

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**

the

**Kick van der Zwaag TRUCKS & VANS Remarketing Service**

**based in .s-Hertogenbosch , deposited with the Dutch Chamber of Commerce**

**ARTICLE 1. DEFINITIONS**

- Kick van der Zwaag TRUCKS & VANS Remarketing Service together with their affiliated operating companies as well as their legal successors by way of universal succession are the users of these general terms and conditions and are hereinafter referred to as "we" and "us".
- "Counterparty" and / or "client" are understood to mean any (legal) person to whom we submit our offers, as well as the person who makes us offers, as well as the person who gives us an order or who Person with whom we conclude a contract and also the person with whom we have any legal relationship, as well as their legal successors, agents, acquirers and heirs.
- Under "Products" and / or "Vehicles" all products and / or (second-hand) vehicles, means of transport, trucks (components), parts, etc. that are delivered to the other party using these general terms and conditions, as well as the Provision of services and the performance of work (including repair work) and / or consulting services by us to the other party.

**ARTICLE 2. SCOPE OF APPLICATION**

2.1 These general terms and conditions apply to all our offers, contracts, order agreements (e.g. on the performance of work by us) as well as to all legal transactions, deliveries and work that we carry out, including all pre-contractual situations as well as future legal relationships entered into with us for example in relation to the sale of (company) vehicles, trucks, truck components, (second-hand) means of transport, parts and accessories as well as the adaptation and production of chassis and cabins, the development and production of components, the performance of repair , Maintenance and other work on the products and / or vehicles.

2.2 Deviations from and / or additions to these general terms and conditions are only binding on us if they have been agreed in writing.

2.3 If it turns out that one or more provisions from these general terms and conditions violate statutory provisions, the remaining provisions from these general terms and conditions remain in full force.

**ARTICLE 3. OFFERS**

3.1 All of our offers and offers are non-binding, unless they contain an acceptance period; if this is the case, the offer expires after this period.

3.2 Changes and / or promises made after the offer, which we make verbally or in writing, constitute a new offer that makes the old offer lapse.

3.3 Unless expressly stated otherwise in writing, all offers and offers are based on our executing the contract under normal circumstances and during normal working hours.

**ARTICLE 4. CONCLUSION OF CONTRACT**

Kick van der Zwaag Trucks & Vans Remarketing Service  
Van Straelenlaan 135224 GM 's-Hertogenbosch The Netherlands  
E-mail: [kick@kickvanderzwaag.com](mailto:kick@kickvanderzwaag.com)  
Tel.: +31 (6) 40 30 19 87  
KVK Eindhoven: 17158201. V.A.T number: NL 00 31 25 743 B35  
<http://www.kickvanderzwaag.com>

4.1 The written contract is concluded: if we submit a non-binding offer, at the point in time at which we receive a written acceptance of this offer; and if the other party submits an offer and / or places an order, at the time at which we accept the offer and / or the order or when we start executing the order.

4.2 If our offer is irrevocable, the contract will be concluded at the point in time at which we receive an acceptance of this offer from the other party within the period set by us.

4.3 If an acceptance declared by the other party deviates from the offer, this is considered a new offer by the other party and a rejection of our entire offer; this also applies if the assumption only deviates in minor points.

4.4 In the case of agreements, changes and / or promises that our employees, representatives, salespeople or other intermediaries have made, carried out or declared verbally or in writing after the conclusion of the contract, are only binding if we confirm them in writing to the other party.

#### **ARTICLE 5. DATA AND INFORMATION**

5.1 We are only obliged to (further) execute the order if the other party has provided all the data and information requested by us in the form and in the manner that we have specified. Additional costs that arise from the fact that the other party does not provide the requested data and information, or not in a timely manner or properly, shall be borne by the other party.

5.2 The other party is obliged to inform us immediately about facts and circumstances that may be of importance in connection with the execution of the contract.

5.3 The other party is responsible for the accuracy, completeness and reliability of the data and information provided to us by the other party or on their behalf.

#### **ARTICLE 6. EXECUTION OF THE ORDER**

6.1 We determine how and by whom the order is carried out, but we take into account the wishes expressed by the client as much as possible.

6.2 We will perform the work to the best of our ability and with the greatest care; however, we cannot vouch for the attainment of any desired result.

6.3 Deadlines within which the work must be completed only represent extreme deadlines if this has been agreed in writing.

6.4 Unless it is certain that the execution is permanently impossible, the client cannot dissolve the contract due to the expiry of the deadline, unless we do not or not completely execute the contract within a reasonable grace period set in writing after the agreed delivery period has expired.

#### **ARTICLE 7. PRICES**

7.1 The prices quoted by us are net prices and do not include sales tax and other government taxes and / or third-party charges incurred for the sale and / or delivery and / or execution of the contract and are based on a delivery from our branch, unless in writing otherwise agreed.

7.2 The prices quoted by us are in EUR or another currency approved by us; Any exchange rate differences shall be borne by the other party, unless otherwise agreed in writing.

7.3 The prices quoted by us are based on the current prices and specifications applicable at the time the contract is concluded and on an execution of the contract under normal circumstances.

7.4 In the event that one or more price-determining factors and / or statutory charges, including wages, contributions, materials and rate changes, increase after the conclusion of the contract, we reserve the right to charge the other party a proportionate price increase.

7.5 Article 7.4 also applies if the changes in the price-determining factors mentioned there result from circumstances that were already known when the contract was concluded.

7.6 In the event that the application of article 7.4 leads to a price increase of 20% or more and the price increase is not required by law, the other party is entitled to terminate the contract by registered mail within one week after we have announced the price increase .

7.7 Unless expressly agreed otherwise in writing, delivery costs, service costs and costs for shipping etc. are never included in our price. Unless otherwise agreed in writing, workshop prices do not include the cost of materials and parts or any third party costs.

7.8 Price increases due to additions and / or changes to the contract are borne by the other party.

7.9 We shall invoice the other party for costs that arise because the other party has failed to enable the execution of the contract and / or that circumstances arise which are attributable to the other party and which result in costs for us.

#### **ARTICLE 8. DELIVERY**

8.1 Delivery times are determined by mutual agreement, but delivery times and / or transfer dates specified by us are never considered to be the ultimate deadline, unless otherwise agreed in writing. In the event of late delivery and / or handover, we must be given notice of default in writing, granting a reasonable grace period. A reasonable grace period is in any case the period considered reasonable in the industry.

8.2 If we are not responsible for exceeding the delivery time, the other party is never entitled to compensation or a right to terminate the contract.

8.3 The specified delivery times and / or handover dates are based on the working conditions applicable at the time the contract is concluded and on timely delivery of the materials and / or parts ordered by us for the execution of the contract.

8.4 The other party is obliged to receive what has been delivered by us at the specified place of delivery; if it fails to do so, the other party will be invoiced for all resulting costs (including storage and storage costs) and damage in the amount of the tariff applicable on our premises or on site.

8.5 Delivery takes place from our branch.

#### **ARTICLE 9. RISK**

9.1 The risk in relation to the products and vehicles sold is transferred from us to the other party at the time of delivery. If a vehicle is sold, the other party is obliged to insure the vehicle from the time of delivery.

9.2 Ownership of the products sold passes to the other party after delivery and after payment of the purchase price and all other amounts owed by the other party to us under the contract.

9.3 As long as ownership of a vehicle has not passed to the other party in accordance with paragraph 2 of this article after delivery has already taken place, the other party must take out liability insurance for the vehicle and maintain the insurance cover and the other party is not permitted to sell the vehicle, to encumber, pledge, rent, lend or otherwise make available to third parties or transfer to third parties as security. The other party has to hold us harmless in relation to third party claims regarding the vehicle for the period mentioned above.

#### **ARTICLE 10. PAYMENT**

10.1 Unless otherwise agreed in writing, payment will be made at the time of delivery.

10.2 Offsetting against claims that the other party allegedly has against us is not permitted.

10.3 In the event of non-payment within the deadlines specified in Article 10.1, we reserve the right to increase the amount owed by the other party by the judicial and extrajudicial collection costs. The extrajudicial collection costs are hereby set at 15% of the amount owed, but at least at € 250.

10.4 Payments made by the other party are always made first on all interest and costs owed and then on the claims from the contract that have been open for the longest time; this also applies if the other party declares that the payment will be based on a different claim.

10.5 Any payment discounts agreed in writing expire if the payments are not received within the payment period agreed in more detail.

10.6 The other party is not entitled to refuse or suspend the fulfillment of its payment obligation due to alleged product defects or for any other reason.

10.7 In the event of liquidation, insolvency, bankruptcy or statutory deferral of payment by the other party, the claims are due immediately, regardless of the reason for them, at the expense of the other party.

10.8 We are entitled at any time to request an advance payment of the amount owed by the other party and / or to require that the other party, in order to secure the fulfillment of all its obligations, upon first request to provide sufficient security, including - but not limited to - an irrevocable and unconditional bank guarantee issued by a recognized banking institution and / or the creation of a lien and / or a surety and / or the issuing of a declaration of personal liability. If this security is not provided, we are entitled to suspend the execution of the contract or to dissolve the contract with immediate effect; this does not affect our right to terminate the contract under Article 16.

#### **ARTICLE 11. PAYMENT**

11.1 Subject to mandatory legal provisions to the contrary, we are entitled to suspend our performance (which also includes future partial deliveries) if the other party does not meet one or more of its obligations or if we have good reasons for this assumption based on circumstances of which we are aware .

11.2 We can exercise a right of retention on all items of the other party to which the execution of the contract relates and which are de facto in our possession within the framework of the contract if the other party fulfills the obligations in connection with the execution of the contract or otherwise with the other party concluded contracts due to transactions that we have regularly concluded with the other party are not fully or partially fulfilled.

11.3 We are entitled to take recourse against the other party for the costs that we had to incur for the careful safekeeping of the items actually in our possession.

#### **ARTICLE 12. WARRANTY AND NOTICE**

12.1 Exchanged parts and materials will only be made available to the other party if this has been expressly agreed in writing.

12.2 For new vehicles, new parts and new accessories, only the guarantees given by the manufacturer, importer and other suppliers apply.

12.3 A guarantee is only granted for used vehicles if and to the extent that this is expressly stated in the contract.

12.4 No guarantee is given for used parts and accessories.

12.5 Notwithstanding this, the guarantee for work that we have carried out by a third party as part of the execution of the contract is limited to the guarantee that we can assert ourselves against this third party.

12.6 Any warranty claims expire:

- if we are not given the opportunity to remedy the defects;
- if third parties have carried out work without prior notice or our consent;
- in the event of improper use of the vehicle, such as:

- use for purposes other than normal;
  - overload;
  - Use of incorrect fuels and oils;
  - maintenance other than that prescribed by us or the manufacturer of the vehicle;
  - Improper vehicle driving, use and / or maintenance;
- if changes have been made to the vehicle by the other party or on their behalf, unless these have been made in full in accordance with a recommendation made by us in writing or after obtaining our written consent.

12.7 The guarantee for work is limited to the fact that we carry out the work originally carried out again at our expense. The travel and / or transport costs that we have to spend in connection with the execution of guarantee services are borne by the other party.

12.8 The same guarantee applies to the guarantee work carried out on the basis of this article.

12.9 The following are excluded from the guarantee:

- emergency repairs;
- Defects in materials or parts that the other party has prescribed or made available;
- Defects based on drafts, drawings, constructions or working methods made available by the other party or on recommendations made by the other party;
- Deviations that are considered permissible or unavoidable in the industry with regard to the color or quality of the paint layer.

12.10 Any complaints with regard to vehicles delivered by us (including quality and / or dimensions) as well as with regard to work performed as well as with regard to invoice amounts must be made within 8 working days after receipt of the vehicle or after the work has been carried out or after

receipt of the The invoice has been submitted to us in writing, specifying the facts on which the complaint is based.

12.11 Minor deviations and differences in quality, number, size or processing as well as differences in the execution of the work cannot be the subject of a complaint.

12.12 Complaints in relation to certain products or certain work do not affect the obligations of the other party in relation to other products or parts of the contract. If we replace parts of a product or completely replace a product, the replaced (old) product becomes our property.

12.13 The complained about products can only be returned if we have given our written consent. Products that we have made to measure at the request of the other party cannot be returned unless we have agreed to this in writing. We reserve the right to invoice the other party for the return costs.

12.14 Complaints regarding defects will not be remedied if the products have been processed or these defects have not been reported within the above period.

12.15 After the complaint, we are to be given the opportunity to check the products; for this purpose the other party has to provide any cooperation. Complaints regarding products that we cannot control are not permitted.

12.16 The other party cannot invoke product defects as long as the other party has not yet fulfilled any obligation towards us that does not necessarily have to constitute immediate consideration.

#### **ARTICLE 13. DETERMINATION OF DAMAGES**

13.1 If we have quantified the damage on behalf of the other party, the other party is obliged to reimburse us for all associated costs, unless the other party instructs us to repair the defect in question or the other party decides to purchase it based on the figure a new vehicle with us.

#### **ARTICLE 14. SALE AND PAYMENT**

14.1 If the other party continues to use the vehicle to be traded in when selling a vehicle including a trade-in for a used vehicle, the other party is obliged to treat the vehicle with the necessary care.

14.2 The vehicle to be traded in only becomes our property when it is actually transferred into our sphere of control.

14.3 During the use referred to in paragraph 1 of this article, the other party bears the risk to the car as well as all costs, in particular in connection with maintenance and any damage, regardless of their cause, or as a result of the loss - including failure to deliver (the lack of ability for handing over) - the complete valid vehicle documents, such as the vehicle registration and registration documents as well as any other official documents.

14.4 If, in our opinion, the vehicle to be traded in is no longer in the same condition as it was at the time the contract was concluded at the time it actually came into our control, we are authorized to refuse the trade-in and to pay the agreed purchase price of the vehicle or to re-number the vehicle to be taken in payment and to use the value at this point in time.

14.5 If, in our opinion, the vehicle to be traded in has defects that could only be determined after the actual handover, but with regard to which, according to objective standards, it is clear that these

already existed at the time of the conclusion of the contract, the other party shall pay us the resulting damage replace. Damage is understood to mean a reduction in the stated value.

#### **ARTICLE 15. RETENTION OF TITLE**

15.1 All goods delivered and still to be delivered remain the sole property of Kick van der Zwaag TRUCKS & VANS Remarketing Service until the other party has paid in full all claims that we have or will acquire against the other party, expressly including interest, extrajudicial and judicial costs .

15.2 As long as ownership of a vehicle has not passed to the other party in accordance with paragraph 1 of this article after delivery has already taken place, the other party must take out liability insurance for the vehicle and maintain insurance cover and is not permitted to sell the vehicle, to encumber, pledge, rent, lend or otherwise make available to third parties or transfer to third parties as security. The other party has to hold us harmless in relation to third party claims regarding the vehicle for the period mentioned above.

15.3 During the period mentioned in paragraph 2, the other party is obliged to return the products and / or the vehicles sold to us in good condition at our first request. If the other party violates its existing payment obligations towards us or if we have good reasons for this assumption, we are entitled to take back the products delivered by us under retention of title.

15.4 The other party is obliged to keep products delivered subject to retention of title with the necessary care and as recognizable property of us.

#### **ARTICLE 16. DISSOLUTION**

16.1 If the other party does not fulfill any (payment) obligation from any contract concluded with us, does not fulfill it in a timely manner or does not fulfill it properly, as well as in the event of suspension of payment, application for deferment of payment, bankruptcy, administration or liquidation of the other party's company, we shall be in default without the other party and entitled to dissolve the contract or part of the contract without judicial involvement.

16.2 As a result of the dissolution, the mutual claims become due immediately. The other party is liable for any damage we incur, including, among other things, interest and lost profit.

16.3 If a case mentioned in paragraph 1 occurs and the other party enjoys an advantage that it would not have had had it been properly fulfilled, we are entitled to compensation for our damage in the amount of this advantage.

16.4 Unless otherwise stipulated in these general terms and conditions, counterparties waive the right to dissolve the contract concluded with us in full or in part (to have it dissolved).

16.5 We reserve the right to unilaterally dissolve the contract if there is a dispute about the product delivered.

#### **ARTICLE 17. FORCE MAJEURE**

17.1 In the event that force majeure delays or prevents the execution of the contract, we are authorized to dissolve the contract in writing without being liable to pay compensation to the other party.

17.2 Force majeure on our part is understood to mean, among other things, any circumstance that prevents or delays the normal execution of the contract without our intervention. Such a circumstance exists in any case:

- if the production or delivery of a certain item stagnates;
- if we have sold a vehicle that is still to be trade-in to the other party and this vehicle cannot be delivered to the other party due to circumstances that cannot be attributed to us;
- In the event of loss, damage and / or delay during and due to the transport, extreme sickness-related absences of employees, actions / measures in the customs area, including (temporary) cordoning off certain geographical areas, fire, theft and other serious disruptions in our company or at our Supplier
- In the event that the manufacturer, importer or supplier makes modifications or (design-related) changes to a product, we reserve the right to deliver the modified product, provided that the modified product has at least the normal functional properties as the original product as well as the special usage properties that we and the other party have agreed in writing.

#### **ARTICLE 18. LIABILITY**

18.1 Except in the case of intent, our liability is limited to our warranty obligations as described in Article 13 and we will not be liable for any damage, regardless of whether the claim is based on a contract with us, tort or any other reason.

18.2 Should we be liable for damage, this liability is always limited to direct property damage or personal damage and our liability never extends to any operational damage or other consequential damage, including lost revenue.

18.3 Insofar as it is judicially determined that we are liable on the basis of this contract or for any other reason, our liability also applies to the price at which the other party bought the product or to an amount that the other party paid for the order but limited to a maximum of the daily value of the vehicle in question.

18.4 In the event that a final judgment considers the provisions of Article 18.3 to be a disproportionate disadvantage, our liability for the damage and, at most, the amount against which we are insured or - in view of customary practice in the industry - has been reasonably insured would be limited. Claims for compensation in accordance with the above provisions must be reported to us within one month of the discovery of the damage; after this period has expired, any claim for damages expires.

18.5 If the other party is a consumer, the statutory provisions apply to our liability.

18.6 The other party is obliged to indemnify or hold us harmless in relation to all third-party claims for compensation for damage and costs as well as the payment of interest for which we are not liable in relation to the other party under this article.

18.7 We are never liable for damage caused by work on the products that is not part of our normal work and is carried out by us for reasons of goodwill at the express request of the other party. This work is carried out at the expense and risk of the other party.

18.8 We will insure the risk of loss of or damage to the other party's items that we are holding for the duration of this custody. We are liable for the items handed over to us by the other party, regardless of the external cause, and regardless of whether the damage or loss occurs during the time in which

we store these items on the basis of a contract, only to the extent that the insurer concerned will replace the damage in question. The processing of the things does not belong to an external cause in this sense.

18.9 If this contract extends to items that we obtain or have obtained from third parties, our responsibility and / or liability is limited to the responsibility and / or liability that the supplier is incumbent on himself towards us. This provision only applies if this application is more favorable for the other party than the application of the above provisions.

18.10 We are not obliged to provide a replacement vehicle or the transport of the item in question, nor is the other party entitled to reimbursement of the costs for a replacement vehicle.

#### **ARTICLE 19. INTELLECTUAL PROPERTY RIGHTS**

19.1 All rights to intellectual property and / or rights in relation to intellectual products that we develop or use in the performance of the order, including recommendations, employment contracts, (model) contracts, systems, system designs, etc., are available, provided these are not third parties already entitled to us.

19.2 Without our prior express consent, the client is not permitted to reproduce, publish or economically use the intellectual products or their specification on data, possibly together with or with the participation of third parties.

#### **ARTICLE 20. DIFFERENT CLAUSES**

20.1 In the event of contradictions between a provision from the general terms and conditions and a provision from the special provisions, the special provisions take precedence.

#### **ARTICLE 22. APPLICABLE LAW AND JURISDICTION**

22.1 The provisions of the Vienna Sales Convention do not apply any more than any future international regulation with regard to the purchase of movable property, the applicability of which the parties can exclude.

22.2 Dutch law applies to all contracts to which these general terms and conditions are fully or partially applicable.

22.3 All disputes that result from or in connection with the contract, unless otherwise required by mandatory legal provisions, will only be brought before the competent court of the district in which our registered office is located.

22.4 In the event of a (threatened) dispute, we are entitled to have one or more experts carry out (or have carried out) an assessment of the other party.