

**GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY OF  
PARTS COMPANY B.V., ALSO TRADING UNDER THE NAMES  
BAS PARTS AND PARTS FACTORY (2013).**



If necessary Parts Company B.V. will submit on first request a translation in Dutch of these general terms and conditions

Filed at the Brabant Chamber of Commerce under number 17221169.

**GENERAL**

**ARTICLE 1 DEFINITIONS**

- 1.1 Parts Company B.V. and its affiliated operating companies as well as its successors in title under universal title are the user of these general terms and conditions and will hereinafter be referred to as: "we" and "us".
- 1.2 "Other party" and/or "client" means every legal entity/natural person to whom we make our offers, as well as those who make offers to us and those who provide an assignment to us, or, as the case may be, those with whom we enter into an agreement and furthermore those with whom we are in any legal relationship, and apart from those, their representative(s), authorised person(s), successor(s) in title and beneficiary/beneficiaries.
- 1.3 "Products" means all products and/or parts etc. which, being subject to these general terms and conditions, are delivered to the other party, as well as the carrying out of services and work and/or the provision of advice by us to the other party.

**ARTICLE 2 APPLICABILITY**

- 2.1 These general terms and conditions apply to all our offers, agreements, and agreements for services as well as all legal acts, deliveries and work carried out by us and other services with regard to the products.
- 2.2 Derogations and addendums to these general terms and conditions only bind us if these have been agreed in writing.
- 2.3 When it appears that one or more provisions of these general terms and conditions are in conflict with the law, then the remaining provisions of these general terms and conditions will remain unimpaired.
- 2.4 In case of conflict between the contents of the agreement concluded between the other party and us and these general terms and conditions, the provisions of the agreement will apply.
- 2.5 If we do not always require strict compliance with these terms and conditions, this does not mean that the provisions thereof are not applicable, or that we to any extent would lose the right in other cases to require strict compliance with the provisions of these terms and conditions.

**ARTICLE 3 SUSPENSION AND RIGHT OF RETENTION**

- 3.1 We are entitled to suspend our performance (including also future partial deliveries) if the other party does not fulfil one or more of its obligations, or, as the case may be, if circumstances which have come to our knowledge give us good grounds to fear that the other party will not fulfil its obligations, except for in the case of derogating mandatory statutory provisions.
- 3.2 We can exercise the right of retention on all goods of the other party to which the performance of the agreement relates, and which are in fact held by us in the context of the agreement, if the other party does not, wholly or in part, fulfil the obligations

related to the performance of the agreement, or other agreements concluded with the other party.

- 3.3 We are entitled to recover from the other party the costs which we have had to incur with regard to the care of the goods which are in fact held by us.
- 3.4 The other party is not entitled on the basis of alleged defects of the products and for whatsoever reason to delay or suspend or otherwise cease or limit its work, deliveries, goods or services and other obligations towards us.
- 3.5 The other party is also not entitled to setoff any claim against us.
- 3.6 We have the right to setoff the amounts which we owe to the other party against the amounts which the other party owes to us on whatsoever basis. If in the event of set-off compensation there are amounts in different currency, then we will determine in which currency this set-off compensation will take place. Conversion will take place at the official exchange rate applicable on the day on which payment in accordance with the invoices concerned is owed.

**ARTICLE 4 TERMINATION**

- 4.1 If the other party does not, not in a timely manner, or not properly fulfil any (payment) obligation, in spite of a demand letter which includes a reasonable period, ensuing from any agreement concluded with us, as well as in the event of suspension of payment or application for moratorium, bankruptcy, guardianship order or liquidation of the company of the other party, we will be entitled, without notice of default and without judicial intervention, to terminate the agreement, or a part thereof.
- 4.2 Termination will make the existing claims reciprocally immediately due and payable. The other party will be liable for the damage suffered by us, inter alia comprising of interest and lost profits.
- 4.3 If the provisions of subclause 1 occur and the other party enjoys an advantage which the other party would not have had in case of proper fulfilment, then we will have the right to compensation of our damage to the amount of this advantage.
- 4.4 Except for insofar as these general terms and conditions foresee this, parties waive the right to terminate (have terminated), wholly or in part, the agreement concluded with us.

**ARTICLE 5 FORCE MAJEURE**

- 5.1 In the event that force majeure delays or prevents the performance of the agreement, then we as well as the other party will be entitled to terminate the agreement in writing, without this giving the other party any claim to compensation.
- 5.2 Force majeure on our part also includes every circumstance arisen through no fault on our part, as a result of which the usual

performance of the agreement is prevented. Circumstances causing such force majeure inter alia:

- if the production or delivery of specified goods is ceased;
- if we have sold to the other party a part still to be exchanged and this part cannot be delivered to the other party through circumstances which cannot be attributed to us;
- loss, damage and/or delay during and through transport, extreme sickness absence of staff, actions/measures by customs, including (temporary) closure of specified geographical areas, fire, theft and other serious disruptions in our company or at our supplier.

- 5.3 If the manufacturer, importer or supplier make modifications or (design) changes to the product, we retain the right to deliver the changed product, provided that the changed product has at least the usual properties for use as the original product, as well as the special properties for use, if and insofar as this is agreed between us and the other party.

#### **ARTICLE 6            LIABILITY**

- 6.1 Except for intent or wilful recklessness on our part or our management (including superior employees) our liability is limited to our guarantee obligations described in article 19 and we are never liable for whatsoever damage, regardless if that claim is based on an agreement concluded with us, unlawful act or otherwise.
- 6.2 In the event that we might be liable for damage, our liability is always limited to direct damage to goods or persons and this never includes any loss of profits or other consequential loss, including loss of revenue.
- 6.3 In the event that we might be liable for damage our liability is furthermore limited to the price for which the other party has purchased the product, or, as the case may be, to an amount which is paid by the other party for the assignment.
- 6.4 If we consider there to be grounds which make us decide not to apply the stipulations included in this article, then our liability is at all times limited to that damage and not exceeding that amount for which we are insured for, or, as the case may be, reasonably would have been insured, having regard to the applicable custom in the sector.
- 6.5 Every claim by the other party for compensation of damage and/or rectification of the shortcoming and/or replacement of the goods, on whatsoever basis, lapses on the earliest of the following dates: in case of failure to report in a timely manner or one year after delivery, installation or completion.
- 6.6 The other party is bound to indemnify, respectively reimburse us, with regard to all claims by third parties for compensation for damage, costs or interest for which our liability is excluded in these terms and conditions in the relationship with the other party.
- 6.7 We are never liable for damage caused by incorrect use, mounting and/or installation of the products delivered by us.
- 6.8 We will insure the risk of loss or damage to the goods of the other party, which we hold, for the period that we hold these goods. We are liable for the goods handed over to us by the other party, regardless of which external cause it concerns and regardless of whether the damage or the loss arises during the period that we hold those goods on the basis of an agreement, exclusively insofar as the insurer concerned compensates the damage concerned. 'External cause' does not include the modification of the goods.

- 6.9 If this agreement concerns goods which we obtain, or have obtained, from third parties, our responsibility and/or liability is limited to that for which that supplier is responsible and/or liable towards us. This provision is only applicable insofar as that application is more advantageous for the other party than the application of the previous provision.
- 6.10 We are not obliged to offer to the other party replacement transport or to arrange the transport of the consignment; the other party also does not have the right to reimbursement of the costs of replacement transport.

#### **ARTICLE 7        APPLICABLE LAW AND COURT OF COMPETENT JURISDICTION**

- 7.1 The provisions of the Vienna Sales Convention do not apply, nor does any future international regulation concerning purchase of movable property of which the operation can be excluded by parties.
- 7.2 The law of the Netherlands applies to all agreements to which these general terms and conditions apply wholly or in part.
- 7.3 All disputes ensuing from or related to the agreement will, insofar as mandatory legal provisions do not object to this, be exclusively submitted to the court of competent jurisdiction in the district of our place of business, unless we, as claimant or applicant party chose a court of competent jurisdiction in the place of residence or business of the other party.
- 7.4 In the event of a (threatening) dispute we will have the right to (have conducted) conduct an assessment by one or more experts at the other party's location.

#### **SALE**

##### **ARTICLE 8            OFFERS**

- 8.1 All our offers and tenders are without obligation, unless these contain a period for acceptance, in which case the offer will lapse after this period.
- 8.2 Changes and/or promises made by us after the offer, either orally or in writing, will constitute a new offer, in the course of which the previous offer has lapsed.
- 8.3 If an acceptance by the other party derogates from the offer, then this will apply as a new offer from the other party and as rejection of our entire offer, also if only minor points are derogated from.
- 8.4 All offers and tenders are based on the performance of the agreement by us under normal circumstances and during normal working hours, unless expressly stated otherwise in writing.

##### **ARTICLE 9            FORMATION**

- 9.1 The agreement comes into effect, insofar as applicable within the period set out by us, at the time of receipt by us of acceptance in writing of this offer and if the other party makes an offer and/or gives an assignment, at the time that we confirm the offer and/or the assignment in writing, or, as the case may be, when we have commenced the execution of the assignment.
- 9.2 Additional agreements reached after the agreement, changes and/or promises made either orally or in writing by our staff, representatives, sellers or other intermediaries, are not binding, unless these have been confirmed by us in writing to the other party.

## **ARTICLE 10 DATA AND INFORMATION**

- 10.1 We are only obliged to (further) execution of the assignment if the other party has provided all data and information required by us in the form and in the manner required by us. Extra costs arisen because the other party has not, not in a timely manner, or not properly, provided the required data and information, will be on the account of the other party.
- 10.2 The other party is obliged to inform us promptly with regard to facts and circumstances which can be of importance with regard to the execution of the assignment.
- 10.3 The other party guarantees the accuracy, completeness and reliability of the data and information provided to us by the other party or on behalf of the other party.

## **ARTICLE 11 PRICES**

- 11.1 The prices stated by us are net prices and are stated excluding turnover tax and other government charges and/or charges from third parties imposed on the sale and/or delivery and/or performance of the agreement, and are based on the delivery from our business location, except insofar as agreed otherwise in writing.
- 11.2 The prices stated by us are in Euros, or in another currency agreed by us; any exchange differences are on the risk of the other party, unless agreed further in writing.
- 11.3 The prices stated by us are based on the current prices applicable at the time of the concluding of the agreement and on the specifications and on performance of the agreement under normal circumstances.
- 11.4 We retain the right to charge a proportional price increase to the other party, if after the concluding of the agreement an increase occurs of one or more factors determining prices and/or statutory levies, including wages, premiums, materials and exchange rate changes.
- 11.5 The provisions of subclause 4 also apply if the changes in the factors determining prices referred to therein are the result of circumstances already foreseeable at the concluding of the agreement.
- 11.6 In the event that application of subclause 4 might result in a price increase of 20% or more and the price increase does not ensue from the law, then the other party will have the right to terminate the agreement by registered letter, within one week after we have made it known that the price will be increased.
- 11.7 If not agreed otherwise expressly in writing, the prices stated by us are (EX-W) Veghel. Delivery costs, service charges and costs for dispatch, etc. are never included in our price.
- 11.8 Price increases ensuing from addendums and/or amendments to the agreement are on the account of the other party.
- 11.9 Costs arisen as a result of the other party remaining in default to make the performance of the agreement possible and/or as a result of circumstances occurring which can be attributed to the other party as a result of which costs have arisen for us, will be charged by us to the other party.
- 11.10 We are entitled to recover the costs, which we had to incur with regard to the care concerning the goods which we in fact hold, from the other party.

## **ARTICLE 12 DELIVERY**

- 12.1 Delivery times are determined in mutual consultation; however delivery times and/or delivery dates stated by us are never to be considered to be final deadlines unless agreed otherwise in

writing. In case of delivery and/or completion in an untimely manner we must be given notice of default stating a reasonable period for performance. A reasonable period is in all events a period applicable as reasonable within the sector.

- 12.2 If the exceeding of the term of the delivery time cannot be attributed to us, then the other party can never claim compensation or termination of the agreement.
- 12.3 The delivery times and/or dates are based on the, at the time of the entering into the agreement, applicable working conditions and on the timely delivery of the materials and/or parts ordered by us for the performance of the agreement.
- 12.4 As soon as we are aware of facts and circumstances which can prevent or make deliveries within the stated period difficult, we will inform the other party about this stating the new expected period.
- 12.5 The other party is obliged to take receipt of the delivery delivered by us at the established delivery time, in the absence of which all costs ensuing therefrom (including delivery, storage insurance and garage charges) and damage, as well as 15% of the gross sales value of the product and/or vehicle on the basis of cancellation fee, will be charged to the other party.
- 12.6 Delivery takes place in accordance with the Incoterms as stated in our documents.
- 12.7 The risk of the sold products and parts transfers to the other party at the time of delivery.

## **ARTICLE 13 CANCELLATION**

- 13.1 The other party is entitled to cancel the orders placed. Cancellation must be made in writing prior to the agreed delivery date. The other party is obliged to make a payment to us of 15% of the gross sales value of the products on the basis of the cancellation fee within one week from this cancellation. If the other party has not made this payment after one week then we will have the right to inform the other party in writing that we require performance of the concluded agreement. In that event the other party can no longer rely on cancellation.
- 13.2 Orders not taken receipt of can be offered anew to the other party. In that event the invoice amount will be plus the costs incurred, inter alia comprising of storage costs.

## **ARTICLE 14 PAYMENT**

- 14.1 Unless agreed otherwise in writing, payment will take place at the time of delivery. Setoff against claims which the other party alleges to have against us is not permitted.
- 14.2 The other party hereby undertakes towards us to pay us on our first request by delivery of the goods to be designated by us, the goods delivered by us to you included also therein (Section 45 Book 6 Civil Code).
- 14.3 In case of non-payment within the period referred to in article 14.1 interest will be owed on the basis of Section 119a Book 6 in conjunction with Section 120 Book 6 Civil Code, or the statutory interest if this is higher, whereby a part of the month is calculated as a full month, commencing on the first day after the expiry of the payment term specified in article 14.1.
- 14.4 In case of payment (in a timely manner) not forthcoming within the period referred to in subclause 1, we retain the right to increase the amount owed by the other party with the judicial and extrajudicial collection charges. The extrajudicial collection charges are hereby set at 15% of amount owed with a minimum of € 250.-.

- 14.5 In the event of untimely payment all payment obligations of the other party, regardless whether we have already invoiced for this, will be forthwith due and payable. If the period intended for payment is exceeded, then the other party will be in default without any payment reminder.
- 14.6 Payments made by the other party will firstly apply to settle all interest and costs owed and then to settle the amounts due under the agreement which have been due and payable the longest, even if the other party states that the payment is intended for another amount due.
- 14.7 Any payment discounts agreed in writing will lapse if the payments have not been received within the further agreed payment term.
- 14.8 The other party is not entitled, on the basis of alleged defects of the products and for whatsoever other reason, to refuse or suspend the fulfilment of the other party's payment obligation.
- 14.9 We are always entitled to setoff all which we, one or more of our sister, subsidiary and parent companies and/or other companies forming part of Parts Company B.V., of client, its sister, subsidiary and parent companies and/or other companies forming part of the group of client, have to claim, and to rely with regard to this claim on (one or more of) those claims on the right of suspension.
- 14.10 In the event of liquidation, insolvency, bankruptcy or moratorium of the other party the claims, on whatsoever basis, (including those of the parties referred to in article 14.9) against the other party will be immediately due and payable.
- 14.11 We are at all times entitled to require an advance payment of the amount owed by the other party and/or to require that the other party cooperates on first request to the furnishing of sufficient security for the assurance of the fulfilment of the other party's obligations, including but not limited to an irrevocable and unconditional bank guarantee issued by an acknowledged banking institution and/or the providing of a right of pledge and/or guarantee and/or the issuing of a notice of joint and several liability.
- If this provision of security is not forthcoming we will be entitled to suspend the performance of the agreement, or to terminate this with immediate effect, without prejudice to our right to terminate the agreement in accordance with the provisions of article 4.
- 14.12 If the other party has not acceded to our request as referred to in subclause 11 within fourteen days after a demand to that effect in writing for this purpose, then all of the other party's obligations will be immediately due and payable.

#### **ARTICLE 15 COMPLAINTS**

- 15.1 Any complaints with regard to goods delivered by us as well as with regard to invoice amounts must be submitted in writing to us within 8 working days from receipt of the goods, respectively from receipt of the invoice, including precise statement of the facts to which the complaint relates. In the absence of a report the other party will be deemed to have approved and accepted the delivered goods without any reservation. The right to complaint lapses through the (continued) use of the delivered goods.
- 15.2 If it is not reasonably possible to discover the defect within the aforesaid period, then the other party must complain to us in writing within 8 working days after the other party has discovered the defect or should have discovered this. With regard to defects which are discovered after the expiry of the guarantee period, and

in case of uncertainty regarding this, after the passing of one year from delivery, complaints can no longer be made.

- 15.3 Minor, or deviations usual in the sector, and differences in quality, number, measurement or finish, as well as differences in the execution of the work, can not form any basis for complaints.
- 15.4 Complaints with regard to specified products or with regard to specified work do not affect the obligation of the other party with regard to other products or parts of the agreement.
- 15.5 The products complained about can only be returned when we have agreed to this in writing. Products which are tailor-made by us on request of the other party cannot be returned, unless we agree to this in writing. We retain the right to charge return costs to the other party.
- 15.6 Complaints with regard to defects are not accepted if the products have been processed, or if these defects are not reported within the aforesaid periods.
- 15.7 We will be given the opportunity after the complaint to inspect the products, for which the other party will provide full cooperation. It is not possible to complain with regard to products which cannot be inspected by us.
- 15.8 The other party cannot enforce any claim against us with regard to complaints about defects of products as long as the other party has not yet fulfilled any obligation towards us, also if this obligation is not directly related thereto.

#### **ARTICLE 16. GUARANTEE**

- 16.1 If and insofar as nothing has been expressly agreed with regard to the properties of the products to be delivered, the other party can only make a claim on properties which are in accordance with that which is usual in the sector.
- 16.2 Guarantees for new parts and accessories exclusively apply as these are provided by the manufacturer, importer and other suppliers.
- 16.3 Guarantees for used parts and accessories are exclusively provided if and insofar as the agreement determines this.
- 16.4 The claims to guarantee lapse if:
- a. We are not given the opportunity to rectify the defects;
  - b. Third parties have carried out work, without our prior knowledge or permission, which is related to the defect and with regard to the remedying thereof we have carried out work related to which a claim to guarantee is made;
  - c. The defect is caused by accident, incorrect use, mounting and/or installation of the products delivered by us.
  - d. By, or on the instructions of the other party, changes have been made to the parts, unless all this has taken place fully in conformity with our advice provided in writing, or after permission in writing has been acquired from us;
  - e. The other party does not fulfil the agreed payment obligations as well as its other obligations on the basis of the agreement.
- 16.5 The parts delivered as replacement on the basis of this article are again guaranteed subject to the same conditions.
- 16.6 Excluded from the guarantee are:
- defects of materials or parts which are prescribed or made available by the other party;
  - defects which are the result of designs, drawings, constructions or working methods made available by the other party, or, as the case may be, advice provided by the other party.

## **ARTICLE 17            RETENTION OF TITLE**

- 17.1 The ownership of the products, notwithstanding the actual delivery, only transfers to the other party after the other party has paid all amounts due to us concerning of the products delivered or to be delivered by us pursuant to the agreement, or any comparable agreement, as well as with regard to the claims due to failure in the performance of such agreements.
- 17.2 During the period that the ownership of a part, in accordance with the provisions of subclause 1 of this article, has not yet transferred to the other party, but delivery has already taken place, then the other party must keep the part third party insured and the other party is not permitted to dispose, encumber, pledge, rent out, give in loan, or make this part available in any other manner to third parties or to transfer this as security to third parties. If the part is sold or transferred to a third party, then the claim which arises on the basis of the onward supply of the parts to the third party purchaser, will be pledged in advance without notice to the debtor, for our benefit, and the other party undertakes hereby to cooperate to any registration thereof. If there is accession and/or specification of delivered and/or produced products then there is hereby already a right of pledge established on the product of which our product has become a component part. The other party will indemnify us during aforesaid period against claims by third parties to the goods concerned.
- 17.3 During the period referred to in subclause 2, the other party is obliged to return the products to us on our first request. If the other party fails in the fulfilment of its payment obligations towards us, or if we have good grounds to fear that the other party will fail in its obligations, then we will be entitled to take back the products delivered by us subject to retention of title on the account of the other party.
- 17.4 The other party is obliged to keep the products delivered subject to retention of title with the necessary carefulness and as recognisably our property.

## **ARTICLE 18            DATA PROCESSING**

- 18.1 The data of the other party will be processed by us. We are also entitled to make this data available to third parties. Insofar as it concerns the processing of personal data this is processed within the meaning of the Personal Data Protection Act. We can perform the agreement, fulfil the guarantee obligations towards the other party, provide optimal service and provide the other party with product information and personalised offers in a timely manner on the basis of this processing. If it concerns the processing of personal data for the purpose of direct mailing, then any objection brought by the other party to us will be accepted.