

## **GENERAL TERMS AND CONDITIONS GARRETSEN TRUCKS B.V. 2020**

Garretsen Trucks B.V. Chamber of Commerce number:  
74245961.

### **ARTICLE 1: GENERAL**

1.1 These general terms and conditions apply to all offers, legal relationships and agreements between Garretsen Trucks B.V. (hereinafter: Garretsen Trucks) and its other party regarding used trucks and other rolling stock (hereinafter: vehicle). The other party will be understood to mean any legal entity and natural person to whom Garretsen Trucks addresses its offers, as well as the one to whom Garretsen Trucks addresses its offers and the one with whom Garretsen Trucks enters into a contract and furthermore the one with whom Garretsen Trucks is in any legal relationship.

1.2 In the event that there is any difference between the Dutch and English text of these general terms and conditions, the Dutch text shall prevail.

1.3 The applicability of the general terms and conditions used by the other party is expressly rejected. Additions to or deviations from these general terms and conditions are only applicable if they have been agreed upon between the parties in writing.

1.4 If one or more provisions of these general terms and conditions shall be considered null and void by a court of law, the other provisions of these general terms and conditions shall remain in full force and effect.

### **ARTICLE 2: AGREEMENT**

2.1 All offers, quotations, verbal and/or written statements are without any obligation, unless expressly stated otherwise in writing by Garretsen Trucks.

2.2 If the acceptance of an offer by the other party deviates from Garretsen Trucks' offer, this will be deemed to be a new offer by the other party and a rejection of the offer made by Garretsen Trucks, even if it only concerns a deviation on minor points.

2.3 If the other party has accepted the offer by electronic means, the agreement will come into effect after Garretsen Trucks has approved and confirmed this in writing.

2.4 Garretsen Trucks will have the right to dissolve this agreement within 48 hours after the agreement has been concluded. In that case, the other party will not be entitled to any compensation.

2.5 If the other party wishes to cancel the placed order, this can only be done with the explicit written consent of Garretsen Trucks. Garretsen Trucks will furthermore be entitled to withhold a part of the down payment equal to 10% of the sale price and not to refund it, without prejudice to Garretsen Trucks' right to demand additional compensation for the damage suffered as well as costs already incurred.

2.6 If the other party wishes to change an order placed, this can only be done after Garretsen Trucks has approved and confirmed this in writing.

### **ARTICLE 3: PRICE**

3.1 All prices indicated by Garretsen Trucks are in euros and exclusive of VAT, unless otherwise indicated.

3.2 A price change by Garretsen Trucks will never be a ground for dissolution for the other party.

3.3 If costs arise as a result of the other party's failure to enable the execution of the agreement and/or as a result of circumstances that can be attributed to the other party as a result of which Garretsen Trucks has incurred costs, these costs will be charged to the other party.

#### **ARTICLE 4: PAYMENT**

4.1 If Garretsen Trucks and the other party have agreed that payment will be made in cash, payment must be made prior to delivery of the vehicle.

4.2 If Garretsen Trucks and the other party agree that payment will be made by means of a deposit or transfer into a bank account designated by Garretsen Trucks, this must take place within 5 days after the invoice date, unless otherwise agreed in writing. If the other party fails to pay within five days after the invoice date, Garretsen Trucks will send a payment reminder and will give the other party the opportunity to pay the outstanding amount within fourteen days after receipt of the payment reminder. If payment has still not been made after the expiry of the payment reminder, Garretsen Trucks will be entitled to charge statutory commercial interest from the moment of default. In the event of liquidation, insolvency, bankruptcy or suspension of payment of the other party, the claims of Garretsen Trucks shall be immediately due and payable.

#### **ARTICLE 5: DELIVERY**

5.1 The agreed delivery date is never the fatal deadline. In the event of late delivery, Garretsen Trucks shall first be given notice of default in writing, stating a reasonable period for performance.

5.2 If the late delivery cannot be attributed to Garretsen Trucks, the other party will not be entitled to claim damages or to dissolve the agreement.

5.3 In the event that Garretsen Trucks sells the vehicle to the other party, the other party must collect the purchased vehicle within one week after it has been made available by Garretsen Trucks. If the other party fails to collect the vehicle within the set term, Garretsen Trucks will be entitled to dissolve the agreement and to alienate the vehicle without being liable to pay damages. Garretsen Trucks will be entitled to recover the claim from the proceedings.

#### **ARTICLE 6: WARRANTY**

6.1 The vehicle is sold without any form of guarantee and in a condition as seen and agreed by the other party on the website or at the sales location. Garretsen Trucks will not be liable for any hidden or visible defects and insofar as agreed between the parties.

6.2 If the other party invokes the guarantee provided in an agreement with Garretsen Trucks or makes a complaint, Garretsen Trucks will assess the guarantee or complaint and, if necessary, settle the matter with due observance of the relevant provisions of the agreement. Warranty agreements are not

transferable to third parties. All warranty requests and complaints must be submitted via [info@garretsen-trucks.nl](mailto:info@garretsen-trucks.nl).

6.3 Any complaints with respect to the vehicle delivered by Garretsen Trucks must be submitted in writing five working days after receipt of the vehicle or after receipt of the invoice, stating precisely the facts to which the complaint relates. In the absence of a notification, the other party will be deemed to have approved and accepted the delivered vehicle. The right to complain shall lapse through (continued) use of the vehicle delivered.

6.4 Complaints shall not be possible if:

- a. the vehicle is used for a purpose other than that for which it is normally intended or, in the opinion of Garretsen Trucks, has been used or transported in an injudicious manner or has been repaired by the other party or a third party;
- b. the damage has been caused by negligence on the part of the other party (e.g. due to incorrect maintenance) or because the other party has acted contrary to instructions, directions and advice of Garretsen Trucks;
- c. the other party has not yet fulfilled any of its obligations towards Garretsen Trucks, even if not directly related thereto;

6.5 In the event the other party - with due observance of the terms and conditions set out in this article - makes a complaint and the complaint is considered to be well-founded by Garretsen Trucks, Garretsen Trucks will, at its discretion, replace the vehicle concerned (after which the replaced vehicle will become the property of Garretsen Trucks), repair it or grant a price reduction. Garretsen Trucks has the right to determine which products or materials will be used for replacement.

6.6 The handling of a complaint will not suspend the other party's obligation to pay.

6.7 If, in addition to the cases described above, attention is paid to a complaint, Garretsen Trucks has no obligation and the other party cannot derive any rights from this.

6.8 The claims under the guarantee shall lapse if:

- a. Garretsen Trucks is not given the opportunity to remedy the defects;
- b. there is improper use of the vehicle, which is understood to mean, among other things:
  - use for purposes other than normal use;
  - overloading;
  - adjustments to software (settings) with which the vehicle is equipped if these are not permitted or supported by law and/or by the manufacturer;
  - adjustments and/or additions to hydraulic functions if these are not permitted or supported by law and/or by the manufacturer;
  - use of wrong fuels and oils;
  - incompetent study, use and/or maintenance;
  - accident, insufficient maintenance.
- c. the other party fails to fulfil the agreed (payment) obligations as well as its other obligations under the agreement.
- d. there is talk of emergency repair.

## **ARTICLE 7: RETENTION OF TITLE AND LIEN**

7.1 Delivery of the vehicle takes place under retention of title. The ownership of the vehicle, notwithstanding the actual delivery, shall not pass to the other party until the other party

has paid all claims of Garretsen Trucks pursuant to the agreement between the parties.

7.2 As long as the ownership of the vehicle has not yet passed to the other party in accordance with the provisions of paragraph 1 of this article, but delivery has already taken place, the other party shall keep the vehicle insured and shall not be permitted to alienate, encumber, pledge, rent out, lend or in any way make the vehicle available to third parties or transfer it to third parties as security. The other party will indemnify Garretsen Trucks during the aforesaid period against any claims that third parties might assert against Garretsen Trucks, with respect to the retention of title.

7.3 During the period referred to in paragraph 2, the other party will be obliged to return the sold vehicle to Garretsen Trucks at Garretsen Trucks' first request in good condition. If the other party fails to fulfil its (payment) obligations or if Garretsen Trucks has a well-founded fear that the other party will fail to fulfil its obligations, Garretsen Trucks will be entitled to take back the vehicle delivered by Garretsen Trucks under retention of title at the expense of the other party.

7.4 The other party shall be obliged to keep the vehicle delivered subject to retention of title with due care.

7.5 Garretsen Trucks will be entitled to exercise the right of retention – also towards any third party - with respect to everything Garretsen Trucks holds for or on behalf of the other party as long as the other party has not paid in full for the vehicles delivered by Garretsen Trucks and the non-payment concerns a failure attributable to the other party. Garretsen Trucks will also be entitled to exercise the right of retention –

also towards any third party - with respect to any damage, interest and costs that the other party owes or will owe to Garretsen Trucks pursuant to any agreement or these general terms and conditions.

#### **ARTICLE 8: SUSPENSION AND DISSOLUTION**

8.1 Garretsen Trucks will be entitled to dissolve the agreement in whole or in part with immediate effect, without judicial intervention, or to suspend the execution, without prejudice to rights to which Garretsen Trucks is entitled, if the other party fails to fulfil any (payment) obligation arising from any agreement entered into with Garretsen Trucks, or fails to do so on time or properly, despite a summation stating a reasonable term. Garretsen Trucks will also be entitled to dissolve the agreement in whole or in part with immediate effect, without judicial intervention, or to suspend the execution, without prejudice to rights to which Garretsen Trucks is entitled, in the event of an application for suspension of payment, bankruptcy, placement under guardianship or liquidation of the business of the other party. The entire down payment of the vehicle on account of a cancellation fee will be withheld and will not be refunded, without prejudice to the right of Garretsen Trucks to demand additional compensation if the costs incurred (including delivery, storage, distribution and storage costs) are higher than the down payment amount.

8.2 If an agreement is dissolved, all claims against the other party will become immediately due and payable, without Garretsen Trucks being obliged to pay damages or a guarantee

fee. The other party will be liable for any damage suffered by Garretsen Trucks.

#### **ARTICLE 9: TRADE-IN SALES**

9.1 If the vehicle is sold for exchange of another vehicle and the other party continues to use the vehicle to be exchanged in anticipation of delivery, the vehicle to be exchanged shall remain entirely for its own account and risk as long as the other party has not actually delivered that vehicle to Garretsen Trucks. Until such time, the other party shall remain the owner of the vehicle to be exchanged and all costs including the costs of maintenance, damage, loss and depreciation shall be for the other party's account.

9.2 The vehicle to be exchanged will only become the property of Garretsen Trucks at the moment that Garretsen Trucks acquires the actual disposal of this vehicle.

9.3 The vehicle to be exchanged must be free of financing and obligations towards third parties.

9.4 Unless expressly agreed otherwise in writing, all vehicle documents belonging to the vehicle shall be handed over to Garretsen Trucks at the moment that the vehicle becomes the property of Garretsen Trucks.

9.5 At the moment that Garretsen Trucks acquires the actual disposal of the vehicle and the vehicle to be exchanged is, in the opinion of Garretsen Trucks, no longer in the same condition as at the moment of conclusion of the agreement, Garretsen Trucks will have the right to refuse the trade-in vehicle and to demand payment of the agreed purchase price of the vehicle, or to re-

evaluate the vehicle to be exchanged and to take into account the value at that moment.

#### **ARTICLE 10: FORCE MAJEURE**

10.1 Garretsen Trucks shall not be obliged to fulfil any obligation in the event of force majeure. In the event of force majeure, both Garretsen Trucks and the other party will be entitled to dissolve the agreement in writing, without this entitling the other party to any compensation.

10.2 For the purposes of these general terms and conditions, force majeure will be understood to mean: any circumstance beyond the control of Garretsen Trucks, whether or not foreseeable at the time of entering into the agreement, as a result of which the normal execution of the agreement is prevented.

10.3 Circumstances giving rise to force majeure as described above shall in any case apply:

- if the supply of a certain vehicle, or part thereof, is discontinued;
- if Garretsen Trucks has sold the other party a vehicle that is yet to be exchanged and this vehicle cannot be delivered to the other party due to circumstances that cannot be attributed to Garretsen Trucks;
- loss, damage and/or delay during and as a result of transport, extreme absenteeism of personnel, actions/measures at customs, including (temporary) closure of certain geographical areas, fire, theft and other serious malfunctions at Garretsen Trucks or at a supplier;

- war, import and export restrictions, government measures, quarantine, trade bans, epidemics and frostbite.

#### **ARTICLE 11: LIABILITY**

11.1 The liability of Garretsen Trucks is, except for intent or wilful recklessness, limited to the guarantee as described in article 6. Garretsen Trucks shall not be liable for any damage whatsoever, irrespective of whether such claim is based on an agreement entered into with Garretsen Trucks, a wrongful act or otherwise.

11.2 Insofar as Garretsen Trucks may be liable for damage, Garretsen Trucks' liability will always be limited to direct damage to goods or persons and will never extend to any trading loss or other consequential loss, including loss of income.

11.3 Insofar as Garretsen Trucks may be liable for damages, the liability of Garretsen Trucks will furthermore be limited to a maximum of the invoice amount or to a maximum of the current market value of the vehicle concerned.

11.4 In the event of any other claim for damages, Garretsen Trucks' liability shall at all times be limited to such damages and at most to the amount for which Garretsen Trucks is insured.

11.5 The other party will not be obliged to give any warranty and/or indemnification with respect to any claims of third parties for compensation of damages, costs or interest for which the liability of Garretsen Trucks in these General Conditions is excluded in proportion to the Other Party.

#### **ARTICLE 12: THE PROCESSING OF DATA**

12.1 The other party's data will be processed by Garretsen Trucks. Garretsen Trucks will also be entitled to make this data available to third parties. Insofar as it concerns the processing of personal data, these are processing operations within the meaning of the General Data Protection Regulation. Personal data will only be passed on to third parties if this is necessary for the provision of the service or if there is a legal obligation to do so. On the basis of this processing of data, Garretsen Trucks will be able to execute the agreement, provide the best possible service and provide the other party with product information and personalised offers in a timely manner. In the event it concerns the processing of personal data for the purpose of direct mailing, the Garretsen Trucks will honour any registered objection by the other party.

12.2 The other party is aware that vehicles sold by Garretsen Trucks are (or may be) equipped with software systems that store information about the vehicle. The other party indemnifies Garretsen Trucks against any liability in this respect.

#### **ARTICLE 13: SANCTIONS**

13.1 The other party declares not to resell, transfer, alienate or deliver the vehicles acquired at Garretsen Trucks to parties included in the EU sanctions lists and/or the OFAC Specially Designated Nationals And Blocked Persons List (SDN).

13.2 The other party indemnifies Garretsen Trucks against all possible consequences, in the broadest sense of the word, that result from a violation, intentionally or not, by the other party of the prohibition contained in the preceding paragraph.

**ARTICLE 14: APPLICABLE LAW AND COMPETENT COURT**

14.1 The applicability of the Vienna Sales Convention is expressly excluded.

14.2 All agreements to which these general terms and conditions apply, in whole or in part, shall be governed exclusively by Dutch law.

14.3 All disputes arising from or related to the agreement, in so far as mandatory provisions do not oppose it, will be settled by the competent court of the District Court of Gelderland.