



## **Terms and Conditions of Transmotors B.V. January 2020**

### **Article 1. General**

- 1.1 These Terms and Conditions apply to all offers, quotations and contracts between the private limited company Transmotors B.V., hereafter 'Transmotors', including any companies affiliated to Transmotors, and an Other Party for which Transmotors has declared these Terms and Conditions to be applicable, unless otherwise expressly agreed in writing.
- 1.2 These Terms and Conditions also apply to third parties that have to be brought in by Transmotors for the execution of activities.
- 1.3 The applicability of possible procurement terms and conditions or other terms and conditions of the Other Party are expressly rejected.
- 1.4 If any provision of these Terms and Conditions shall, at any time, be wholly or partly declared null and void or avoided, the other provisions of these Terms and Conditions shall remain fully in effect. In this event, Transmotors and the Other Party shall consult with each other to agree new provisions to replace the void or avoided provisions. In doing so, the purpose and meaning of the original provisions shall be taken into account as far as possible.
- 1.5 In the event that the interpretation of one or several provisions of these Terms and Conditions is not clear, this interpretation must be 'in the spirit' of these provisions.
- 1.6 In the event that a situation occurs between parties that is not covered in these Terms and Conditions, this situation must be assessed in the spirit of these Terms and Conditions.
- 1.7 Should Transmotors not always require strict compliance with these Terms and Conditions, this shall not mean that these provisions shall not apply, nor shall this mean that Transmotors shall lose any right to require the strict compliance with the provisions of these Terms and Conditions in other cases.

### **Article 2. Quotations and offers**

- 2.1 All quotations and offers of Transmotors are without obligation, unless the quotation states an acceptance term. A quotation or offer lapses in the event the product to which the quotation or the offer pertains has become no longer available in the meantime.
- 2.2 Transmotors cannot be bound to its quotations or offers in the event the Other Party can reasonably understand that the quotations or offers, or part/parts thereof, contains/contain a manifest mistake or error in writing.
- 2.3 The prices mentioned in a quotation or offer are excluding Dutch VAT and other governmental levies, and any costs that may have to be incurred as a result of the contract, including travelling expenses and accommodation costs, shipping/postage and administration costs, unless otherwise indicated.
- 2.4 In the event that the acceptance (either on minor points or otherwise) shall deviate from the proposal included in the quotation or offer, Transmotors shall not be obliged to this. In this event, the contract shall not be realised in accordance with this deviating acceptance, unless Transmotors indicates otherwise.
- 2.5 A compound price quotation does not oblige Transmotors to carry out a part of the contract at a corresponding part of the specified price. Offers and/or quotations do not automatically apply to future orders.

### **Article 3. Contract term, delivery period, execution of and amendments to contract**

- 3.1 In the event a term has been agreed on or stipulated for the execution of certain activities or for the delivery of certain items, this shall never be a strict deadline. In the event a term is exceeded, the Other Party must give



- notice of default on the part of Transmotors in writing. Transmotors must be allowed a reasonable timeframe to execute the contract at a later date.
- 3.2 In the event the Other Party has agreed to partial deliveries, all extra costs that may result from this shall be for the account of the Other Party.
- 3.3 In the event Transmotors needs information from the Other Party for the execution of the contract, the implementation period shall not start until the Other Party has made the relevant correct and complete information available to Transmotors.
- 3.4 Delivery shall be in accordance with the Incoterms 2020. The Other Party is obliged to purchase the items at the time at which these are made available to the Other Party. In the event that the Other Party refuses purchase or fails to provide information or instructions that are essential for the delivery, Transmotors shall be entitled to store the items in question for the account and at the risk of the Other Party.
- 3.5 In the event that parties find, during the execution of the contract, that it is required for the proper execution thereof to amend the contract or to complement the contract, parties shall proceed to amendment of the contract timely and in joint consultation.
- 3.6 In the event that the nature, size or contents of the contract, at the request of or by order of the Other Party, or by the competent authorities, etc., are amended, as a result of which the contract changes qualitatively or quantitatively, this may also have consequences for what was originally agreed. For this reason, the original amount agreed may be increased or reduced. Transmotors shall submit a price quotation of this in advance, in as far as possible. Should an amendment be made to the contract, the originally stipulated terms of execution may also change. The Other Party accepts the possibility of amendment of the contract, including a change in price and in completion time.
- 3.7 In the event that the contract is amended, including additions to the contract, Transmotors shall be entitled to not execute this until this amendment or addition has been approved by the person within Transmotors who is authorised to do so, and the Other Party has agreed with the price quoted for this amendment and/or addition and with other terms and conditions, including the time of the execution that has been determined. Non-execution or not immediate execution of the amended contract does not result in breach of contract on the part of Transmotors, nor shall it constitute a reason for the Other Party to cancel the contract. Without being in breach of contract, Transmotors can refuse a request for amendments to the contract, in the event that this could affect, in qualitative or quantitative sense, for instance, the relevant activities to be carried out or items to be supplied.
- 3.8 If the contract is amended and such an amendment involves a price increase, Transmotors shall be entitled to require an additional down payment/security from the Other Party prior to the execution of the amended contract.
- 3.9 In the event that the Other Party fails to properly observe any matters in which the Other Party is obliged to Transmotors, the Other Party shall be liable for all damages (including costs) that result from this for Transmotors, either directly or indirectly.
- 3.10 In the event that Transmotors has agreed on a fixed price with the Other Party, Transmotors is nevertheless entitled, at any time, to increase this price without the Other Party being entitled to annul the contract for this reason, if this price increase ensues from an authority or obligation pursuant to the law or legislation, or is the result of an increase of the price of raw materials, wages, levies, taxes, import and export duties, etc., or for other reasons that could not have reasonably been foreseen at the time of entering into the contract.
- 3.11 In the event that the price increase, other than as a result of an amendment to the contract, exceeds 10% and is increased within three months after signing the contract, only the Other Party which appeals under section 5 chapter 3 of Book 6 of the Dutch Civil Code is entitled to annul the contract by way of a written statement, unless Transmotors is still willing to execute the contract as originally agreed, or in the event that the price increase ensues from an authority or obligation on the part of Transmotors under the law, or in the event that it has been stipulated that the delivery shall take place later than three months after the purchase.



#### **Article 4. Suspension, annulment and early termination of the contract**

- 4.1 Transmotors is entitled to suspend observance of its obligations or to annul the contract, in case:
- the Other Party does not, not fully, or not timely fulfil its contract obligations;
  - circumstances of which Transmotors has become cognizant after the signing of the contract give good grounds for fearing that the Other Party shall not fulfil its obligations;
  - the Other Party has been requested to stand surety for the settlement of its obligations under the contract, and this surety was not given or is insufficient.
- In case Transmotors can no longer be required to observe the contract against the originally agreed conditions due to delays on the part of the Other Party, Transmotors shall be entitled to annul the contract.
- 4.2 Moreover, Transmotors is entitled to annul the contract should circumstances arise the nature of which render the observance of the contract impossible, or in the event that other circumstances arise as a result of which Transmotors cannot in reasonableness be required to uphold the contract without amendments.
- 4.3 In the event that the contract is annulled, the claims of Transmotors on the Other Party are immediately claimable. If Transmotors suspends the observance of its obligations, Transmotors shall retain its rights under the law and under the contract.
- 4.4 In the event that Transmotors decides to suspend or terminate the contract, Transmotors is not obliged to any compensation of damages and/or costs that may result from this, in any way.
- 4.5 In the event of liquidation, of (application for) moratorium or bankruptcy, or seizure – if and in as far as the seizure is not lifted within three months – of the Other Party, or debt restructuring or another circumstance as a result of which the Other Party may no longer have free use of its capital, Transmotors shall be entitled to cancel the contract immediately and with immediate effect, terminate the contract or rescind the order, without any obligation on its part to pay any damages or compensation. In this event, Transmotors' claims against the Other Party shall be immediately claimable.
- 4.6 In the event that the Other Party wholly or partly cancels an order it has placed, the items that have been ordered and/or prepared to facilitate this order, increased with any relevant possible delivery costs and transport costs and any labour time reserved for the execution of the contract, shall be charged fully to the Other Party.
- 4.7 Should the Other Party cancel an in-stock car, Transmotors shall charge 10% of the purchase price, or settle this with a down payment that may have been paid.

#### **Article 5. Force majeure**

- 5.1 Transmotors is not obliged to observe any obligation towards the Other Party in the event that Transmotors is prevented from doing so as a result of a circumstance for which Transmotors cannot be blamed, nor if this is for the account of Transmotors pursuant to the law, a legal act or generally accepted practice.
- 5.2 These Terms and Conditions understand force majeure to be, in addition to what is included in the law and in case law, all external reasons, foreseen or not foreseen, which Transmotors cannot influence, but as a result of which Transmotors cannot meet its obligations. Strikes in the Transmotors company or in other companies are included in this. Transmotors also has the right to appeal to force majeure if the circumstance that prevents (further) observance of the contract occurs after Transmotors should have fulfilled its obligation.
- 5.3 Transmotors may suspend the obligations under the contract during the period that the force majeure continues. If this period exceeds two months, each of the parties shall be entitled to annul the contract, without obligation to pay damages to the other party.



## **Article 6. Payment and collection costs**

- 6.1 Payment must be made prior to delivery, unless otherwise agreed in writing. If otherwise agreed in writing, payment must be made within fourteen days after the invoice date, in a way to be indicated by Transmotors and in the currency stated on the invoice, unless otherwise indicated by Transmotors in writing.
- 6.2 If the Other Party does not pay an invoice in time, the Other Party is legally in default. In this case, the Other Party shall owe 1% interest per month, unless the statutory commercial interest rate is higher, in which case the statutory commercial interest rate shall be owed. The interest on the claimable amount shall be calculated from the moment that the Other Party is in breach, until the moment that the full amount owed has been paid.
- 6.3 Transmotors may, without being in breach of contract, refuse an offer for payment, if the Other Party designates a sequence for the imputation of the payment that differs from that as defined in Article 6:44 (1) of the Dutch Civil Code. Transmotors may refuse the full redemption of the capital sum, unless, in this case, the accumulated interest on overdue amounts, current annuity and collection costs are also paid.
- 6.4 The Other Party is never entitled to suspension or settlement of what is owed to Transmotors by the Other Party.
- 6.5 In the event that the Other Party is in default with regard to the (timely) observance of its obligations, all reasonable extra-judicial and judicial costs to obtain payment shall be for the account of the Other Party. The extra-judicial costs are calculated based on what is customary in the collection industry in the Netherlands, which currently is the calculation method in accordance with the Extrajudicial Collection Costs (Fees) Decree. However, should Transmotors have incurred higher collection costs, the actually incurred costs shall be eligible for compensation, unless the contract has been agreed with a consumer. If any judicial and execution costs have been incurred, these shall also be recouped from the Other Party. The Other Party shall also owe interest on the collection costs.
- 6.6 Regardless of the agreed payment conditions, the Other Party must provide what Transmotors deems to be adequate security for payment immediately when requested to do so by Transmotors. If the Other Party fails to comply with this within the set term, it will be in default immediately.

## **Article 7. Retention of title**

- 7.1 All items supplied by Transmotors under the contract remain the property of Transmotors until the Other Party has properly carried out all obligations under the contract/contracts entered into with Transmotors.
- 7.2 Items that are a part of the retention of title may not be sold on to another party and may never be used as a means of payment. The Other Party is not authorised to pledge any items that are a part of the retention of title or to encumber these in any other way.
- 7.3 The Other Party must always do everything that may reasonably be expected to safeguard the Transmotors property rights.  
If third parties seize any items that have been supplied under the retention of title and/or want to establish or exercise a right thereon, the Other Party must immediately inform Transmotors of this.
- 7.4 The Other Party is obliged to insure any items that have been supplied under the retention of title and keep up insurance against all risks, and make the policy of this insurance available for inspection to Transmotors upon demand. In the event of a payment made by the insurance company, Transmotors is entitled to these monies. If required, the Other Party shall undertake, in advance, to give Transmotors its cooperation in all that may be required in this framework, or is desirable or found to be desirable.
- 7.5 In the event that Transmotors wishes to exercise its property rights referred to in this Article, the Other Party gives prior unconditional and irrevocable permission to Transmotors, and third parties to be designated by Transmotors, to enter all places where property of Transmotors is located and to retrieve the items in question.



## **Article 8. Warranties, inspection and complaints, period of limitation**

- 8.1 The items to be supplied by Transmotors shall meet the customary demands and standards that may reasonably be required at the time of delivery and for which these are intended in the Netherlands with normal use. The warranties mentioned in this article apply to items that are intended for use within the Netherlands. For use outside the Netherlands the Other Party itself must verify whether use thereof is suitable in the country in question and meets the Terms and Conditions that are required accordingly. In this event, Transmotors can request other warranty conditions and other Terms and Conditions for the items to be supplied, or for activities to be carried out.
- 8.2 The warranty referred to in subsection 1 is valid for a period of one year after delivery, unless the nature of the supplied items results in a different period, or parties have agreed otherwise. In the event that the warranty given by Transmotors pertains to an item that was manufactured by a third party, the warranty is limited to the warranty provided by the manufacturer of the item in question, unless otherwise stated.
- 8.3 Any type of warranty expires in the event that a defect has resulted from or ensued from injudicious or improper use thereof or use after the sell-by date, incorrect storage or maintenance thereof by the Other Party and/or by third parties when, without written permission of Transmotors, the Other Party or third parties have introduced changes to the item and/or have tried to introduce changes to the item, other items were affixed to it that should not have been affixed to it, or in the event that these were tooled in a way that deviates from the prescribed way. The Other Party shall not be entitled to warranty either in the event that the defect is caused by or is the consequence of circumstances that cannot be influenced by Transmotors, including weather conditions, etc.
- 8.4 With regard to services provided by or activities carried out by third parties, the warranty provisions shall apply that have been agreed between these third parties and Transmotors. The claim to the said warranty provisions shall also lapse in case of improper use, which includes, among other things, overloading, use of fuels and oils other than those appropriate for the vehicle, other maintenance than prescribed by Transmotors, and incompetent driving and/or incompetent use of the vehicle. In addition, the warranty includes non-ordered emergency repairs.
- 8.5 In the event that Transmotors replaces spare parts in order to meet its warranty obligations, the replaced spare parts become its property, unless otherwise agreed.
- 8.6 The Other Party is obliged to investigate or have investigated the supplied parts, immediately at the time at which these are made available to him, or immediately upon the relevant activities being carried out, respectively. The Other Party must investigate whether the quality and/or quantity of what has been supplied is in accordance with what has been agreed on and meets the requirements that the parties have agreed on with respect to this. Any possible visible defects must be reported to Transmotors in writing within seven days after delivery (in the case of a consumer sale, the period of two months after discovery applies). Any possible non-visible defects must be reported to Transmotors in writing immediately, but, at any rate, within fourteen days after discovery thereof, at the latest. The report must include a description of the defect that is as detailed as possible, to allow Transmotors to react adequately. The Other Party must allow Transmotors to investigate a complaint or have a complaint investigated.
- 8.7 In the event that the Other Party protests, this shall not defer its obligation to pay. In this case, the Other Party shall still be obliged to purchase and pay for the items ordered.
- 8.8 In the event that a defect is reported later, the Other Party is no longer entitled to repairs, replacement or indemnification. In the case of a consumer sale, there may be an entitlement to repairs, replacement or indemnification if the nature of the item or other circumstances of the case result in a longer period.
- 8.9 In the event that it is self-evident that an item is faulty and that a complaint has been made with respect to this in time, Transmotors shall replace the faulty item or have this repaired and/or shall pay replacement compensation for this to the Other Party, within a reasonable period of time after return of the faulty item and/or, if the return is not reasonably possible, written notification with respect to the defect by the Other Party, at the discretion of Transmotors. In case of replacement, the Other Party is obliged to return the replaced item to Transmotors and to afford the property of this item to Transmotors, unless Transmotors indicates otherwise.



- 8.10 In the event that it shall be ascertained that a complaint is unfounded, the costs resulting from this, including the costs that have been incurred by Transmotors for an investigation, shall be fully for the account of the Other Party.  
After the warranty period has expired, all costs for repairs or replacement, including administration, shipping, mailing costs and call out fees, shall be charged to the Other Party.
- 8.11 In deviation from the statutory period of limitation, the period of limitation for all claims and defences against Transmotors and against the third parties involved in the execution of a contract with Transmotors is twelve months.
- 8.12 In case of a consumer sale, subsection 11 does not apply to legal claims and defences that are founded on facts that would justify the statement that the delivered item would not meet the contract. Such claims and defences expire by the lapse of two years after the Other Party has informed Transmotors of non-conformity as such.

#### **Article 9. Liability**

- 9.1 In the event that Transmotors shall be liable, this Liability shall be limited to what has been agreed in this provision.
- 9.2 Transmotors is not liable for damage, of whatever nature, ensuing from the fact that Transmotors has acted on the basis of incorrect and/or incomplete details supplied by or on behalf of the Other Party.
- 9.3 In the event that Transmotors shall be liable for any damage, the Liability of Transmotors shall be limited to the invoice amount of the order, at any rate to the part of the order pertaining to the Liability.
- 9.4 At any rate, the Liability of Transmotors is always limited to the amount paid out by its insurance company, where appropriate.
- 9.5 Transmotors is only liable for direct damage that is the immediate consequence of a failure or a related series of failures attributable to Transmotors. A related series of attributable failures is regarded as a single failure. Direct damage to exclusively mean the reasonable costs to ascertain the cause for and the extent of the damage, in as far as the conclusion pertains to damage as referred to in these Terms and Conditions, the possible reasonable costs to be incurred to have the inadequate performance of Transmotors comply with the contract, in as far as these can be attributed to Transmotors, and reasonable costs, incurred to prevent or limit damage, in as far as the Other Party proves that these costs have resulted in limiting direct damage as referred to in these Terms and Conditions.
- 9.6 Transmotors shall never be liable for indirect damage, including consequential loss, loss of profit, lost savings, and losses caused by interruption of operations. In the case of a consumer sale, this provision does not extend beyond what is allowed pursuant to Article 7:24 of the Dutch Civil Code.
- 9.7 The provisions of subsections 1–6 of this article apply to both the contractual and the noncontractual liability of Transmotors towards the Other Party, its staff and any third parties it has engaged.

#### **Article 10. Transfer of risk**

- 10.1 The risk of loss, damage or decrease in value is transferred to the Other Party at the moment at which items for the Other Party are brought under the control of the Other Party.

#### **Article 11. Indemnification**

- 11.1 The Other Party indemnifies Transmotors against all claims with respect to any possible damage caused by third parties to or related to the product, and/or in possession or use thereof, directly or indirectly, however and in whichever shape or form, in as far as these transcend the Liability of Transmotors to the Other Party, in accordance with the provisions in these Terms and Conditions.



- 11.2 The Other Party indemnifies Transmotors against all claims by the Other Party and by third parties as a result of any defect in a product, also in case this is caused by an action by the Other Party or by its subordinates, including the manufacturing or adaptation by Transmotors of products in accordance with the instructions of the Other Party.
- 11.3 In the event that the provisions of this Article are deemed to be unreasonably onerous in judicial proceedings, only the damage against which Transmotors is insured shall be eligible for compensation, to the maximum amount for which Transmotors has taken out insurance, or for which Transmotors should have taken out insurance, in line with the prevailing customs in the industry.
- 11.4 In the event that Transmotors shall be called upon by third parties in this respect, the Other Party is obliged to assist Transmotors, both judicially and extra-judicially, and to do everything forthwith that may be expected of the Other Party in such an event. In case the Other Party fails to take adequate measures, Transmotors shall be entitled to do so itself, without being in breach of contract. All costs and damage on the part of Transmotors and third parties that ensue from this, are fully for the account and the risk of the Other Party.

#### **Article 12. Claims of the Other Party against Transmotors**

- 12.1 Any claims the Other Party has or will have against Transmotors on account of the execution of the contract or on the basis of noncontractual liability cannot be transferred, assigned or pledged. This provision has effect under property law, as referred to in Article 3:83 (2) of the Dutch Civil Code.

#### **Article 13. Confidentiality and intellectual property**

- 13.1 The Other Party must observe confidentiality with regard to all drawings, specifications, technical descriptions, designs, calculations, company information and know-how (hereinafter: confidential data) originating from Transmotors, which have been brought to its attention or have come to its attention as a result of or as part of the negotiations and/or the execution of the contract.
- 13.2 The Other Party may not show or provide these confidential data to third parties, copy or multiply them and/or use them to its own advantage (outside the execution of the contract), or allow third parties to use them, without prior permission from Transmotors.
- 13.3 In the case of a breach of the provisions of subsection 1 and/or 2 of this article, the Other Party forfeits to Transmotors an immediately payable penalty of €5,000 that is not subject to mitigation, without prejudice to the right of Transmotors to full/additional compensation.
- 13.4 If no contract is concluded, the Other Party must return the documents/confidential data provided by Transmotors to Transmotors within five calendar days of a request to that effect from Transmotors.
- 13.5 Drawings, technical descriptions, designs and calculations, as well as the intellectual property rights to such drawings, technical descriptions, designs and calculations provided by Transmotors to the Other Party, are and continue to be the property of Transmotors.
- 13.6 Unless the parties have agreed otherwise in writing, the intellectual and industrial property of all projects/ideas completed or to be completed within the context of the contract are vested in Transmotors.

#### **Article 14. Applicable law and conflicts**

- 14.1 All legal relationships in which Transmotors is a party are exclusively governed by the law of the Netherlands, also in the event that an obligation is implemented abroad, wholly or partly, or in the event that the parties involved in this legal relationship have their domicile abroad. The Vienna Sales Convention does not apply.
- 14.2 The Dutch court, the court of Rotterdam, has exclusive jurisdiction to take cognizance of disputes, unless imperatively prescribed otherwise by law. Notwithstanding this, Transmotors has the right to bring the conflict before the competent judge in accordance with the law.



#### **Article 15. Location and amendments to Terms and Conditions**

- 15.1 These Terms and Conditions have been filed with the Chamber of Commerce in ....  
The most recently filed version and/or the version that applied at the time of entering into the legal relationship with Transmotors shall always apply.
- 15.2 The Dutch text of the Terms and Conditions shall always be decisive for the interpretation of these Terms and Conditions.