

TERMS AND CONDITIONS OF DELIVERY Emotorexport B.V.

Definitions

1. Emotorexport B.V.: Emotorexport B.V., established in Steenwijk under CoC no. 88745635.
2. Customer: the person with whom Emotorexport B.V. has entered into an agreement.
3. Parties: Emotorexport B.V. and client together.
4. Consumer: a customer who is also an individual acting as a private person.

Applicability of delivery terms

1. These terms and conditions of delivery apply to all work, orders, agreements and deliveries of services or products by or on behalf of Emotorexport B.V..
2. The parties can deviate from these terms of delivery only if they have expressly agreed to do so in writing.
3. The parties expressly exclude the applicability of additional and/or different general and/or delivery terms and conditions of the customer or third parties.

Payments and payment period

Products are paid for directly.

Consequences of not paying on time

1. If the client fails to pay within the agreed period, Emotorexport B.V. is entitled to charge the legal interest rate of 8% per month for commercial transactions from the day the client is in default, whereby part of a month is counted as a whole month.
2. If the customer is in default, he will also owe extrajudicial collection costs and any damages to Emotorexport B.V..
3. Collection costs are calculated according to the Compensation for Extrajudicial Collection Costs Decree.
4. If the customer fails to pay on time, Emotorexport B.V. may suspend its obligations until the customer has fulfilled his obligation to pay.
5. In the event of liquidation, bankruptcy, seizure or suspension of payment on the part of the client, the claims of Emotorexport B.V. against the client are immediately due and payable.
6. If the customer refuses to cooperate in the execution of the agreement by Emotorexport B.V., he shall still be obliged to pay the full agreed price to Emotorexport B.V.

Right of advertising

1. As soon as the customer is in default, Emotorexport B.V. is entitled to invoke the right of complaint with respect to the unpaid products delivered to the customer.
2. Emotorexport B.V. invokes the right of claim by means of a written or electronic communication.
3. As soon as the customer has been informed of the invoked right of complaint, the customer must immediately return the products to which this right refers to Emotorexport B.V., unless parties have agreed otherwise.
4. The cost of retrieving or bringing back the products shall be borne by the customer.

Suspension right

Unless the customer is a consumer, the customer waives the right to suspend performance of any obligation arising from this agreement.

Lien

1. Emotorexport B.V. may invoke its right of retention and, in that case, retain products of the customer until the customer has paid all outstanding bills with respect to Emotorexport B.V., unless the customer has provided adequate security for those costs.
2. The right of lien also applies pursuant to previous agreements from which the customer still owes payments to Emotorexport B.V.
3. Emotorexport B.V. shall never be liable for any damages that the customer may suffer as a result of exercising his right of retention.

Settlement

Unless the customer is a consumer, the customer waives his right to set off any debt to Emotorexport B.V. against any claim against Emotorexport B.V.

Retention of title

1. Emotorexport B.V. remains the owner of all products delivered until the customer has completely fulfilled all his payment obligations towards Emotorexport B.V., including claims for failure to fulfill the agreement.
2. Until such time, Emotorexport B.V. may at all times invoke its retention of title and repossess the goods.

3. Before ownership has passed to the customer, the customer may not pledge, sell, dispose of or otherwise encumber the products.
4. If Emotorexport B.V. invokes its retention of title, the agreement shall be considered dissolved and Emotorexport B.V. shall be entitled to claim damages, lost profits and interest.

Retention

1. If the customer takes delivery of ordered products later than the agreed delivery date, the risk of any loss of quality shall be borne entirely by the customer.
2. Any additional costs resulting from premature or late purchase of products shall be borne entirely by the customer.

Warranty

1. The warranty with respect to products applies only to defects caused by faulty manufacture, construction or material.
2. The warranty does not apply in the case of normal wear and tear and damage caused by accidents, modifications made to the product, negligence or incompetent use by the customer, as well as when the cause of the defect cannot be clearly determined.
3. The risk of loss, damage or theft of the products that are the subject of an agreement between the parties is transferred to the customer at the time they are legally and/or actually delivered, or at least come into the control of the customer or of a third party who takes delivery of the product on behalf of the customer.

Indemnification

The client indemnifies Emotorexport B.V. against all claims by third parties related to the products and/or services provided by Emotorexport B.V..

Complaints

1. The client shall examine a product delivered or service rendered by Emotorexport B.V. for any shortcomings as soon as possible.
2. If a product delivered or service rendered does not meet what the customer could reasonably expect from the agreement, the customer must inform Emotorexport B.V. of this as soon as possible, but in any case within 1 month of discovering the shortcomings.
3. Consumers must notify Emotorexport B.V. no later than 2 months after discovering the deficiencies.

4. The Customer shall provide as detailed a description as possible of the shortcoming, so that Emotorexport B.V. is able to respond adequately.
5. The customer must demonstrate that the complaint relates to an agreement between the parties.
6. If a complaint relates to work in progress, this cannot in any case result in Emotorexport B.V. being obliged to perform other work than that agreed upon.

Notice of default

1. The customer shall give notice of default in writing to Emotorexport B.V.
2. It is the responsibility of the customer that a notice of default actually reaches Emotorexport B.V. (in a timely manner).

Joint and several liability customer

If Emotorexport B.V. enters into an agreement with multiple customers, each of them shall be jointly and severally liable for the full amounts they owe Emotorexport B.V. under that agreement.

Liability Emotorexport B.V.

1. Emotorexport B.V. is only liable for any damage suffered by the client if and insofar as such damage was caused by intent or deliberate recklessness.
2. If Emotorexport B.V. is liable for any damages, it shall only be liable for direct damages arising out of or in connection with the execution of an agreement.
3. Emotorexport B.V. is never liable for indirect damages, such as consequential damages, lost profits, missed savings or damages to third parties.
4. If Emotorexport B.V. is liable, such liability shall be limited to the amount paid out by any (professional) liability insurance taken out, and in the absence of (full) payment by an insurance company of the amount of damage, liability shall be limited to the (part of the) invoice amount to which the liability relates.
5. All illustrations, photographs, colors, drawings, descriptions on the website or in a catalog are only indicative and are only approximate and cannot be grounds for compensation and/or (partial) dissolution of the agreement and/or suspension of any obligation.

Due date

Any right of the client to claim damages from Emotorexport B.V. shall in any case expire 12 months after the event from which the liability arises directly or indirectly. This does not exclude the provisions of article 6:89 of the Dutch Civil Code.

Right of rescission

1. The customer has the right to dissolve the agreement when Emotorexport B.V. imputably fails to fulfill its obligations, unless this failure, in view of its special nature or minor importance, does not justify dissolution.
2. If fulfillment of the obligations by Emotorexport B.V. is not permanently or temporarily impossible, then dissolution can only take place after Emotorexport B.V. is in default.
3. Emotorexport B.V. has the right to dissolve the agreement with the customer if the customer fails to fulfill his obligations under the agreement in full or in a timely manner, or if Emotorexport B.V. becomes aware of circumstances which give him good reason to fear that the customer will not be able to fulfill his obligations properly.

Force majeure

1. In addition to the provisions of Article 6:75 of the Dutch Civil Code, a shortcoming by Emotorexport B.V. in the fulfillment of any obligation towards the Customer cannot be attributed to Emotorexport B.V. in a situation independent of the will of Emotorexport B.V., as a result of which the fulfillment of its obligations towards the Customer is wholly or partially prevented or as a result of which the fulfillment of its obligations cannot reasonably be required of Emotorexport B.V.
2. The force majeure situation mentioned in paragraph 1 also includes - but is not limited to - the following: state of emergency (such as civil war, insurrection, riots, natural disasters, etc.); defaults and force majeure of suppliers, delivery companies or other third parties; unexpected power, electricity, internet, computer and telecom failures; computer viruses, strikes, government measures, unforeseen transportation problems, bad weather conditions and work interruptions.
3. If a force majeure situation arises as a result of which Emotorexport B.V. cannot fulfill 1 or more obligations to the customer, those obligations will be suspended until Emotorexport B.V. can fulfill them again.
4. From the moment a force majeure situation has lasted for at least 30 calendar days, either party may rescind the contract in writing in whole or in part.
5. Emotorexport B.V. is not liable for any compensation (for damages) in a force majeure situation, even if it enjoys any advantage as a result of the force majeure situation.

Modification of the agreement

If after the conclusion of the agreement for its execution it appears necessary to modify or supplement its content, the parties shall promptly and by mutual agreement adjust the agreement accordingly.

Change of delivery terms

1. Emotorexport B.V. is entitled to modify or supplement these terms of delivery.
2. Changes of minor importance may be made at any time.
3. Major substantive changes will be discussed by Emotorexport B.V. with the customer in advance whenever possible.
4. A consumer is entitled to terminate the contract in the event of a material change in the terms of delivery.

Transfer of Rights

1. Rights of the client from an agreement between the parties cannot be transferred to third parties without the prior written consent of Emotorexport B.V..
2. This provision counts as a clause with effect under property law as referred to in Article 3:83(2) of the Civil Code.

Consequences of nullity or voidability

1. Should one or more provisions of these delivery terms prove to be void or voidable, this shall not affect the remaining provisions of these terms.
2. A provision that is void or voidable shall in that case be replaced by a provision that comes closest to what Emotorexport B.V. had in mind when drafting the terms and conditions on that point.

Applicable law and competent court

1. These terms of delivery and any agreement between the parties shall be governed exclusively by the laws of the Netherlands.
2. The Dutch court in the district where Emotorexport B.V. is located has exclusive jurisdiction to take cognizance of any disputes between the parties, unless otherwise required by mandatory law.

Applicability of delivery terms

1. These terms of delivery are applicable since Jan. 01, 2023.