



GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS AND
THE IMPLEMENTATION OF ORDERS

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1. Definitions:

Contracting Party:	the party with which Hortimec has entered into an contract
Hortimec:	the commercial partnership Hortimec B.V.
Contract:	the contract (for professional services and/or sales) entered into between the Parties
Parties:	Hortimec and the Contracting Party
Product:	the items supplied or to be supplied by Hortimec

2. Applicability and interpretation

- 2.1. These general terms and conditions are applicable to all Offers and Contracts of Hortimec and the Contracting Party, and to all follow-up agreements between Hortimec and the Contracting Party.
- 2.2. In the event of an amendment of a Contract between Hortimec and the Contracting Party in the interim, these general terms and conditions will remain fully applicable.
- 2.3. The general terms and conditions of the Contracting Party are expressly not accepted. The general terms and conditions of Hortimec are exclusively applicable, unless Hortimec expressly accepts the general terms and conditions of the Contracting Party in writing.
- 2.4. Divergences from these general terms and conditions are only applicable insofar as this is expressly confirmed by Hortimec in writing.
- 2.5. In the event of inconsistencies between a Contract and these general terms and conditions, the Contract will prevail over these general terms and conditions.
- 2.6. In the interpretation of these general terms and conditions no significance will accrue to the location of the articles and/or their titles.

3. Offers and contracts

- 3.1. Offers from Hortimec are free of obligation, and should be regarded as a single whole. Acceptance of a component and/or components of an offer from Hortimec is therefore not possible, unless Hortimec expressly accepts this in writing.
- 3.2. Offers from Hortimec become void if they are not accepted within 14 days, unless another period is agreed in writing.
- 3.3. In the event that the written (order) confirmation of Hortimec diverges from the order/request issued by the Contracting Party, the Contracting Party will be considered to be in agreement with the divergence unless the Contracting Party has stated in writing within 14 days of receipt of the (order) confirmation that it does not agree to the divergence.
- 3.4. Hortimec reserves all intellectual property rights on its offers and their associated designs, drawings, descriptions etc. These details may only be used, copied and provided to third parties (for inspection) with the express written permission of Hortimec.
- 3.5. Verbal agreements are only binding upon Hortimec insofar as they are confirmed by Hortimec in writing.
- 3.6. For Contracts for which no price agreements are made, the hourly fee that Hortimec employs at that time or the price that Hortimec charges for such a product will apply.

4. Faults and defects in the issued orders and documentation

- 4.1. Hortimec does not accept any liability whatsoever for errors and defects in the order issued by the Contracting Party, or in the plans, drawings, calculations, specifications, implementation instructions etc. issued by the Contracting Party.
- 4.2. Hortimec does not accept any liability whatsoever for errors and defects in the order issued by the Contracting Party, unless other components, modules or machines that were not supplied by Hortimec are integrated in line with machines that were supplied by Hortimec. Defects also include lower production capacity and reduced functionality of machines supplied by Hortimec as a result of the application and integration of components, modules or machines that were not supplied by Hortimec.
- 4.3. The Contracting Party indemnifies Hortimec against any claims from third parties in respect of that which it has supplied to Hortimec, all of this in the broadest sense of the terms.

5. Delivery, commissioning, the timing of these and the transfer of risk

- 5.1. Any times of delivery and commissioning agreed between the Parties are approximate.
- 5.2. The time of delivery and commissioning will in any event be extended by: a) the period in which Hortimec does not have the information needed by it and to be issued by the Contracting Party, b) the time needed to carry out any additional work, c) the period in which the working conditions are such that the work cannot be carried out, d) the period in which the Contracting Party does not comply with its obligations towards Hortimec arising from the contract, and e) the period in which Hortimec, due to circumstances that are not at its risk, cannot carry out the work or supply the Product. These latter circumstances will also be considered to include noncompliance with obligations by suppliers and/or contractors or subcontractors that are engaged by Hortimec.
- 5.3. If the time of delivery and commissioning is extended on the basis of the foregoing paragraph, the work will be carried out by Hortimec once this is possible, given its other orders and/or work.
- 5.4. Hortimec is not liable for damage that arises from the periods stated in the above paragraphs being exceeded.

- 5.5. The risk of the Product or a work lies with the Contracting Party from the time of delivery and commissioning or dispatch of a Product by Hortimec.
- 5.6. Any agreed trading condition will be interpreted in accordance with the Incoterms. If the parties have not agreed any specific trading condition, delivery will take place ex works.
- 5.7. The Contracting Party will enable Hortimec to deliver or provide the Product or work once again within a reasonable period if it shows a defect.
- 5.8. The Contracting Party will make enough plants, seeds and/or cuttings available to Hortimec to enable the Product to be tested and configured.
- 5.9. Hortimec is not responsible for the Contractor's electrical facilities on site and the Contractor is obliged to indemnify Hortimec for additional costs in the installation work due to defects in the electrical facilities such as inadequate electrical groups, poor cabling to the machines, earth leakage switches and fuses that are too light.
- 5.10. Information and specifications stated in product documentation and price lists are only binding insofar as these are explicitly referred to in the contract with Hortimec.
- 5.11. If an acceptance test is agreed prior to provision, this will take place at the production location, or at another location to be designated by Hortimec. If the Contracting Party is not present, a test report will be sent and this will be considered to be accurate. Costs that the Contracting Party incurs in order to be present at a test will be borne by the Contracting Party.

6. Extent of delivery/work

- 6.1. The extent of the work/delivery will be determined by that which is specified in Hortimec's tender or in the Contract.
- 6.2. Contract variations are defined as alterations in the work and delivery.

7. Software licence and activation

- 7.1. A unique software licence code applies to each individual irrigation system delivered and/or commissioned by Hortimec. The Contractor is obliged to activate this licence code no later than three months after the date of commissioning of the system by a method or through an interface indicated by Hortimec.
- 7.2. If no valid licence code has been entered two months after commissioning, the Contractor will receive a daily notification via the system as a reminder of the approaching expiry of the activation period.
- 7.3. If the licence code then remains unactivated, Hortimec will be entitled to temporarily restrict certain parts of the software, including functions for automated operation or monitoring, as referred to in Article 11. The core functionality of the irrigation system will remain available during this period of restriction.
- 7.4. After a valid licence code is entered, access to the full software functionality is restored, unless otherwise determined in the agreement.
- 7.5. The timely activation of the licence code is the responsibility of the Contractor. Hortimec will not be liable for any direct or indirect loss resulting from the failure to activate the licence on time, provided that the notifications are correctly displayed through the system.

8. Price

- 8.1. The amount that is agreed in writing between the parties, or, in the absence of this, the amount stated by Hortimec in the order confirmation or tender, applies as the price.
- 8.2. If no price is agreed between the parties, the prices normally applied by Hortimec at the time of the performance of the work and/or the delivery of the Product apply.
- 8.3. If a delay in the delivery and commissioning of the work or item arises due to circumstances that are at the Contracting Party's risk, and/or additional work is necessary in order to fulfil the contract, the costs of this will be charged to the Contracting Party.
- 8.4. Hortimec is authorised to charge to the Contracting Party the costs that are caused by the coming into force of or amendments to government regulations, unless this coming into force and/or these amendments were known to Hortimec at the time of the Contract being entered into.

9. Payment

- 9.1. The Contracting Party must settle Hortimec's invoices within 14 days of the invoice date.
- 9.2. If this period is exceeded, the Contracting Party will be in default without a notice of default being necessary.
- 9.3. In the event of late payment, the Contracting Party will be liable to pay interest of 1% per month, or the statutory commercial interest if this is higher, in which context a part of a month applies as a whole month, from the due date for payment, as well as the extrajudicial collection costs, and will be obliged to reimburse the damage suffered by Hortimec.
- 9.4. In the event of late payment Hortimec is also entitled to suspend its activities and to stipulate security for compliance with all obligations that arise from the contract for the Contracting Party.
- 9.5. Authorisation for the Contracting Party to set off or suspend payment is excluded.
- 9.6. If the Contracting Party does not comply with any obligation arising from the agreement in a timely manner, applies for a suspension of payment, goes bankrupt, is liquidated or transfers all or part of its business, Hortimec's claims will immediately become payable in full.

10. Suspension of services in the event of non-payment

- 10.1. If the Contracting Party fails to pay a due and payable debt within the agreed payment term, and remains in default after two written reminders (with a deadline of at least 5 working days), Hortimec shall be entitled to temporarily restrict access to the software environment, or parts of it. The Contracting Party will continue to owe Hortimec the agreed fee during the period of the restricted software environment.
- 10.2. Hortimec will inform the Contracting Party in advance by email and/or system notification of the intended restriction of functionality, stating a reasonable period of at least 5 working days within which payment can take place.
- 10.3. This restriction may mean, among other things, that certain operating options or user modules will not be available until full payment has been received. The system will remain operational during that period in such a way that basic functionality is ensured, but access and use may be significantly restricted.
- 10.4. Access and functionality will be fully restored once the Contractor has fulfilled its payment obligations.

11. Termination

- 11.1. If the Contracting Party remains in default 30 calendar days after the second payment reminder, Hortimec will be entitled to dissolve the agreement, without further notice of default being required. In such cases, all rights of use to the software granted will expire and Hortimec will be entitled to terminate access to the system entirely. Hortimec will give the Contractor a reasonable period of one month to switch service providers in order to prevent the termination from resulting in considerable damage for the Contractor.
- 11.2. Hortimec is not liable for any direct or indirect damage resulting from the application of this article, provided that the restriction or termination was carried out carefully and proportionately. The Contractor indemnifies Hortimec against third-party claims resulting from the lawful application of this article.

12. Non-purchase

- 12.1. If the Contracting Party does not purchase a Product after it has been made available by Hortimec, it will be stored by Hortimec at the Contracting Party's risk and expense, without prejudice to its other (statutory) rights and the obligation of the Contracting Party to pay the agreed price to Hortimec within the agreed period.

13. Retention of ownership

- 13.1. If delivery by Hortimec has taken place before the Contracting Party has fulfilled all of its payment (and other) obligations towards Hortimec, then the delivered items will remain the property of Hortimec until the Contracting Party has fulfilled the abovementioned obligations.
- 13.2. In the case of the export of a Product, the Contracting Party will ensure that sufficient security is provided immediately at Hortimec's request.

14. Liability

- 14.1. Hortimec's liability is in all cases limited to the amount that its liability insurer pays out when appropriate (a maximum of €1,250,000 with the exception of the United States of America and Canada, where no cover applies) and in any event to the amount exclusive of VAT that it has charged to the Contracting Party in respect of the Contract or that part of the Contract to which the liability relates.
- 14.2. Without prejudice to the foregoing, Hortimec will in no way be liable towards the Contracting Party or third parties for damage to the property of the Contracting Party and/or third parties, physical injury, direct and indirect consequential damage, including trading loss, damage due to business stagnation, lost profits and decreased value. Hortimec is also not liable for damage that arises because the Contracting Party has provided Hortimec with inaccurate information.
- 14.3. The Contracting Party indemnifies Hortimec against all claims by third parties.
- 14.4. Without prejudice to the foregoing, the period of Hortimec's liability is limited to 12 months after the delivery of a Product or the provision of a work, on the understanding that this period will be proportionally reduced if the Product is used more intensively than foreseen.

15. Lapse of rights

- 15.1. The Contracting Party can no longer invoke defective performance unless it has informed Hortimec of the defect in writing within 2 weeks of the moment of discovery or within 2 weeks of when it should reasonably have discovered the defect.

16. Repair and rectification of defects

- 16.1. In the event of the repair of defects and/or rectification of deficiencies, any guarantee periods will only be extended in respect of the repaired and/or replaced components. The guarantee conditions remain unchanged.
- 16.2. Defects will be rectified at a location to be designated by Hortimec, and will be considered to have been rectified when Hortimec dispatches the repaired or - if necessary - replaced component to the Contracting Party, unless it cannot be reasonably expected of the Contracting Party that it will install the repaired or replaced component itself.
- 16.3. If it is necessary for the repair or replacement of a Product that additional measures must be taken to enable repair or replacement, then the Contracting Party will take these measures immediately at Hortimec's request.
- 16.4. The Contracting Party is obliged to return replaced components to Hortimec on request and free of charge.

17. Additional provisions for contracts for professional services

- 17.1. By way of derogation from the provisions of article 7:408(1) of the Dutch Civil Code, contracts for professional services with Hortimec cannot be prematurely terminated.
- 17.2. The applicability of articles 7:404, 407(2) and 409 of the Dutch Civil Code is excluded.

18. Applicable law and disputes

- 18.1. All disputes arising from contracts with Hortimec will be exclusively settled by the competent court in Rotterdam.
- 18.2. All contracts with Hortimec are governed by the laws of the Netherlands. Applicability of the Vienna Sales Convention is excluded.

19. Other provisions

- 19.1. If any provision of these general terms and conditions is inapplicable, the other provisions remain fully in force.