

ALGEMENE VERKOOP- EN LEVERINGSVOORWAARDEN

ARTICLE 1: APPLICABILITY

These terms and conditions apply to all offers and to all agreements for the execution of maintenance and repair by and with Truck & Trailer Service Holten B.V., established in Holten, hereinafter referred to as the "user." The client/buyer shall hereinafter be referred to as the "counterparty." Any different terms and conditions shall only form part of the agreement concluded between the parties if and insofar as both parties have expressly agreed to this in writing. The counterparty's acceptance and retention of an offer or order confirmation referring to these terms without comment shall be deemed agreement with their applicability. The possible inapplicability of (a part of) a provision in these general terms and conditions shall not affect the applicability of the other provisions.

ARTICLE 2: AGREEMENTS

Agreements for maintenance and/or repairs, as well as additions/changes, may be established both verbally and in writing.

ARTICLE 3: OFFERS

1. All quotations/offers are non-binding unless they specify an acceptance period. If a quotation/offer contains a non-binding proposal and is accepted by the counterparty, the user has the right to revoke the offer within two days of receiving the acceptance.
 - A. In the event that, between the date of concluding the agreement and the settlement, the cost of the ordered goods/used materials increases and/or changes are made by the government and/or trade organizations in wages, working conditions, or social provisions, the user is entitled to pass on these increases to the counterparty. If a new price list is issued and comes into effect between the aforementioned dates by the user and/or suppliers, the user is entitled to charge the prices specified therein to the counterparty or apply the provisions in the previous sentence.
 - B. In case the counterparty is a natural person not acting in the course of a profession or business, price increases may be passed on/invoiced within 3 months of their coming into effect. In the case of price increases on a shorter term, the counterparty is entitled to terminate the agreement. The user is authorized to engage third parties to perform the agreed-upon work.

ARTICLE 4: DELIVERY/WORKS PERFORMED

1. The specified deadlines within which work must be completed can never be considered as firm deadlines unless expressly agreed otherwise. In the case of non-timely completion of the work, the user must be formally notified in writing, allowing the user a reasonable period to perform/complete the work. This reasonable period will be at least four working days, commencing the day after receipt of the written notice of default.
2. In the case of carrying out maintenance and repairs in parts, each delivery/stage is considered a separate transaction.
3. The counterparty is required to provide the user the opportunity to carry out the agreed-upon work and to make the items for which maintenance or repair is required available to the user. Also, the counterparty must take back the item on which maintenance or repair has taken place after the work is completed. If the counterparty fails to do so, whether in part or in full, despite the formal notice of default, the user has the right to store, at the counterparty's expense and risk, the materials and parts purchased for the execution of the work and the item on which maintenance or repair has taken place. The user also has the right to destroy this item/materials and/or parts after two months of storage. This does not affect the counterparty's obligation to pay the agreed-upon amount to the user. The user is in any case authorized to invoice the agreed-upon amount as soon as it becomes clear that the counterparty is not allowing the user to meet the obligations under the agreement, such as failing to provide the item on which maintenance and/or repair is to be performed.
4. The user is authorized to demand advance payment or security regarding the fulfillment of the financial obligations of the counterparty before performing (further) services. If the counterparty refuses this requested advance payment or security, despite the formal notice of default by the user, the user has the right to terminate the agreement.

ARTICLE 5: PROGRESS OF WORKS. PERFORMANCE OF WORK

1. If the work cannot proceed normally or without interruption due to causes beyond the user's control, the user is entitled to charge the resulting additional costs to the counterparty.
2. If it appears that the repairs are impracticable, either due to circumstances unknown to the user or due to any force majeure, the user is entitled to request that the order given to the user be modified so that the execution of the work becomes possible unless it is clear that due to unknown circumstances or force majeure, it will never be possible. In this case, the user has the right to full compensation for the work already performed or the costs incurred by the user.
3. All expenses incurred by the user at the request or for the benefit of the counterparty are entirely at the counterparty's expense, unless otherwise agreed upon in writing.

ARTICLE 6: COMPLAINTS / RETURNS

1. The counterparty is required to immediately inspect the items upon receipt for defects that are visible at that time or that should reasonably be visible and to immediately notify the user of any defects, subject to forfeiture of the right to do so. Other defects than those referred to above must be reported to the user within 8 days after resumption of use, provided that such defects were known within that period of 8 days or should have reasonably been known, subject to forfeiture of the right.
2. If the counterparty has not complied with the provisions of paragraph 1, the items are deemed to have been received in good condition by the counterparty, and any defects as referred to in paragraph 1 can no longer lead to any claims against the user.
3. Complaints do not suspend the payment obligation of the counterparty. The user must be given the opportunity to examine the complaint. For this purpose, the counterparty must make the item available to the user at the address where the work was carried out.
4. Returning items to the user is at the counterparty's expense and risk.
5. Minor repairs will be performed against reimbursement of material costs and any other repair costs agreed upon at that time. In case of a complaint, the counterparty will owe the user € 15,- for examination and assessment costs, unless the complaint is valid and liability under Article 7 rests with the user.

ARTICLE 7: LIABILITY / WARRANTY

1. If the user has delivered items to the counterparty with material and/or manufacturing defects that must have been present at the time of delivery, the user is obligated to replace those items at no cost, provided that the counterparty has lodged a complaint with the user within the timeframes stated in Article 6, section 1 or (if the defects mentioned therein are not relevant) within the timeframes specified in section 3 of this article.
2. The user's liability towards the counterparty is limited to the sum paid by the counterparty to the user (or the agreed-upon amount) as a consideration for the delivery of the item and/or the work carried out by the user related to the complaint, except in cases of willful misconduct or gross negligence by the user's management or supervisory staff. The user is never liable for consequential damages, for instance. This section does not affect the obligation of the user resulting from section 1 (replacement of products).

3. Any claim by the counterparty against the user expires if:
 - a. The counterparty has not complained to the user within the period mentioned in Article 6, section 1, if the defects referred to there occur;
 - b. The counterparty has not complained in writing to the user within three months after the execution of the work/delivery or - if earlier - before 25,000 kilometers have been driven with the respective vehicle after the execution of the work/delivery. If the counterparty is a natural person not acting in the course of a profession or business, this period of three months is extended to twelve months. Moreover, the counterparty also loses the right to make claims against the user if and to the extent that the damage is caused by the counterparty providing incorrect information to the user.
4. The user is never liable for damage resulting from emergency repairs.
5. The user is obligated to provide further services to the counterparty if the user can successfully assert the same claims against its supplier or the manufacturer based on a provided warranty. In such a case, the user can always suffice with the assignment of its claim against its supplier or the manufacturer to the counterparty. This assignment waives the user's rights towards the counterparty.

ARTICLE 8: PAYMENT

1. Payment must be made within 14 days of the invoice date, net cash, even if delivery is not possible in accordance with Article 4.
2. If an invoice is not fully paid after the expiration of the fatal term referred to in section 1, the counterparty is required to pay the user interest equal to the statutory commercial interest pursuant to Article 6:119a of the Dutch Civil Code. The counterparty is also required to pay all costs associated with taking legal and extrajudicial collection measures and/or enforcement measures to the user, including the costs of a bankruptcy petition. The amount of extrajudicial costs is hereby set at at least 15% of the principal amount owed.
3. At the discretion of the user, in the aforementioned or corresponding circumstances, without further notice of default or judicial intervention, the agreement may be fully or partially dissolved, with or without a claim for damages.
4. If the counterparty has not met its payment obligations in a timely manner, the user is entitled to suspend the fulfillment of its obligations to deliver/perform work to the counterparty until payment has been made or adequate security has been provided.
5. Payments made by the counterparty are always used to satisfy all due interest and costs and then the invoices that have been outstanding the longest, even if the counterparty specifies that the payment pertains to a later invoice.

ARTICLE 9: RETENTION OF TITLE

1. The user retains ownership of delivered and yet to be delivered items until the counterparty has met all of its related payment obligations to the user. These payment obligations include the payment of the purchase price, increased with claims regarding work performed in connection with that delivery, as well as claims for any compensation for damage due to the counterparty's failure to meet its obligations.
2. The counterparty is obligated to promptly notify the user in writing if third parties assert rights over items subject to retention of title as stipulated in this article.

ARTICLE 10: PLEDGE / WARRANTY

As long as the counterparty has not met all of its obligations to the user, it is not allowed to pledge delivered items and/or place these items in the actual control of a financier for storage.

ARTICLE 11: BANKRUPTCY. INCAPACITY FOR ACTION, ETC.

Both parties have the right to terminate the agreement concluded between them without judicial intervention and without any notice of default being required, at the time when the other party is declared bankrupt, applies for provisional suspension of payment, has assets attached, or is otherwise devoid of disposition and/or legal capacity and/or legal capacity to act.

ARTICLE 12: BREACH OF CONTRACT / DEFAULT

1. In the event that the user is unable to fulfill the obligations under the agreement due to force majeure or because a third party or supplier engaged by the user for the execution of the agreement fails to meet its obligations, the user is entitled to extrajudicially terminate the agreement between the parties or suspend the performance of its obligations for a reasonable period without being liable for damages. If the aforementioned situation arises while the agreement has been partially executed, the counterparty is required to fulfill its obligations to the user relating to the period up to that point, in any case.
2. Force majeure, as referred to in section 1, includes, among other things: war, riots, mobilization, domestic and foreign disturbances, government measures, strikes, and lockouts, or the threat thereof, disturbances of currency relations, business disruptions, such as fire, accidents, or other incidents, natural phenomena, regardless of whether these circumstances affect the user's business or those of third parties or suppliers engaged by the user, or a previous link in the chain.
3. In case the counterparty in any way defaults in promptly meeting its obligations to the user, including payment, requests a suspension of payments, is declared bankrupt, has its assets seized, makes a composition with its creditors, or undergoes liquidation, all amounts owed by the counterparty to the user under any contract become immediately due and payable.

ARTICLE 13: CANCELLATION / TERMINATION

Cancellation is only possible with the consent of the user. Unless otherwise agreed, in such cases, the counterparty will pay 20% of the contractually agreed amount to the user, without prejudice to its obligation to accept and pay for ordered items, whether processed or unprocessed, relating to the execution of the agreement, at cost price. Amounts already paid by the counterparty will be settled against this 20%, with the understanding that any higher amounts already paid by the counterparty will not be refunded.

ARTICLE 14: APPLICABLE LAW / COMPETENT COURT

1. Dutch law exclusively applies to agreements concluded between the user and the counterparty. Disputes arising from the agreements will also be settled under Dutch law.
2. Any disputes will be decided by the competent Dutch court, although the user has the authority to bring a case before the competent court in the place where the counterparty resides and/or is established.
3. If the user chooses to submit the dispute to a court other than the court competent in the place where the counterparty resides, the counterparty, being a natural person not acting in the course of a profession or business, has the right to opt for the settlement of the dispute by the court designated by law, provided that the natural person communicates this choice to the user within one month after the user has invoked this provision in writing to the counterparty.