

## 10. Delivery and risk, acceptance obligation

- 10.1 Delivery takes place ex factory. Costs and risks are for the account of the other party/purchaser, to the exclusion of all liability for Terberg Benschop B.V..
- 10.2 Delivery takes place ex factory. The goods are deemed to have been delivered and the risk in respect of these goods shall transfer to the other party:
- as soon as the goods are placed in the transportation vehicle, also when we provide the transportation;
  - when cooperation by the other party as referred to in the following paragraph under b. is (considered to be) refused.
- Unless another means of delivery has been agreed, the above-mentioned transfer of risk shall not be affected.
- 10.3 The other party shall be obliged to provide the cooperation necessary for carrying out our task. This cooperation shall be considered to have been refused:
- a. (if we provide transportation) when the goods have been offered to the other party for delivery and such has proved impossible;
  - b. (if the other party provides transportation) when the goods are not collected at the agreed date either by itself or on its behalf.

In these cases the other party shall be in default immediately and without further notice. All costs resulting from this refusal shall be for the account of the other party, without affecting our other rights concerning this failure. The costs referred to explicitly include a reasonable compensation for storage, calculated according to the usual rates for the location.

- 10.4 The delivery period shall commence after Terberg Benschop B.V. has confirmed the order in writing and after Terberg Benschop B.V. has in its possession all necessary details concerning the required version. The delivery period may be extended by any period during which we may have to suspend our activities in accordance with these conditions and/or the law, or during which we fail to execute the agreement due to force majeure.
- 10.5 Stated delivery times can never be considered as vital terms. Any delivery date is only indicative and is without obligation, unless agreed otherwise in writing at the conclusion of the agreement, on the understanding that Terberg Benschop B.V. can never be held liable for failing to meet the delivery date, nor for any ensuing direct or indirect costs, damages and loss of income, if the exceedance of the delivery time is the result of force majeure, government measures, strikes, machine failure, etc., or if suppliers fail to fulfil their obligations. In these instances and in all instances when buyers can no longer reasonably demand compliance with the agreement, Terberg Benschop B.V. shall have the right to either suspend the execution, or rescind the agreement partly or in its entirety, as it sees fit, without recourse to the courts. In the case of unreasonable exceedance of the delivery time we shall be in default after being served with written notice of default.

## 11. Liability

- 11.1 We shall not be held liable for damage, of whatever kind, arisen at the other party and/or third parties. In case vehicles are serviced, driven etc. and repaired at Terberg Benschop B.V. following an order, the condition that Terberg Benschop B.V. shall not be liable in any way for theft, loss, destruction or any other damage, shall be applicable at all times, except when personal deliberate intent or wilful recklessness of the driver(s) of the vehicle is proven; the other party indemnifies Terberg Benschop B.V. against all damages and liability in respect of itself and/or third parties. The policy of Terberg Benschop B.V. is aimed at continuous improvement and development of its products. Terberg Benschop B.V. is therefore at all times and without reserve entitled to effect technical alterations to the vehicles, without the other party being able to object or make any claims.
- 11.2 Any liability and guarantee for damages arising within the territory of Canada and/or the United States, as well as damages which under the law of these states may be adjudicated, is excluded.

## 12. Force Majeure

- 12.1 If and insofar we fail to meet our obligations arising from the agreement in full, in part or in time due to force majeure, we shall be entitled to rescind the agreement concerned without recourse to the courts and without owing damages as a result, or to suspend the obligations arising from the agreement in question for a reasonable period.
- 12.2 Force majeure is understood to mean among others: any unforeseeable stagnation in the normal routine in our company or in the company of a third party we acquire goods from, as well as apparent changes in the actual circumstances since the agreement was made, which directly or indirectly influence the cost price factors or delivery opportunities. Not imputable, and therefore not our risk, are cases such as default and/or failure by or at our suppliers, subcontractors and/or transporters, fire, strikes or lock-outs, riots or civil disturbance, war, government measures, including import, export and transit restrictions, frost and all other conditions which are such that fulfilment can no longer be demanded from us.

## 13. Right of retention

We shall be authorized to retain all goods of, or on behalf of, the other party that are related directly or sufficiently to the obligations the other party has yet to meet to justify refusal to deliver, until such time the other party has met all its obligations us. In case we lose control over goods covered by our right, we shall be entitled to claim these goods as if we were the owner.

## 14. Indemnity

The liability towards third parties for damage arising during the execution of the agreement to which these present conditions are applicable shall never exceed our liability towards the other party. The other party shall indemnify us against any further liability and, where possible, shall stipulate in its agreements with third parties such exoneration on our behalf. The other party shall indemnify us fully against claims for damages from third parties, based on infringement of intellectual property rights resulting from the use of drawings, data, materials or parts, or produced by the application of procedures which we have been provided with or have been ordered by or on behalf of the other party to execute the agreement or have been imposed.

## 15. Joint and several liability

If we conclude an agreement with two or more (legal) entities, each of these (legal) entities shall be severally liable for the full compliance with the contracts resulting from this agreement on their behalf.

## 16. Intellectual property

Any data as well as any data carriers (such as drawings, diskettes, etc.) which we have made available to the other party, or which, on our behalf or according to our instructions, are being produced, processed or kept by the other party, are our property, as are any related industrial and intellectual rights. Insofar another delivery would be required for our property, this delivery takes place when the agreement is concluded. These goods may be used by the other party only for the purpose for which it has acquired these for our own and/or our agreement's benefit.

## 17. Drawings, calculations etc., confidentiality

- 17.1 Drawings, calculations, designs, descriptions, models, software etc. made or supplied by us, shall remain our property, even if the other party has been charged for them. The other party is obliged not to disclose to third parties any details which come to its knowledge or in its possession following the agreements with us. The other party is prohibited from using these data itself other than for the agreements concluded with us.
- 17.2 For each infringement of the stipulations of Articles 16 and/or 17, paragraph 1, as well as for each day the infringement in question lasts, the other party shall invariably owe us a penalty of € 75.000,- payable on demand. This penalty applies in addition to any liability for damages.

## 18. Applicable law and settlement of disputes

- 18.1 All our offers, quotations, transactions, agreements and all resulting contracts to which these conditions apply in part or in their entirety, shall be governed by Dutch law as it applies for the Kingdom in Europe. Other parties that do not reside in the Netherlands are considered to have elected domicile at the head office of Terberg Benschop B.V. in Benschop.
- T he applicability of the Vienna Convention on contracts for the international sale of goods (Treaty Book 1981, 184; 1986, 61) is, however, explicitly excluded.
- 18.2 Any disputes arising from our offers and/or agreements shall be settled by the competent court at the place of residence of our branch, subject to the competence of the Cantonal Court according to the law.

IJsselstein, 01.05.2005

# GENERAL DELIVERY AND PAYMENT CONDITIONS Terberg Benschop B.V..

FILED AT THE ARRONDISSEMENTSRECHTBANK  
UTRECHT UNDER NR. 49/1995, D.D.: 10-03-1995



Manufacturer of special vehicles

## 1. Applicability

- 1.1 These conditions apply to all our offers, quotations, transactions, agreements and all resulting contracts. In addition, they apply to all ensuing offers, quotations, transactions and agreements made to, or concluded with, the other party, whether these are related to, or arise from, quotations already tendered or concluded agreements.  
Offers and quotations are without obligation and must always be considered in their entirety.
- 1.2 General conditions of the other party only apply to our quotations and agreements concluded with us if and insofar they are compatible with these present conditions. Our conditions shall prevail in case of any doubt about the compatibility of these conditions.
- 1.3 In case changes are made to these conditions in the interim, the adapted version of these conditions shall be included in any agreement concluded between us and the other party after the change has been effected.
- 1.4 General purchasing conditions of customers. In their relationship with Terberg Benschop B.V. customers may only refer to their general purchasing conditions, of whatever nature, if and insofar these general purchasing conditions have been accepted explicitly and in writing by Terberg Benschop B.V.
- 1.5 Upon permitting the start of the execution of the works, the other party and/or the principal is considered to have agreed to these conditions.

## 2. Realization of the agreement

- 2.1 Only orders that have been confirmed in writing by the board or an officer with powers of representation are binding upon Terberg Benschop B.V.. In the case of non-acceptance, the board or an officer with powers of representation shall notify the principal within eight days of receiving the order. If more than one vehicle is stated on the order, this is regarded as a separate order for each vehicle.
- 2.2 If we have requested the other party to return a signed copy of the order confirmation in acceptance of the order and the other party has failed to do so within seven days, counting from the date of dispatch, nor have we received a written confirmation concerning the party's refusal to start the execution of the agreement, the agreement with the other party is considered to have been concluded if we are actually executing the agreement.
- 2.3 Stipulations, understandings and arrangements only constitute an agreement between both parties if they have been confirmed in writing by Terberg Benschop B.V.
- 2.4 In the case of an order without a prior quotation from us, the agreement will not come into effect until we have confirmed the order within fourteen days of receiving it, or if we are actually executing the order.

## 3. Prices

- 3.1 Prices apply to delivery ex-factory and can be changed at all times in the case of increased prices for materials, raw materials, auxiliary goods and parts, including a rise of prices following changes in exchange rates, import duties and such, and in the case of higher costs for wages, salaries, social securities and governmental costs.
- 3.2 We shall invariably inform the other party at the earliest opportunity if and insofar we exercise the right allocated above to pass on these price changes. The other party shall not be entitled to cancel the agreement in the case of price changes leading to a difference of 10% or less compared with the agreed prices.
- 3.3 In the case of any governmental measure introducing or changing cost-price-increasing taxes, levies or import duties, we shall be entitled to pass on these changes to the other party, regardless of whether the agreed price is fixed, without this leading to cancellation of the order or rescission of the agreement by the other party.

## 4. Execution of the agreement

- 4.1 We are entitled to determine the way in which the order shall be executed, as well as the place where and the time when the order shall be executed by us, unless explicitly agreed otherwise.
- 4.2 If during the execution of the agreement it emerges that minor adjustments are necessary or desirable, we can adapt the execution of the agreement accordingly. Other party and/or principal shall be informed of these deviations in as far as possible. In the case the nature of the deviations is such that a price adaptation is indicated, the price adaptation shall take place after consultation.
- 4.3 We are without exception entitled to invite the assistance of third parties in the execution of our activities without notifying the other party, and/or to have those activities - in part - carried out by third parties.

## 5. Payment

- 5.1 Payment, unless agreed otherwise, shall be made upon delivery at the office of Terberg Benschop B.V., or into a giro/bank account specified by us. No claims for deduction and/or reduction can be made. Contracts are concluded by Terberg Benschop B.V. under the assumption that the other party is sufficiently creditworthy. If it should emerge at a later date that the financial situation in the opinion of Terberg Benschop B.V. involves any risks, Terberg Benschop B.V. shall always be entitled to cancel the order in question, unless the other party provides further security to the satisfaction of Terberg Benschop B.V., also if the other party has stipulated for credit. In the case of cancellation as mentioned above, Terberg Benschop B.V. shall not be obliged to pay damages claimed for whatever reason.
- 5.2 We shall be entitled to demand guaranteed security from the other party. This security must be such that our claim and any ensuing interest and costs are adequately covered and that we are able to apply for redress unhindered and without any problems. If the guarantee is refused, we shall be entitled to suspend (further) compliance with our obligations towards the other party or to consider the agreement cancelled. This provision also applies if the other party has stipulated for credit.
- 5.3 Interest based on 1% per month, or part thereof, shall become due 30 days from the invoice date. In the case we have not received payment from the other party within this term or any other agreed term, the other party is legally in default.  
Any collection costs, both extrajudicial and judicial, are for the account of the debtor in default. The extrajudicial collection fees total 15% of the amount owing with a minimum set at € 75,-. These costs shall be due from the moment Terberg Benschop B.V. has laid the claim for collection with its attorney-at-law.
- 5.4 Payments made by the other party shall always serve to first meet any interest and costs due, followed by instances where no reservation of title may be claimed, and then to meet payment of invoices, the longest outstanding invoices first, even if the other party states that the payment is made for a different claim or for an (invoice) claim of a later date.

## 6. Bankruptcy etc.

In the case of the other party's failure to meet any of the obligations arising from the agreement or to meet these adequately or in time, and in case of bankruptcy, suspension of payment or receivership, or the immobilization or liquidation of its company, the other party is considered to be legally in default and we shall be able to cancel the agreement in its entirety or partially or have it declared cancelled, or to suspend the (further) execution of the agreement as we see fit, without any obligation to pay damages and without prejudice to any other rights due to us, and without a notice of default or legal intervention being required. In these instances we shall moreover be entitled to claim immediate payment of the outstanding amounts.

## 7. Reservation of title

- 7.1 As long as the principal and/or buyer has not made full payment in respect of an agreement between the parties, or in respect of a claim arisen from failure in its compliance with such agreements, concerning the execution of the work or the purchase and sales of goods and owing to Terberg Benschop B.V., the goods delivered remain for the account and risk of the principal and/or buyer, either processed or not, and the property of Terberg Benschop B.V.. The Principal and/or buyer is not entitled to pledge these goods or transfer their title to third parties, or to encumber or transfer the goods under whatever title pursuant to the law of property or contract. If the principal and/or buyer fails to meet any obligation from the agreement towards Terberg Benschop B.V. in respect of the work to be carried out or the goods sold, we shall be entitled to take or claim back the goods (regardless of whether these have been processed or not), in which case the agreement is cancelled without recourse to the courts and without prejudice to the right of Terberg Benschop B.V. to claim compensation for damage, loss of income and interest.
- 7.2 The reservation of title also covers goods that have been created or obtained after processing the goods that have been supplied under reservation of title. The other party shall in that case immediately transfer the ownership of the goods obtained as the result of conversion to us.
- 7.3 Terberg Benschop B.V. reserves the sleeping right of lien on the goods supplied by it as soon as it loses ownership of these goods for whatever reason, to ensure payment of any existing and future claims made by us on the other party, including collection costs and interest fees.
- 7.4 The other party undertakes, at our first request, to establish a sleeping or unproprietary right of lien on all goods supplied as long as it has not met its existing and future payment obligations.
- 7.5 The buyer/principal is forbidden to establish a right of revenge, sleeping or unproprietary right of lien for any third party(ies) on goods supplied by us which have not yet been paid for, or to enter into an agreement with a third party regarding these goods.

## 8. Additional costs

Additional costs arising from changes to the order after Terberg Benschop B.V. has sent an order confirmation are wholly for the account of the buyer; the delivery time shall in this case be changed accordingly.

## 9. Claims and guarantee stipulations

- 9.1 Claims must be submitted, accompanied by a written motivation, within eight days after the date of invoice or after any defects might have reasonably been detected; after this period they will not be taken into consideration.
- 9.2 Claims do not suspend the (payment) obligations of the other party with regard to the supplied goods, any goods supplied earlier or goods yet to be supplied.
- 9.3 Return shipments of the delivered goods can take place only after consultation and with our approval. The other party may not derive any rights whatsoever from such approval. Return shipments must be carriage paid.
- 9.4 General guarantee stipulations.
  - a. Terberg Benschop B.V. guarantees its newly delivered vehicles for a maximum period of twelve months following the delivery date, for a maximum mileage of 100,000 km or its equivalent in miles, and/or a maximum of 2000 hours of operation, from the date of delivery, whereby the maximum attained first is decisive. This guarantee is valid only for first buyers/owners.
  - b. Unless agreed otherwise in writing, no guarantee is granted for used cars, other than for hidden defects.
  - c. This guarantee applies to any defects caused exclusively by faulty production, construction or materials.
  - d. We shall not be obliged to meet this guarantee if for example the vehicles show defects through improper use, use of the vehicle for purposes contradicting the nature and/or function of the vehicle, and other causes such as natural wear and tear, unsuitable fuel, lubricants, overloading, defects, as well as in those cases where the cause in the opinion of Terberg Benschop B.V. is not conclusive.
  - e. In the case of guarantee it is up to Terberg Benschop B.V. to decide whether it will proceed to repair or replace.
  - f. The guarantee does not extend beyond free repair or free replacement within normal working hours.  
Loss of profit, consequential damage and any other form of indirect damage not mentioned by name here are excluded from the guarantee. All additional costs not related to the repair shall be charged, such as:
    1. costs for (simultaneously) carrying out necessary maintenance, including costs for necessary materials;
    2. costs for towing, fuel, lubricants, filters, goods transportation costs, import duties, travelling and accommodation expenses of service engineers outside the Netherlands.
  - g. Parts that are replaced - whether or not they are faulty - shall become the property of Terberg Benschop B.V..
  - h. Costs of repairs carried out after the written approval from Terberg Benschop B.V. outside the Netherlands shall be compensated only on the basis of the costs which would have been made if Terberg Benschop B.V. had carried out the repairs itself.
  - i. In replacing complete parts Terberg Benschop B.V. shall be entitled to demand compensation for the time and/or kilometres the defect part has lasted.
  - j. The guarantee on materials, including parts, which Terberg Benschop B.V. has acquired from third parties, shall never exceed the guarantee which Terberg Benschop B.V. itself shall receive from its suppliers with regard to the defect good.
  - k. Any remaining guarantee obligations of Terberg Benschop B.V. shall never entitle the purchaser/principal to suspension of payment. Claims for deductions shall not be possible.
  - l. In being submitted an order for repair and/or delivery of whatever nature, Terberg Benschop B.V. must be informed in advance and in writing of any guarantee agreements.
  - m. The buyer/principal shall be obliged - under penalty of expiry of all guarantee agreements in this matter - to inform us in writing and with an explanation as soon as possible, but in any case within fourteen days after detection, at least after the time the defect might reasonably have been detected, of any detected defect in the vehicle and/or product.
  - n. Any claim for guarantee shall lapse when changes to the chassis have been made which in the opinion of Terberg Benschop B.V. may influence the normal working or reliability of the chassis, without the written approval of Terberg Benschop B.V.. The same applies when parts not supplied by Terberg Benschop B.V. have been fitted within the period of guarantee.
  - o. No appeal may be made against a decision taken by Terberg Benschop B.V. in respect of the guarantee.
  - p. By accepting the vehicle, the purchaser agrees to these guarantee stipulations.