

# Mobile Fencing & Security

## General terms and conditions of sale of The Mobile Perimeter Protection Group B.V., Heras Temporary Security, and Heras Mobile Fencing & Security

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### 1. Applicability of these terms and conditions

1. These general terms and conditions of sale apply to all offers made by the seller The Mobile Perimeter Protection Group B.V. ('HMF&S') and under its trade names as well as to any existing and future agreements concluded between HMF&S and the buyer ('customer'). Deviations from and/or amendments to these general terms and conditions shall be binding on the parties only if agreed to in writing.

### 2. Conclusion of the sales agreement

1. The agreement with the customer is considered concluded after confirmation by HMF&S or when HMF&S starts executing the agreement.

### 3. Prices

1. All prices are in euros and exclusive of VAT.
2. HMF&S is entitled to pass on cost price increasing factors such as levies, taxes and surcharges, which lead to an increase in the cost price.

### 4. Payment

1. Payment must be made within 30 days of the invoice date.
2. If payment is not made within 30 days of the invoice date, the customer shall be in default by operation of law and shall owe HMF&S default interest of 1.5% per month with immediate effect.
3. In the absence of payment within 30 days of the invoice date, the customer shall also owe HMF&S compensation for extrajudicial costs. The compensation for extrajudicial costs is 15% of the outstanding amount, with a minimum of €250.00.
4. Suspension or set-off by the customer of outstanding claims of HMF&S against the customer will be excluded.
5. Complaints regarding invoices must be submitted in writing to HMF&S within five days of the invoice date, failing which the customer may no longer invoke any inaccuracies in the invoices.
6. HMF&S is at all times entitled to set off any claims, which can be measured in terms of money, of the customer against claims from HMF&S and the companies (in)directly affiliated with HMF&S in any way.
7. If the customer is in any way part of a group of companies, the 'customer' within the meaning of this Article shall include all the companies belonging to that group in any way.

### 5. Delivery

1. The goods will be delivered to the customer at the location indicated in the order confirmation. The costs associated with the delivery are at the customer's expense.
2. If, upon delivery at the agreed time, no one is present to take delivery of the goods or due to poor or impossible accessibility of the location by normal transport, HMF&S shall be entitled not to deliver the goods, without prejudice to its right to payment of the purchase price. In this case, the customer shall be obliged to pay the transport costs incurred as well as any future transport costs. If delivery is made but no one is present on behalf of the customer to acknowledge receipt, the quantities and condition of the goods as noted by

the driver shall be binding.

3. From the moment of delivery, the goods and the use of the goods are at the expense and risk of the customer.
4. Until such time that the customer has fulfilled all its payment obligations, it is obliged to insure the goods against theft and provide these insurance policies to HMF&S on demand for inspection.
5. HMF&S shall be entitled to deliver in parts without being liable for compensation or without this giving rise to a right to terminate the agreement.

### 6. Retention of title

1. Subject to the provisions in paragraphs 2 to 11 of this article, ownership of the goods shall pass to the customer at the time of delivery or supply as referred to in Article 5 paragraph 1.
2. HMF&S retains ownership of all goods it delivers or supplies to the customer – paid and unpaid – by virtue of the (lease) purchase agreements and related services concluded by it.
3. If HMF&S carries out or will carry out work to be reimbursed by the customer within the framework of these agreements, the aforementioned retention of title shall apply until the customer has also paid these claims of HMF&S in full. The retention of title also applies to the claims which HMF&S holds against the customer or any claims that may arise in future due to the failure of the customer to fulfil one or more of its obligations with respect to HMF&S arising out of the aforementioned agreements or due to the termination of the agreement.
4. As long as the ownership of the delivered goods has not passed to the customer, the customer may not pledge the goods or grant a third party any other right to them, subject to the provisions of the seventh and eighth subparagraphs of this paragraph.
5. HMF&S hereby reserves the right of pledge as referred to in Article 3:237 of the Civil Code as security for all claims that HMF&S may still have against the customer, whether on any account whatsoever, on goods delivered or not, which have passed into the ownership of the customer and are still in the hands of the customer. HMF&S is at all times entitled and hereby irrevocably authorised by the customer to perform the acts necessary to establish this pledge (including explicitly establishing the pledge by authentic or registered private deed) and to do so also on behalf of the customer. At the request of HMF&S, the customer undertakes to cooperate with this pledge without delay.
6. The customer is obliged to store the goods supplied or delivered under retention of title with due care and as the identifiable property of HMF&S. The customer is obliged to insure the goods against fire, explosion, and water damage as well as against theft for the duration of the retention of title and to make these insurance policies available for inspection by HMF&S on first request. All claims of the customer against the insurers of the goods by virtue of the aforementioned insurances will, as soon as HMF&S expresses its wish to do so, be pledged to it by the customer in the manner indicated in article 3:239 of the Civil Code, as additional security for the claims of HMF&S against the customer. The last two sentences of paragraph 5 of this Article shall apply.
7. If the customer fails to comply with its payment obligations with respect to HMF&S or if HMF&S has good reason to fear that the customer will fail to meet these obligations, HMF&S is entitled to repossess the goods delivered under retention of title on its own and without being liable in any way to the

customer. After repossession, the customer shall be credited for the market value which may under no circumstances be higher than the original purchase price, less any costs incurred on repossession.

8. The customer is permitted to sell and transfer the goods supplied or delivered under retention of title to third parties in the normal course of its business operations. When selling on credit, the customer is obliged to demand a retention of title on the basis of the provisions of this article.
9. As soon as HMF&S states its wish in this regard, the customer undertakes not to assign or pledge not to cede or pledge to third parties any claims it may have against its customers, insofar as the customer has not pledged them to its financing bank, without the prior written consent of HMF&S. As soon as HMF&S states its wish in this regard, the customer also undertakes to pledge these claims to HMF&S in the manner indicated in Section 3:239 of the Civil Code as additional security for its claims against the customer on any grounds whatsoever. The last two sentences of paragraph 5 of this Article shall apply.
10. Insofar as the retention of title of HMF&S on the the delivered goods ceases to exist on account of accession or specification, the customer establishes, in advance and for the benefit of HMF&S, a non-possessory pledge on the goods acceded or acquired by specification as security for all current and future debts payable, for whatever reason, by the customer to HMF&S. The last two sentences of paragraph 5 of this Article shall apply.
11. The retention of title vested in HMF&S shall not lapse in case these debts are paid to it by a third party subrogated to the claims of HMF&S against the customer.

## 7. Force majeure

1. In case of force majeure as referred to in Section 6:75 of the Civil Code, but in any case, but not exclusively, war or threat of war, terrorism, riots, strikes, floods, fire, failure or breakdown of energy supplies, government measures and transport bans, both parties shall be entitled to suspend their obligations for the duration of the force majeure, but for not longer than one month.
2. If performance is and will continue to be impossible or if a temporary impossibility continues for longer than a month from the planned time of delivery, the parties are entitled to terminate (that part of) the agreement (which has not yet been performed), without any of the parties being entitled to compensation. The customer is not entitled to terminate the agreement with respect to goods already delivered.

## 8. Liability

1. HMF&S may be held liable for the damage or loss suffered by the customer only if the customer can prove that there is question of intent or gross negligence on the part of HMF&S.
2. HMF&S expressly excludes liability for consequential damage sustained by the customer, which includes but is not limited to loss of profits, business interruption loss, labour costs, interest and repair charges, transport costs or fines.
3. Such liability for damage or loss shall, in any case, be explicitly limited to the amount paid out by the insurer in the relevant case, plus the deductible. If, for whatever reason, no payment is made under the insurance policy, liability for damage or loss shall be explicitly limited to the invoice amount, excluding VAT.
4. Damage or loss shall, in any case, include damage or loss due to breaches or termination of the agreement and damage or loss on account of an unlawful act.
5. Claims for damages must be brought by the customer within one year after the claim for liability has arisen to the court authorised in these terms and conditions. After the period referred to in this paragraph, the claim for compensation shall be statute-barred.

## 9. Inspection and complaints

1. The customer must thoroughly inspect the delivered goods immediately and at the latest within 12 hours after delivery for any anomalies such as defects, incorrect quantities or incorrect measurements, and compare the goods with the order placed and the shipping documents. Deviations must also be reported immediately in writing to HMF&S, failing which the goods shall be deemed to have been delivered correctly both in fact and in law. In that case, the obligation to prove the contrary shall rest with the customer.

2. Bearing in mind the first paragraph, the same terms and conditions shall apply to non-visible defects, on the understanding that the complaint period starts immediately, and no later than 12 hours, after detection of the anomaly.
3. For all other complaints, such as those related to incorrect invoicing, a complaint period of five working days after detection of the complaint is applicable, failing which the invoice shall be deemed as correct in fact and in law.

## 10. (Consequences of) dissolution

1. HMF&S shall be entitled to dissolve the agreement without judicial intervention if the client is declared bankrupt, applies for or obtains a moratorium, is admitted to the statutory debt rescheduling scheme or otherwise loses the power of disposition of its assets or parts thereof.
2. The customer is not entitled to terminate the agreement with respect to goods already delivered, unless HMF&S agrees to this.
3. Due to the dissolution, all reciprocal claims shall become immediately due and payable. The customer is liable for damage or loss suffered by HMF&S, including loss of profits and transport costs.

## 11. Choice of law and choice of forum

1. The purchase agreement is exclusively governed by Dutch law. The Vienna Convention on Contracts for the International Sale of Goods is expressly excluded.
2. All disputes between the parties arising from the agreement or directly or indirectly related to it shall be settled by the competent court in HMF&S's place of business.

## 12. Authentic language and miscellaneous

1. If these terms and conditions are also provided in a language other than Dutch, in the event of differences in interpretation or interpretation, the Dutch version of these terms and conditions will, under all circumstances, be decisive.
2. If one of the above provisions is declared invalid or non-binding by a court of law, the other provisions shall remain in force and effect between the parties. The part declared invalid or non-binding or the annulled provision will have to be interpreted as much as possible in accordance with the purport of the agreement(s) concluded between the parties and these terms and conditions.
3. Cross-border transactions with non-Dutch customers may be subject to specific, differing terms and conditions, which will be agreed separately with the customer.