

## **GENERAL TERMS AND CONDITIONS OF SALE OF TREEPAR B.V.**

### **1. Applicability of these general terms and conditions; the exchange of messages**

- a. These general terms and conditions apply to all –including those to be issued in the future, respectively to come into effect - offers and agreements which TREEPAR B.V. B.V., with its registered office in Eerbeek, registered in the Commercial Register under number 65162994, hereinafter referred to as: "TREEPAR B.V.", issues respectively concludes, regardless of the nature of the performance to be carried out by TREEPAR B.V.. The term "item" used hereinafter includes the sale and delivery of movable property as well as the provision of a service. The other party of TREEPAR B.V. is hereinafter referred to as: "the client".
- b. If the client at any time refers to its general terms and conditions (of purchase), the applicability thereof is hereby expressly rejected.
- c. The messages referred to in these general terms and conditions can, unless stated otherwise or the written form applies by law, be sent in writing, as well as by email or by fax.

### **2. Offers; security and termination of a concluded agreement; assembly**

- a. Unless stated otherwise, the offers of TREEPAR B.V. are without obligation. An offer without obligation can be revoked by TREEPAR B.V. within three working days from the receipt of the acceptance.
- b. TREEPAR B.V. will always have the right to require sufficient security to be furnished prior to the concluding of the agreement. TREEPAR B.V. also has the right to do this after the concluding of the agreement, if it has reasonable suspicion that the client will not fulfil its obligations. This is in all events the case if the client does not fulfil any due and payable liability towards TREEPAR B.V. in spite of notice of default. In the event that the client, in spite of notice of default, does not furnish security, TREEPAR B.V. will then have the right to exercise the rights which are described in article 9 of these general terms and conditions.
- c. If the client of TREEPAR B.V. wishes to terminate an agreement once concluded, and TREEPAR B.V. agree to this, this will always take place subject to the condition that the client compensates the damage suffered, or damage to be suffered, by TREEPAR B.V.. This damage will amount to at least an amount equal to 50% of the agreed price. TREEPAR B.V. has the right to prove that it has suffered a higher amount of damage, in which case the client will owe the higher amount of damage.
- d. Assembly of the items delivered by TREEPAR B.V. must be carried out exclusively by trained staff in specialised garages making use of the specialised tools provided for this, all this whilst paying due regard to the assembly, respectively maintenance, instructions of the

vehicle manufacturer concerned.

### **3. Prices, price adjustment and surcharge scheme**

- a. The prices offered by TREEPAR B.V. are based on delivery ex Works, from its warehouse in the Netherlands or otherwise stated. Delivery clauses are always interpreted in accordance with the most recent edition of the Incoterms of the International Chamber of Commerce. The prices offered are furthermore based on flexible cooperation by the client with the settlement of the concluded agreement. TREEPAR B.V. will be entitled to increase the agreed prices if the cost price of that which TREEPAR B.V. must perform in the period between the coming into effect of the agreement and the point in time of the delivery/performance increases.
- b. TREEPAR B.V. applies an additional surcharge (cost) scheme for certain items to be sold by it, which the client must comply with. This surcharge scheme can be based on payment in advance or afterwards.
- c. In case of advance payment, the purchase price is plus surcharge cost, which will be returned, or repaid, upon the return of the item together with packaging, respectively the packaging. The returning of an item always requires prior permission from TREEPAR B.V..
- d. The scheme for payment afterwards applies if it has been agreed with the client that at the occasion of the delivery of an item purchased by the client, a used similar item is returned which fulfils the requirements to be set by TREEPAR B.V.. If this scheme applies, TREEPAR B.V. will also have the right to increase the agreed purchase price by a surcharge, which will be credited or repaid as soon as the product to be exchanged is received by TREEPAR B.V.. TREEPAR B.V. has the right to balance an exchange product to be received against an older transaction with regard to which no exchange product was received.
- e. The current price lists of TREEPAR B.V. will state if and, if yes, which surcharge scheme applies for which items. This price list, or, as the case may be, separate documentation, will include the details with regard to the surcharge scheme.
- f. Starting point is always that the returning of the item with the packaging (if TREEPAR B.V. agrees to this), respectively the packaging, must take place within three months from the date of the invoice on which the surcharge is charged, on the basis of the delivery clause DDP, to a location within the Netherlands to be stated by TREEPAR B.V..

### **4. (Periods of) delivery and risk**

- a. Unless the contrary has been agreed, the delivery of the item sold by TREEPAR B.V. takes place ex Works, from the warehouse of TREEPAR B.V or warehouse somewhere else.

- b. Agreed delivery periods are indicative and not a final deadline. TREEPAR B.V. will only be in default after its client has given notice of default in writing to TREEPAR B.V. and has set a reasonable period to be determined after consultation with TREEPAR B.V., and TREEPAR B.V. does not remedy the shortcoming within that period.
- c. From the delivery, the item will be on the account and risk of client, without prejudice to the retention of title stipulated in article 10.
- d. TREEPAR B.V. will inform its client as soon as possible of any exceeding or potential exceeding of a period.

#### **5. Purchase obligation**

- a. The client of TREEPAR B.V. is obliged to provide the necessary cooperation for the implementation of the performance, including the taking delivery of the item purchased and/or processed.
- b. If the client of TREEPAR B.V. refuses to take delivery of the item or the offered performance, the client will at the time of this refusal be in creditor's default and TREEPAR B.V. will retain the item - until the time at which TREEPAR B.V. terminates the agreement, or until the item is taken delivery of at a later date - on the account and risk of the client. TREEPAR B.V. will not be required to insure the item concerned and can charge the costs of the garaging and suchlike at the rates applicable at TREEPAR B.V.'s. As long as the sold item concerned is still not taken delivery of and paid for by the client of TREEPAR B.V., the ownership will not be transferred and TREEPAR B.V. will have the right to invoice the client for the amount owed.

#### **6. Guarantee**

Guarantees are only provided by TREEPAR B.V. by means of statements in writing. Unless the contrary is expressly evident from such statements, only the legal provisions of the attributable failure will apply to the guarantees given by TREEPAR B.V. Unless agreed otherwise, a guarantee will apply for a period of one year and will apply to the territory of the Netherlands.

#### **7. Inspection and complaints**

- a. The client must inspect the delivered item at the time of delivery for externally observable defects - such as scratches, dents and non-functioning in conformity with the agreement - and, after the discovery of such defects, forthwith make a complaint and make a note on the consignment note/delivery note. If the client does not comply with this, the item will apply as having been accepted by the client as such.

- b. The client must inspect the item for other defects referred to under a within fourteen days from delivery and report any defects within this period to TREEPAR B.V. After this period of fourteen days TREEPAR B.V. will not accept any complaints.

#### **8. Payment, costs, setoff, suspension and third-party clause**

- a. Unless otherwise agreed, the payment must take place within 14 days from the invoice date. The payment must either take place in cash or by means of transfer to an account to be stated by TREEPAR B.V.. In the event of transfer to the account of TREEPAR B.V., the point in time when the amount is credited to the account will apply as the point in time of the payment. The payments to be made by the client will first serve to settle those claims for which TREEPAR B.V. cannot enforce the retention of title/right of pledge/right of retention stipulated in article 10. With due regard thereto, the payments will first serve to settle all costs owed, thereupon to settle all interest owed, and finally to settle each time the longest outstanding principal sum.
- b. Complaints concerning an invoice must be reported within fourteen days from the date of the invoice, in the absence of which the correctness of the invoice is established, without prejudice to the right of TREEPAR B.V. to correct any evident errors.
- c. On the matter of extrajudicial and judicial costs, the client of TREEPAR B.V., if TREEPAR B.V. has a due and payable performance to claim from its client and refers the debt for collection, will owe reimbursement which will be calculated pro rata of the rate to be charged for similar cases by the third party engaged by TREEPAR B.V., whether or not per unit of time, insofar as reasonable, plus the costs reasonably to be paid by this third party to third parties. The reimbursement of extrajudicial costs relate to all acts to be executed by the third party engaged by TREEPAR B.V., whilst the graduated scale which is included in the Dutch Extrajudicial Collection Costs Fees Decree (*Besluit vergoeding voor buitengerechteijke incassokosten*) will apply as the minimum for this. With regard to the judicial costs, the non-contractual amount to be liquidated by the court will apply as the minimum.
- d. Setoff by the client of TREEPAR B.V. is not permitted, unless TREEPAR B.V. unconditionally acknowledges the claim of its client. The client is not permitted to suspend its payment obligation when the client makes a complaint.
- e. If TREEPAR B.V. concludes an agreement with two or more legal entities or natural persons, each of them will be jointly and severally liable towards TREEPAR B.V. for the complete performance of the agreement concerned.
- f. TREEPAR B.V. stipulates by means of a third-party clause that the companies affiliated to it in a group which have a claim against the client can setoff this claim against that which TREEPAR B.V. owes to the client, or, as the case may be, if an affiliated company owes a

debt to the client, TREEPAR B.V. can setoff its claim against the client against that which this company owes to the client.

### **9. Default; bankruptcy etc.**

If the client of TREEPAR B.V. does not, or not properly, or not in a timely manner, fulfil any obligation, as well as in the event that its client is declared insolvent, is granted a moratorium (whether or not provisionally), or statutory debt adjustment is declared with regard to the client, or the client is placed under guardianship, or the company of the client is ceased or liquidated, then the client will be deemed to be in default by operation of law with regard to all obligations which have not been fulfilled, and TREEPAR B.V. will have the right to, at its discretion, without any obligation of compensation, and without prejudice to the further rights accruing to TREEPAR B.V. on the basis of the law, and without the requirement of notice of default, terminate the agreement(s) concerned wholly or in part by means of a statement in writing, or, as the case may be, to suspend the (further) performance of this (these) agreement(s). TREEPAR B.V. will in these events also have the right to demand immediate payment of all that which the client owes to TREEPAR B.V..

### **10. Retention of title; insurance; pledge and retention**

#### **a. Retention of title**

All deliveries take place subject to retention of title. TREEPAR B.V. retains the ownership of the items delivered to the client and to be delivered on the basis of whatsoever agreement until the client:

- a) has paid the price of all items, plus the interest and costs owed in full and,
- b) has paid the claims which TREEPAR B.V. acquires against the client if the client fails in the fulfilment of the obligations referred to above.

The client may not in any manner whatsoever use the item subject to retention of title for security of claims other than those of TREEPAR B.V.. If a third party has the possession of an item on behalf of the client, the client, if the client fails towards TREEPAR B.V., will be obliged to report the name and address of this third party to TREEPAR B.V. and TREEPAR B.V. may inform this third party that this item must from now on be kept on behalf of TREEPAR B.V..

- b. The client is obliged to adequately insure the items to be taken receipt of by the client and in all events against the risk of theft, misappropriation, damage and destruction. The client is not permitted to pledge its claims against the insurer to third parties, or otherwise use these as security, or, as the case may be, to transfer these to third parties. The other party undertakes towards TREEPAR B.V. to, at any time required by TREEPAR B.V. (whether or not in the future), have its right to compensation applied in a manner to be determined by

TREEPAR B.V. as security for all its claims against the client. The obligation described in this paragraph does not apply if the client has paid the amount owed by it prior to the delivery.

c. **Pledge**

It applies between TREEPAR B.V. and its client that a right of pledge will be established on movable property of the client- not being property subject to registration - held by TREEPAR B.V. for the security of the claims which TREEPAR B.V. has or will acquire against its client on whatsoever basis. The right of pledge comes into effect without further formalities at the time when TREEPAR B.V. takes possession of the items concerned.

d. **Right of retention**

TREEPAR B.V. may also exercise the right of retention accruing to it for the payment of all that which the client owes to it on whatsoever basis.

### **11. Ownership of replaced parts**

Parts replaced by TREEPAR B.V. become its property without TREEPAR B.V. owing any payment for this unless the contrary is stipulated.

### **12. Liability and force majeure**

- a) If the client of TREEPAR B.V. has adhered to the regulations which are recorded in article 7, legal proceedings due to attributable failure can, with due regard to that which is stipulated in these general terms and conditions with regard to its liability, only be brought against TREEPAR B.V. during the period of one year from the date of delivery/the execution of the performance.
- b) If TREEPAR B.V. acknowledges that it has failed imputably, or this is otherwise established, then TREEPAR B.V. will have the right, within a reasonable period after its client invokes this, to report to the client that it will proceed free of charge with redelivery or delivery of the absent items or the execution anew of the performance or rectification. TREEPAR B.V. must during the stating of its choice reasonably take the interests of its client into consideration. If, after the notification referred to, TREEPAR B.V. performs within a reasonable period, this will mean that the obligation concerned will have been fulfilled in a correct manner and the client will not have any right to compensation. There is an exception to the provisions of the previous sentence if the client, prior to the notification referred to in the first sentence of this paragraph, has already terminated the agreement without the intervention of the courts, or, as the case may be, has instituted a claim for termination and this is granted.
- c) If it is established that TREEPAR B.V. owes compensation to its client, its liability for compensation will be limited to the amount which is agreed with regard to the

item/performance concerned, excluding VAT, including (the value of) that which TREEPAR B.V. has already performed in the context of the attributable failure. The client of TREEPAR B.V. indemnifies TREEPAR B.V. against all claims of third parties - inter alia with regard to product liability - insofar as these claims exceed the maximum referred to in the previous sentence.

- d) In addition to that which the law considers to be force majeure, force majeure also includes sickness of employees or servants or agents of TREEPAR B.V. and/or strike actions and/or breach of contract and/or force majeure on the part of its suppliers, transport providers or other third parties which are involved in the agreement, and furthermore traffic congestion, natural forces, war or mobilisation, obstructive measures by any authority, fire and other accidents in the company of TREEPAR B.V., as well as other circumstances which prevent the performance of the agreement, all this insofar as the result thereof is that the (further) performance of the agreement cannot reasonably be expected from TREEPAR B.V..
- e) In this article, attributable failure also includes unlawful acts.

### **13. Industrial and intellectual property**

Unless expressly stipulated otherwise, TREEPAR B.V. is the owner of all industrial and intellectual property rights to all products, including the drawings produced by it - whether or not produced in the context of an offer - even if the products concerned have been produced or modified by TREEPAR B.V. upon instruction of the client. The provisions of the previous sentence do not apply if TREEPAR B.V. obtained products from third parties and TREEPAR B.V. acknowledges the intellectual property of these third parties. In that event, the client must respect the intellectual property of these third parties.

### **14. Processing of personal data**

The data which TREEPAR B.V. receives from the client will be processed by it as controller within the meaning of the Dutch Personal Data Protection Act (*Wet bescherming persoonsgegevens*). TREEPAR B.V. will perform the agreement with the aid of this data and, insofar as agreed, fulfil guarantee obligations, provide service and provide its client in a timely manner and with due regard to the statutory provisions with product information by post, or otherwise by the sending of personalised offers. Upon request from the client, incorrect data will be rectified whilst TREEPAR B.V. will also fulfil all other obligations towards the client pursuant to the Personal Data Protection Act.

## **15. Export and environmental regulations**

- a. The items, software and technology to be delivered by TREEPAR B.V. are potentially subject to restrictive export legislation and regulations of the European Union, the Netherlands, the United States and other countries. This legislation and these regulations concern, for example, strategic items. The client must strictly adhere to this legislation and these regulations and become familiar with the existence and the scope thereof. In this context it must be noted that specific legislation of the United States has extraterritorial effect where applicable.
- b. Where applicable, TREEPAR B.V. must, with regard to the items to be delivered, adhere to environmental legislation, whether or not originating from the Dutch legislature or the European Union. It also applies here that the client is obliged to become familiar with the existence of this legislation and the scope thereof.
- c. If it is necessary with regard to the provisions under a. and b. of this article to acquire licences, the client must take the initiative for this in a timely manner and on its own account.

## **16. Applicable law and dispute resolution**

- a. The law of the Netherlands applies to all legal relationships to which these general terms and conditions apply, excluding, if otherwise applicable, the United Nations Convention on Contracts for the International Sale of Items.
- b. All disputes between TREEPAR B.V. and its client to which these general terms and conditions apply will be at first instance settled by the Zutphen District Court in the Netherlands unless a mandatory statutory provision objects to this and without prejudice to the right of TREEPAR B.V. to bring legal proceedings against its client before another court of competent jurisdiction.

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