

GENERAL TERMS AND CONDITIONS OF SALE HANDICARE

1 Definitions

1.1 In these General Terms and Conditions of Sale (hereinafter referred to as the “General Conditions”), the following terms shall mean:

“Dealer”:	the other party with which Handicare enters into a Contract for the (re)sale of Products, on the basis of a distribution agreement or otherwise;
“Customer”:	the party which purchases Products (direct) from Handicare and to that end enters into a Contract with Handicare;
“User”:	the party by whom the Products are intended to be used;
“Distribution Agreement”:	a contract between Handicare and a Dealer for the (re)sale of the Products;
“Contract”:	any contract concluded between Handicare and a Customer or a Dealer – on the basis of a distribution agreement or otherwise – with respect to the sale of a Product, any modification or addition thereto, as well as all (legal) transactions for the purpose of preparing and executing the contract;
“Order”:	any order by the Customer or any acceptance by the Customer of an offer to enter into a Contract with Handicare;
“Products”:	manual or electric wheelchairs, scooters or other goods manufactured by Handicare, which Handicare sell on the basis of a Contract.

2 Applicability

- 2.1 These terms and conditions shall apply to all (subsequent) Contracts which Handicare (including, but not limited to, all companies over which Handicare has actual or legal control) concludes with other parties for the supply and purchase of the Products. Merely by placing the Order and/or accepting the goods supplied the Customer accepts these conditions and will be deemed to have tacitly agreed to any further Orders, irrespective of a written confirmation by Handicare.
- 2.2 In the event that these conditions are – or, in the event of subsequent Contracts, will be – unacceptable to the Customer, the Customer must specify expressly in writing, by separate letter or fax letter exclusively addressing this subject, the proposed variations from these terms and conditions, in which case a written confirmation by Handicare shall be required to effectuate the variation proposed by the Customer.
- 2.3 Handicare shall reserve the right to alter or add to these conditions, which alterations or additions will not, however, apply to Contracts concluded or Orders made prior to the alteration or addition.
- 2.4 The alterations referred to in paragraph 2.3 shall be binding as from the fifteenth day after Handicare has notified the Customer of the alterations.
- 2.5 In so far as relevant to the rights and obligations of the User, the applicability of these General Conditions shall entail that the Dealer commits himself to reselling the Product to third parties only on the relevant conditions – as contained in these General Conditions. The warranty conditions (Section 9) of these General Conditions must in any event form an integral part of the contracts of sale to be concluded between the Dealer and third parties. In addition, the Dealer shall limit his liability to third parties with due observance of the provisions of Section [10].
- 2.6 Where applicable, a Customer granting the use of the Products to Users must incorporate the provisions referred to in paragraph 2.5 of the General Conditions into a (user) agreement between Customer and User.
- 2.7 Prior to entering into a user agreement or contract of sale with User or third parties for the sale or grant of the right of use of a Product, the Customer shall furthermore provide the User with comprehensive information regarding the appropriate use of the Product, to which end the Customer shall in any event supply a copy of the user's manual.

3 Offer; Conclusion of Contracts

- 3.1 Oral Orders shall only be binding if laid down and confirmed in writing by Handicare. Unless within one working day (during regular working hours, Monday to Friday inclusive) after receipt of this confirmation the Customer lodges a written protest for deviations for his Order, the Customer shall be bound by the Contract as confirmed.
- 3.2 Contracts will also be concluded upon receipt by Handicare of an Order signed by the Customer.
- 3.3 All oral and written offers and quotations shall be non-binding and serve only as invitations to submit Orders.

4 Payment

- 4.1 Unless otherwise agreed in writing, payment of the Products supplied must be effected by the Customer within thirty (30) days after the invoice date. Unless otherwise agreed in writing, all amounts billed shall be paid in full without any discount, rebate or deduction.
- 4.2 If a fixed discount percentage for the purchase of Products has been agreed (in writing) with the Customer, such percentage will be discounted in the invoices concerned. If a variable discount percentage for various Products has been agreed (in writing), a quarterly set-off will be effected against accounts receivable, immediately payable or otherwise.
- 4.3 Until such date as shall yet be determined – but not later than 1 January 2002 – all amounts payable to Handicare by the Customer shall be expressed in Netherlands guilders. After the said date all amounts payable will be expressed in Euros. If the Customer wishes to effect payment in another currency, he must do so at the highest exchange rate of the Netherlands guilder or Euro on the day of payment and under the obligation of paying all additional costs incidental to the settlement in alternative currency.
- 4.4 Unless expressly agreed otherwise, the prices quoted by Handicare shall be for the delivery of the Products ex works or ex warehouse, exclusive of transport costs and VAT.
- 4.5 If the delivery date stated by Handicare has passed without delivery having been effected and the delay can be attributed to causes as referred to in paragraph 13.1, after three months of delay (after the stated date) an increase of the pricing factors may be charged on to the Customer.
- 4.6 Payment of the price increase as referred to in paragraph 4.5 shall be simultaneous with payment of the principal sum or – if a repayment arrangement has been agreed – payment of the final instalment.

5 Delivery

- 5.1 Agreed times of delivery shall be approximates and shall definitely not be absolute deadlines within the meaning of Section 83a of Book 3 of the Netherlands Civil Code.
- 5.2 The period of delivery shall commence when all technical details of the specifications as required by the Customer in respect of the Product to be delivered have reached Handicare.
- 5.3 If the Customer presents different product specifications once the Contract has been concluded, Handicare shall be allowed a reasonable period of time to process these new specifications and the Customer shall be obliged to compensate any additional costs incurred as a consequence thereof.
- 5.4 Unless expressly agreed otherwise in writing, all Products sold by Handicare shall be delivered to the Customer ex works in accordance with the Incoterms 2000; the risk in the good shall pass to the Customer the moment when Handicare places a Product at the disposal of the Customer by actually handing the product to the Customer or to a carrier engaged by him.
- 5.5 As a departure from the provisions of the preceding paragraph, the parties shall be free to agree in writing that Handicare is charged with the responsibility of shipment. The risk incidental to storage, loading, carriage and unloading shall even in that case lie with the Customer (as from the date of notification as referred to in paragraph 5.6). The Customer shall be free to take out insurance against these risks.
- 5.6 Handicare shall notify the Customer in writing that a Product is ready for delivery in its warehouse. Subsequently, the Customer shall be required (to instruct another party) to take receipt of the Product to be delivered within fourteen (14) days after the said written notification.
- 5.7 The Customer who has reasonable grounds to expect to be unable to take receipt of the Product(s) within the term set forth in the previous paragraph shall forthwith notify Handicare thereof in writing. If delivered Products are kept in storage by Handicare for more than two (2) weeks, the Customer shall be liable to pay storage costs. If he has no such reasonable grounds, the Customer shall be required to pay storage costs immediately upon expiry of the term referred to in paragraph 5.6.
- 5.8 If the Customer does not take receipt of the Products within the agreed period of time, he shall be in default without notice being required. In that case, Handicare will be entitled to store the Products for the account and at the risk of the Customer or to sell the Products to a third party. The Customer shall remain liable to pay the purchase price, increased by interest and extrajudicial costs, however, less the net proceeds from the sale to the third party, if that should be the case.

6 Packaging

- 6.1 Handicare shall package Products in accordance with the nature and the use of the Product sold.
- 6.2 If the Customer has special wishes in terms of packaging, Handicare shall satisfy such wishes to the best of its ability, to which end Handicare may charge a fee.

7 Default

- 7.1 The mere expiry of the agreed term of payment shall cause the Customer to be in default, in which case all accounts receivable for whatever reason shall be immediately payable.
- 7.2 On all amounts not paid on the last day of the term of payment the Customer shall – without a notice of default being required – be liable to pay an interest charge for late payment at a rate equal to the current rate of statutory interest increased by a surcharge of 2.5%.
- 7.3 If a Customer is in default towards Handicare, he shall be required to reimburse all (extra)judicial costs incurred, with a minimum of EUR 50. The amount of extrajudicial costs to be compensated shall be calculated in accordance with the following chart (to be increased by VAT due thereon):

On the first EUR 3,000	15%
On the surplus up to EUR 6,000	10%
On the surplus up to EUR 15,000	8%
On the surplus up to EUR 60,000	5%
On the surplus over EUR 60,000	3%

- 7.4 If the actual extrajudicial costs exceed the amount resulting from the above calculation, the actual costs shall be due payable.
- 7.5 Handicare shall be entitled at all times to demand security from the Customer for the payment of all present and future accounts receivable.
- 7.6 Pending the issue of security Handicare shall be entitled immediately to suspend performance of its obligations.

8 Retention of title

- 8.1 Notwithstanding actual delivery, no title to the Products shall pass to the Customer until the Customer has paid in full and clear funds all amounts he is or will be liable to pay under the Contract.
- 8.2 Until title to the Products has passed to the Customer, the Customer shall not be entitled to rent out, pledge or otherwise encumber the Products or grant the use thereof to third parties. The Customer shall only be entitled to sell, deliver or grant third parties the use of the Products, of which Handicare is the owner, in so far as such action is necessitated in the pursuance of the Customer's ordinary business activities.
- 8.3 If and as long as Handicare still owns the Products, the Customer shall immediately notify Handicare of any (imminent) seizure of the Products or other claim made with respect to the Products. The Customer shall likewise – in the event that he is in a position in which he has ceased to make payment – notify Users, if any, of the retention of title made by Handicare.
- 8.4 Upon request, the Customer shall inform Handicare where the Products the title to which is still held by Handicare are located.

- 8.5 If attachment or garnishment is levied, a suspension of payments is granted or a court order for (in)voluntary winding-up is made, the Customer shall immediately inform the attaching deurwaarder [bailiff], the bewindvoerder [administrator] or the curator [liquidator], respectively, of the title(s) held by Handicare. The Customer shall guarantee that any attachment or garnishment levied on Products owned by Handicare will be lifted.

9 Warranty

- 9.1 Save in so far as the following provisions stipulate otherwise, Handicare warrants to the Customer or User of the Product that the Product is sound and fit for the purpose for which the Product is intended to be used – as set forth in the user's manual of the Product. Handicare furthermore warrants the quality of the material used to manufacture the Product as well as the quality of the manufacturing process.
- 9.2 Handicare shall replace parts of the Product which are defective due to faulty materials or manufacturing defects on free of cost basis, provided that such defects arise within one (1) year after the date of delivery of the Product to the Customer. Consequently, the following shall be excluded from the scope of free replacement as meant in the preceding sentence:
- a replacement of parts of the Product required on account of defects arisen more than one (1) year after the date of delivery of the Product to the Customer;
 - b replacement of parts of the Product required on account of defects resulting due to improper or careless use of the Product or resulting due to using the Product for a purpose other than the intended purpose; if a Dealer is a Customer, this Customer shall save Handicare harmless from and against any claims by Users or other third parties for defects resulting due to improper or careless use of the Product;
 - c parts subject to wear and tear, and the repair/replacement of these parts is the result of normal wear and tear;
 - d without prejudice to the provisions of paragraph 9.2, the warranty with respect to the battery of the electric wheelchair and the electric scooter only covers instances of malfunctioning or non-functioning which are evidently the direct result of material defects or manufacturing defects. The warranty as set out in these provisions does not cover a battery which is malfunctioning or non-functioning due to normal wear and tear or due to improper or incompetent use of the Product or the battery forming part of the Product, including the improper charging of the battery and the failure to perform timely and proper maintenance; the Customer shall save Handicare harmless from and against any claims by Users or other third parties for defects resulting due to improper or careless use of the Product or the battery forming part thereof. This includes damage resulting due to the leakage of battery acid when performing maintenance to (wet) batteries.
- 9.3 The warranties as explained in the preceding provisions shall in any event cease to be effective if:
- a the Product maintenance guidelines drawn up by Handicare have been observed not at all or to an insufficient extent;
 - b repair/replacement of parts results from neglecting, damaging or overburdening the Product or using the Product for purposes other than its intended purpose;

- c parts of the Product have been replaced by parts not of the same origin as those used by Handicare and/or parts of the Product have been replaced without authorisation by Handicare.
- 9.4 The warranties as set forth in paragraphs 9.1 up to and including 9.3 above shall become null and void if the Product is reused by a new User within the warranty period and that reuse necessitated modifications, of whatever kind, to the Product, which modifications were not authorised or performed by and/or on the instructions of Handicare.
- 9.5 The above warranty shall also become null and void if through the agency of the Customer, in instances other than those mentioned in paragraph 9.4, our Products have been altered in such way as to cause our Products to malfunction.
- 9.6 In the event of damage or other calamities the User or the Customer must contact Handicare as soon as possible and provide the most extensive information possible if they wish to retain their rights under the warranty set out above. The possibility to lodge a claim under the above warranties shall lapse upon expiry of a period of twenty (20) days after the damage or calamity occasioning the claim arose.
- 9.7 The replacement of a part or the repair or reconditioning of the Product during a warranty period shall not extend the warranty period.
- 9.8 Any repair to or reconditioning of the Product not authorised or performed by and/or on the instructions of Handicare shall not be covered by the scope of this warranty. If a User has authorised or performed and/or instructed the repair or reconditioning of a Product, the Customer shall save Handicare harmless from and against any claims by third parties following – in the widest sense – from such repair or reconditioning.
- 9.9 In consideration of the matters considered in the preceding paragraphs of this Article 9, the following parts subject to wear and tear or breakage risk shall in any event be excluded from the scope of free repair/replacement unless the breakage and/or wear and tear has been caused by faulty materials and/or manufacturing defects:
- a foot plates and/or foot rests
 - b carbon brushes;
 - c upholstery of the seat;
 - d Frame covers, rain covers and other covers, apron, winter cover, immobilisation waistcoats, cross straps, sitter's pants and other similar accessories;
 - e tubes;
 - f damage to breakable materials such as lamps and other parts qualifying as vulnerable.
- Depending on the other specifications of the Product, this list may be extended on the basis of a list possibly attached to these terms and conditions (Schedule 1).
- 9.10 In the event that a User lodges a claim under a warranty with a Customer or that a Customer lodges such claim, Handicare shall be notified immediately.

- 9.11 If Handicare has determined a claim under the warranty to be justified, the costs of transport to Handicare will be borne by the Customer, the costs of transport to the Customer will be borne by Handicare.

10 Liability

- 10.1 Subject to the following provisions, Handicare only assumes liability for damage arising out of death or bodily injury due to a defect in the Product for which Handicare is liable and for damage to another good owned by the User of the Product in a private capacity, provided that such damage is the direct result of a defect in the Product.
- 10.2 Handicare shall indemnify for damage as referred to in paragraph 10.1 up to the sum covered by its statutory liability insurance taken out with its insurance company.
- 10.3 Handicare shall not assume any other or additional liability than the liability set out in paragraph 10.1. In particular, Handicare shall not assume any liability for consequential damage in whatever form.
- 10.4 In so far as Handicare – notwithstanding the provision of paragraph 10.3 – is ordered by a Netherlands court or in any other forum for the settlement of disputes to pay damages other than referred to in paragraph 10.1, Handicare shall make indemnification in accordance with the provisions of paragraph 10.2.
- 10.5 Handicare shall not assume liability for damage resulting due to repair or replacement required to remedy defects caused by improper or careless use of the Product or caused by modifications made by the Customer or User which were not authorised or performed by and/or on the instructions of Handicare.
- 10.6 The Customer shall save Handicare harmless from and against any claims by Users under the warranty provisions referred to in Article 9 or claims for liability under mandatory law if the Customer or third parties have made modifications which are not in accordance with the supplied instructions and/or which have been made using the wrong materials, unless this failure to observe the instructions or use the right materials is based on an error in the technical manual or other instructions imparted by Handicare.
- 10.7 The Customers shall likewise save Handicare harmless from any against any liability resulting due to representations made by the Customer with regard to the Product which are incompatible with the quality or the normal use of the Product.

11 Intellectual property

- 11.1 Neither the Customer nor the User shall obtain any right of intellectual property with regard to the Products.
- 11.2 The Customer shall not be allowed to alter or remove Products or any identifying marks on the packaging thereof, or to make copies of the Products or any part thereof.

- 11.3 Handicare warrants that to the best of its knowledge the Products do not infringe on any intellectual property rights held by third parties under Netherlands law. In the event of claims by third parties for infringement of such rights, Handicare may if required replace or alter the Product concerned or terminate the Contract in whole or in part. The Customer shall only be entitled to terminate the Contract if and in so far as the Customer cannot reasonably be expected to uphold the Contract.
- 11.4 The Customer shall notify Handicare forthwith of any claim made in respect of the Products. In the event of such claim, Handicare shall be authorised to raise a defence on its own and on the Customer's behalf or to take legal action against the third party in question or to negotiate an out-of-court settlement with that third party. In so far as he can reasonably be required to do so, the Customer shall refrain from initiating such action and render his full assistance to Handicare.

12 Termination

- 12.1 If the Customer wishes to terminate the Contract without there being any failure in the performance of the contractual obligations on the part of Handicare and Handicare consents to termination, the Contract will be terminated by mutual agreement. Handicare shall then be entitled to compensation of all financial loss suffered such as operating losses, loss of profits and costs incurred in the assembly of a Product, amongst other things.
- 12.2 Handicare shall be entitled to terminate the Contract if the Customer is in default or in any of the following events:
- a a winding-up order has been made against the Customer, the Customer has gone into voluntary liquidation or the Customer has applied for a suspension of payments;
 - b a third party attaches/garnishes goods and/or claims of the Customer;
 - c the death of the Customer, if the Customer is a natural person.

13 Force majeure

- 13.1 If as a result of an event of force majeure Handicare is prevented in whole or in part from delivering a Product under a Contract, Handicare will be authorised to suspend performance of its obligations arising from the Contract for the duration of the event.
- 13.2 Only if the period during which Handicare as a result of an event of force majeure is prevented from fulfilling its obligations arising from the Contract has continued for longer than three (3) months shall the Customer be entitled to cancel the Contract. However, if it is established that the event of force majeure is permanent, each party shall be entitled to cancel the Contract with immediate effect by written notice sent by registered post.
- 13.3 Handicare shall not be liable towards the Customer or the User for direct or indirect damage/loss suffered by the Customer or the User as a consequence of Handicare's breach of contract on account of force majeure, unless this force majeure was caused by intent (opzet) or gross negligence (grove schuld) on the part of Handicare.

- 13.4 If as a result of an event of force majeure Handicare is prevented from performing its obligations arising from the Contract, Handicare will notify the Customer without delay and furthermore keep the Customer informed of developments with regard thereto.
- 13.5 The term “force majeure” as referred to in this Article shall be understood to include any circumstance beyond the control of Handicare which prevents Handicare from fulfilling all or any of the obligations under the Contract temporarily or permanently or by reason of which Handicare cannot reasonably be required to fulfil its obligations, regardless whether such event was foreseeable at the time when the Contract was made. Such circumstances in any event include but are not limited to: (civil) war, imminent war, insurrection, strikes, shortage of labour, fire, epidemics, restrictive measures imposed by any government authority or a malfunctioning component of the assembly line or the electrical equipment.

14 Applicable law

- 14.1 These General Conditions as well as the Contract shall be governed by the laws of the Netherlands.
- 14.2 All disputes arising out of or in connection with Contracts shall be submitted to the sole judgement of the court having jurisdiction in Rotterdam, unless mandatory law prescribes otherwise. Handicare shall be entitled to depart from the provisions of this clause and apply the statutory jurisdiction rules.
- 14.3 The United Nations Convention on Contracts for the International Sale of Goods (CISG) (Vienna 1980) shall not be applicable, nor shall any other international (set of) regulation(s) exclusion of which is permitted.
- 14.4 The parties may agree to settle their disputes through arbitration or mediation by way of alternative to civil action.

15 Conversion

- 15.1 If any one or more of these conditions should contravene any provision of statutory law either in whole or in part, the remainder of these conditions will continue in full force and effect, and with respect to the voided provision the parties shall furthermore be deemed to have agreed on a provision which is allowed under statutory law and approximates the effect of the voided provision most closely.