

HappyPoros – General Terms and Conditions v1/11-2019

DEFINITIONS

1. **HappyPoros:** HappyPoros, established in Rotterdam under the Dutch Chamber of Commerce nr. 76343820.
2. **Customer:** the person with whom HappyPoros has entered into an agreement.
3. **Parties:** HappyPoros and the customer together.
4. **Consumer:** a customer who is an individual and acts as a private person.

APPLICABILITY GENERAL TERMS AND CONDITIONS

1. These Terms and Conditions apply to all quotations, offers, work, orders, agreements and deliveries of services or products by or on behalf of HappyPoros.
2. The parties can only deviate from these terms if they have expressly agreed to it in writing.
3. Parties explicitly exclude the applicability of additional and/or deviating general terms and conditions of the customer or third parties.

OFFERS AND QUOTATIONS

1. Offers and quotations of HappyPoros are without obligation, unless otherwise stated.
2. An offer or quotation shall be valid for a maximum period of one month, unless a different acceptance period is mentioned in the offer or the quotation.
3. If the customer does not accept an offer or quotation within the applicable time period the offer or quotation will be cancelled.
4. Offers and quotations do not apply to repeat orders, unless the parties have expressly agreed to this in writing.

ACCEPTANCE

1. When accepting a free quote or offer HappyPoros reserves the right to withdraw the offer within 3 days after receipt of the acceptance without the customer being able to derive any rights from this.
2. Verbal acceptance by the customer commits HappyPoros only after the customer has confirmed this in writing (or electronically).

PRICES

1. All prices used by HappyPoros are in euro's, exclusive of BTW (VAT) and exclusive of any other costs such as administration costs, taxes and travel-, shipment- or transport costs, unless explicitly stated otherwise or agreed upon otherwise.
2. All prices used by HappyPoros for its products or services, on its website or otherwise published, can be changed at

any time.

3. The price with regard to a service is determined by HappyPoros on the basis of the actual hours spent.
4. The price is calculated according to the usual hourly rates of HappyPoros (€45), valid for the period in which he performs the work, unless a different hourly rate has been agreed upon.
5. When parties have agreed on a total amount for services rendered by HappyPoros this will always be an indicative price unless parties have explicitly agreed in writing on a fixed price from which no deviation can be made.
6. HappyPoros is entitled to deviate up to 10% from the indicative price.
7. If the indicative price is to be increased by more than 10% HappyPoros will inform the customer in time as to why the higher price is justified.
8. Should the price be higher by more than 10%, the client has the right to cancel the part of the order that exceeds the price increased by 10%.
9. HappyPoros has the right to adjust the prices annually.
10. Prior to the commencement HappyPoros will communicate price adjustments to the customer.
11. The consumer has the right to terminate the agreement with HappyPoros in case he does not agree with the price increase.

INVOICING AND PAYMENT

HappyPoros will invoice the total fee as stated in the offer in two parts to the customer unless otherwise stated in writing by HappyPoros. The first part amounts to 25% of the total fee and is considered a down payment. This down payment should be paid to HappyPoros before the start of the work. The second part will be invoiced before delivery of the product.

CONSEQUENCES OF NOT PAYING IN TIME

1. If the customer does not pay within the agreed period, €15,00 administration costs will be charged per expired period, whereby a part of a month will be counted as a whole month.
2. When the customer is in default he will also have to pay extrajudicial collection costs and possible damages to HappyPoros.
3. The collection costs are calculated according to the Decree on the compensation of extrajudicial collection costs.
4. When the customer does not pay in time HappyPoros may suspend his obligations until the customer has met his payment obligation.
5. In case of liquidation, bankruptcy, seizure or suspension of payment on the part of the customer the claims of

HappyPoros on the customer are immediately due and payable.

6. If the customer refuses to cooperate with the execution of the agreement by HappyPoros he is still obliged to pay the agreed price to HappyPoros.

RIGHT OF SUSPENSION

Unless the customer is a consumer the customer waives the right to suspend the fulfillment of any obligations resulting from this agreement.

SET OFF

Unless the customer is a consumer, the customer waives his right to set off a debt to HappyPoros against a claim against HappyPoros.

INSURANCE

1. The customer is obliged to adequately insure the following items and to keep them insured against, among other things, fire, explosion and water damage as well as theft:
 - delivered items that are necessary for the execution of the underlying agreement
 - goods of HappyPoros present at the customer's premises
 - goods that are delivered under retention of title
2. On first request of HappyPoros the customer will provide the insurance policy for inspection.

EXECUTION OF THE AGREEMENT

1. HappyPoros executes the agreement to the best of its knowledge and ability and in accordance with the requirements of good craftsmanship.
2. HappyPoros has the right to have the agreed upon services (partially) carried out by third parties.
3. The execution of the agreement is carried out in mutual consultation and after written agreement and payment of the possibly agreed upon advance by the customer.
4. It is the responsibility of the client to ensure HappyPoros can start the execution of the agreement in time.
5. When the customer has not ensured that HappyPoros will timely commence with the execution of the agreement, the resulting additional costs and/or extra hours will be borne by the customer.

PROVISION OF INFORMATION BY THE CUSTOMER

1. The customer shall provide HappyPoros with all information, data and documents relevant for the proper execution of the agreement in a timely manner and in the desired form and manner.

2. The customer is responsible for the accuracy, completeness and reliability of the information, data and documents, even when these come from third parties, unless the nature of the agreement dictates otherwise.
3. If and when the customer requests so, HappyPoros will return the relevant documents.
4. If the customer does not provide the information or documents reasonably requested by HappyPoros and the execution of the agreement is delayed as a result, the resulting additional costs and hours are borne by the customer.

DURATION OF THE AGREEMENT

The agreement between HappyPoros and the customer is entered into for the period of 1 year, unless the nature of the agreement dictates otherwise or if parties have expressly agreed otherwise in writing.

INTELLECTUAL PROPERTY

1. HappyPoros will retain all intellectual property rights (including copyright, patent rights, trademark rights, drawing and model rights, etc.) on all designs, drawings, writings, data carriers or other information, offers, images, sketches, models, etc., unless otherwise agreed upon in writing by both parties.
2. The customer is not allowed to copy, show or make available to third parties or use the aforementioned intellectual property rights in any other way without prior written permission of HappyPoros.

CONFIDENTIALITY

1. The customer will keep any information he receives (in any form) from HappyPoros confidential.
2. The same applies to any other information concerning HappyPoros of which he knows or can reasonably suspect to be secret or confidential, or of which he can expect that its disclosure could harm HappyPoros.
3. The customer will take all necessary measures to ensure that the information mentioned in paragraph 1 and 2 will also be kept secret.
4. The obligation of secrecy described in this article does not apply to information
 - which was already in the public domain before the customer became aware of it, or which has subsequently become public without this being due to a breach of the customer's duty of confidentiality
 - that is made public by the customer pursuant to a legal obligation
5. The confidentiality obligation described in this article shall apply for the duration of the underlying agreement and for

a period of 3 years after its expiry.

PENALTY CLAUSE

1. If the other party violates the article of these General Terms and Conditions regarding confidentiality or intellectual property, he forfeits for each violation an immediately payable fine to HappyPoros.
 - If the other party is a consumer, this penalty shall be €1,000.
 - If the other party is a legal entity, this penalty shall be €5,000
2. In addition, the other party shall forfeit an amount equal to 5% of the amount referred to in paragraph 1 for each day that the breach continues.
3. No prior notice of default or legal proceedings shall be required for the forfeiture of this penalty. Nor is it necessary for there to be any question of damage.
4. The forfeiture of the fine mentioned in the first paragraph of this article does not affect the other rights of HappyPoros including the right to claim damages.

INDEMNIFICATION

The customer indemnifies HappyPoros against all claims of third parties related to the products delivered and/or services provided by HappyPoros.

COMPLAINTS

1. The customer should examine a product or service provided by HappyPoros as soon as possible for possible shortcomings.
2. Should a delivered product or service fail to meet the expectations the customer may reasonably have under the agreement, the customer should inform HappyPoros as soon as possible but in any case within 1 month after the deficiencies have been noted.
3. Consumers should inform HappyPoros within 2 months after the deficiencies have been noted.
4. The customer should give as detailed a description as possible of the shortcoming, so that HappyPoros is able to respond adequately.
5. The customer has to prove that the complaint concerns an agreement between the parties.
6. When a complaint pertains to ongoing work, this cannot lead to HappyPoros being obliged to perform other work than agreed upon.

NOTICE OF DEFAULT

1. The customer must give written notice of default to

HappyPoros.

2. It is the responsibility of the customer that the notice of default actually reaches HappyPoros in time.

JOINT AND SEVERAL LIABILITY OF THE CUSTOMER

When HappyPoros enters into an agreement with several customers, each of them is jointly and severally liable for the full amounts due to HappyPoros under the agreement.

LIABILITY HAPPYPOROS

1. HappyPoros is liable for any damage suffered by the customer only if and insofar as the damage was caused by intent or gross negligence.
2. When HappyPoros is liable for any damage it is only liable for direct damage caused by or in connection with the execution of the agreement.
3. HappyPoros is never liable for indirect damages, such as consequential damages, lost profits, lost savings or damage to third parties.
4. In the event HappyPoros is liable, this liability is limited to the amount paid out by the (professional) liability insurance and in the absence of (full) payment by the insurance company of the damage amount the liability is limited to the (part of the) invoice amount to which the liability relates.
5. All images, photographs, colours, drawings, descriptions on the website or in a catalogue are only indicative and only apply approximately and cannot be a reason for compensation of damage and/or (partial) dissolution of the agreement and/or suspension of any obligation.

EXPIRY PERIOD

Any right of the customer to compensation from HappyPoros expires in any case 12 months after the event from which the liability is directly or indirectly derived. 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 terminate the agreement when HappyPoros imputably fails to meet his obligations, unless this failure, given its special nature or minor importance, does not justify the termination.
2. When the fulfillment of the obligations by HappyPoros is not permanently or temporarily impossible, termination can only take place after HappyPoros is in default.
3. HappyPoros has the right to terminate the agreement with the customer when the customer does not meet his obligations under the agreement in full or in time, or when HappyPoros has knowledge of circumstances giving him reason to fear that the customer will not be able to meet

his obligations.

FORCE MAJEURE

1. In addition to the provisions of article 6:75 of the Dutch Civil Code a breach of contract by HappyPoros cannot be attributed to HappyPoros in a situation independent of the will of HappyPoros, as a result of which the fulfillment of his obligations towards the customer is prevented in whole or in part or the fulfillment of his obligations cannot be reasonably expected from HappyPoros.
2. The force majeure situation referred to in paragraph 1 includes - but is not limited to -: state of emergency (such as civil war, insurrection, riots, natural disasters, etc.); non-performance and force majeure of suppliers, deliverers or other third parties; unexpected power, electricity, internet, computer and telecom disruptions; computer viruses, strikes, government measures, unforeseen transport problems, adverse weather conditions and work stoppages.
3. When a force majeure situation occurs preventing HappyPoros from fulfilling one or more obligations to the customer, these obligations will be suspended until HappyPoros can fulfil them again.
4. From the moment a force majeure situation has lasted for at least 30 calendar days both parties are entitled to terminate the agreement in writing partially or entirely.
5. HappyPoros is not obliged to pay any (compensation), even if it benefits from any advantage due to the force majeure situation.

AMENDMENTS TO THE AGREEMENT

If, after the agreement has been concluded, it appears necessary for its implementation to amend or supplement the contents thereof, the parties shall amend the agreement accordingly in good time and in mutual consultation.

AMENDMENT OF GENERAL TERMS AND CONDITIONS

1. HappyPoros is entitled to amend or supplement these General Terms and Conditions.
2. Amendments of minor importance can be carried out at all times.
3. HappyPoros will discuss major changes in content with the customer as much as possible beforehand.
4. Consumers are entitled to terminate the agreement in case of a substantial change in the general terms and conditions.

TRANSITION OF RIGHTS

1. Rights of the customer from an agreement between parties cannot be transferred to third parties without prior

written consent of HappyPoros.

2. This provision is considered as a clause with effect of property law as meant in article 3:83, second paragraph, of the Dutch Civil Code.

EFFECTS OF NULLITY OR VOIDABILITY

1. When one or more provisions of these Terms and Conditions are invalid or voidable, this will not affect the other provisions of these Terms and Conditions.
2. A provision that is void or voidable will be replaced by a provision that comes closest to what HappyPoros had in mind when drawing up the Terms and Conditions.

APPLICABLE LAW AND COMPETENT COURT

1. Any agreement between the parties is governed exclusively by Dutch law.
2. The Dutch court in the district where HappyPoros is located / practice / office is exclusively competent to hear any dispute between parties, unless the law prescribes otherwise.

<https://happyporos.nl>

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