



SPECIAL TRAILERS SINCE 1881

## GENERAL TERMS AND CONDITIONS OF NOOTEBOOM (Revision November 2017)

### Clause 1 – General

1.1 These general terms and conditions form part of all offers of, and agreements with, Koninklijke Nootboom Group B.V., Nootboom Trailers B.V., Nootboom Global Trailer Center B.V., Nootboom Trailer Service B.V., Nootboom SRL, Nootboom UK Ltd. of Nootboom Iberica SA (hereafter to be referred to both jointly and separately as: "Nootboom").

1.2 Applicability of any general terms and conditions in use by the client, is expressly rejected by Nootboom.

1.3 Deviations from these general conditions only bind Nootboom if this has been expressly agreed in writing.

### Clause 2 – Offers and acceptance

2.1 Unless otherwise stated, the offers made by Nootboom are without obligation, even if they include a period of validity.

2.2 An order granted by the client to Nootboom only binds Nootboom if this has been confirmed by Nootboom in writing or as soon as Nootboom has made a start with the execution of the order.

2.3 Each agreement is formed subject to the condition precedent that the client, on the basis of information to be gathered by Nootboom, appears to be sufficiently creditworthy.

2.4 If the client, for whatever reason, wishes to cancel an order, the client is obliged to pay Nootboom the total value of the contract.

2.5 The client indemnifies Nootboom against all claims of whatever nature which third parties may be able to enforce against it with regard to any loss suffered or to be suffered as a result of the cancellation of the order by client.

### Clause 3 - Price

3.1 The prices stated by Nootboom in respect of the services and/or goods to be delivered by Nootboom are expressed in euro and always exclusive of turnover tax and other costs relating to the sale and delivery including, but not limited to, government levies and costs relating to transport, loading and unloading, import duties and excise duties and are based on delivery "ex works" according to the Incoterms applicable on the date of the offer.

3.2 If in the period after entering into the agreement, but before (whether or not partial) delivery, there are cost price increases in the cost factors of Nootboom (including in any event, but not limited to, changes in the material and raw materials prices, transport costs, energy prices, exchange rate changes), Nootboom is entitled to increase the payable price by a proportional percentage.

### Clause 4 - Change in the order, contract variations

4.1 Changes in the order, of whatever nature, will only be binding if they have been agreed between Nootboom and the client in writing.

4.2 If after the formation of the agreement, the client still wishes to make changes in the execution of such, it is for Nootboom to determine whether, and if so, under which (further) conditions these changes in the context of the agreement can still be accepted.

4.3 In the event of changes to the order, of whatever nature, Nootboom is entitled to charge the higher costs associated with these changes to the client.

### Clause 5 – Delivery period

5.1 The delivery period in respect of services and/or goods to be delivered by Nootboom starts to run on the last of the times set out below: the written confirmation of the order by Nootboom, the receipt by Nootboom of the agreed down payment or the receipt by Nootboom of all the required information.

The stated delivery periods are indicative only and may never be considered to be strict deadlines. The client is not entitled to compensation for any loss, direct or indirect and of whatever nature, as the result of the exceeding of the agreed periods or those as stated by Nootboom, or the cancellation of the agreement.

### Clause 6 – Complaints and due date

6.1 The client is required to inspect the goods provided immediately after delivery for any defects and/or damage. The client must report any defects and/or damage to Nootboom in writing within seven days after they have been detected, failing which Nootboom is entitled not to process complaints in that respect.

6.2 The client is in any event no longer able to enforce any claims if the notification to Nootboom is made more than seven days after the time the client could reasonably have detected the defects and/or damage.

6.3 After establishing any defects and/or damage, the client is obliged to do, or refrain from doing, anything which is reasonably possible and necessary to prevent (further) damage. The client is further required to follow Nootboom's instructions in this respect.

6.4 Complaints relating to charged prices and other complaints relating to the invoices must be submitted to Nootboom in writing within eight days from the invoice date with a clear specification of the complaint.

6.5 The client is obliged to render Nootboom every assistance necessary for the investigation of the complaint, amongst other things by enabling Nootboom to conduct a further investigation into the validity of the complaint. If the client does not render its cooperation or the investigation of the complaint is otherwise not or no longer possible, the client cannot enforce any rights.

### Clause 7 – Guarantees

7.1 In respect of deliveries of new goods (including parts and materials) Nootboom guarantees for a period of one year after delivery of the goods to the client that these goods have the properties required for their normal use.

7.2 Nootboom gives a guarantee of six months on repaired and reconditioned goods (including parts and materials).

7.3 The guarantees as referred to in paragraph 1 and 2 do not apply or lapse if:

- the client has not complied with the provisions in clause 6 of these general terms and conditions;
  - the client has not strictly observed the instructions and regulations of Nootboom with regard to the use of the delivered goods;
  - the defects to the goods are the result of normal wear and tear, unskilled use including but not limited to overloading, or inadequate and/or defective maintenance;
  - the defects are the result of improper materials or parts which were made available or prescribed by the client;
  - the client or third parties carried out work, or have had work carried out, on the goods during the guarantee term without the prior consent from Nootboom;
  - the client has not cooperated in a recall or check to any repair to (a part of) a good at the instigation of Nootboom;
  - the client has not met all its obligations arising from the agreement or related agreements with Nootboom.
- 7.4 Insofar as the goods delivered by Nootboom are not new, Nootboom delivers such goods in the condition they are in, and how and where they are ("as is, where is"), at the time of entering into the agreement without Nootboom giving any guarantee in respect of the usefulness, adequacy, marketability or suitability for any purpose of the relevant goods.

7.5 If the complaint which relates to a new delivered good or new delivered goods is deemed justified by Nootboom, Nootboom - without being liable to pay any compensation - has the option of replacing the relevant good or goods, properly repair the relevant good or goods, or issue a credit note for the delivered good or goods up to a maximum of the invoice amount.

7.6 If the complaint which relates to a good which has been reconditioned or repaired by Nootboom on instruction is deemed justified by Nootboom, Nootboom - without being liable to pay any compensation - has the option of repairing the incorrectly performed treatment(s) or repair(s) and/or replace the relevant delivered parts or issue a credit note up to a maximum of the invoice amount.

7.7 If the complaint which relates to (a) new delivered good or a good which has been reconditioned or repaired on instruction is deemed unfounded by Nootboom, the client shall pay Nootboom the costs Nootboom has had to incur in this respect.

7.8 In the event of repair, the good must be delivered by the client to a place of repair to be indicated by Nootboom and must remain fully available to Nootboom for the period required for repair.

### Clause 8 - Retention of title and retention right

8.1 The ownership of the goods delivered by Nootboom to the client only transfers to the client when all that the client owes Nootboom pursuant to the deliveries and/or work, including interest and costs, has been paid to Nootboom in full.

8.2 During the period that the ownership of the goods still rests with Nootboom, the client shall keep the goods on behalf of Nootboom and the client is obliged to keep the goods carefully and separately as the recognisable property of Nootboom and the client is obliged to insure the goods comprehensively (WA and casco) for its account.

8.3 If the client fails in the performance of any obligation towards Nootboom, or Nootboom has reason to fear that the client will fail in the performance of any obligation, Nootboom is entitled to repossess the goods delivered subject to retention of title, without any prior notification or notice of default being required without prejudice to Nootboom's right to compensation and without Nootboom being obliged to refund the amounts paid by the client up to such date. If Nootboom wishes to exercise its retention of title, the client is obliged to render its full cooperation to this such as, but not limited to, the notification of the location of the goods and providing of access to those goods.

8.4 Until such time the client has obtained ownership of the delivered goods, the client is not authorised to sell and/or pledge those goods or encumber them with any security right.

8.5 The client is obliged to indemnify Nootboom against any claims which third parties may have against Nootboom in connection with the retention of title.

8.6 Nootboom is entitled in respect of any claim on the client, on whatever ground, to exercise a right of retention on all goods of the client which are in the control of Nootboom on whatever ground. Any right of retention of the client is expressly excluded.

### Clause 9 - Delivery and notification of completion

9.1 The client receives a notification at the latest two weeks before the date on which delivery could take place.

Delivery must have taken place at the latest two weeks after this date, failing which Nootboom is entitled to store the goods for the account and at the risk of the client. If delivery has not taken place within three months after the notification referred to in the first sentence, Nootboom is entitled to make free use of the goods and the client forfeits a penalty amounting to the purchase price of the relevant good, without prejudice to the right of Nootboom to claim all the loss suffered by Nootboom.

9.2 Unless the parties have agreed otherwise in writing, delivery takes place "ex works" and all risks relating to the goods transfer to the client at the moment of the notification of completion of the goods by Nootboom.

9.3 Delivery to those to whom Nootboom hands the goods on behalf of the client and therefore also to those collecting the goods on behalf of the client or otherwise takes possession of them, is deemed to be a delivery to the client and is fully for the account and at the risk of the client.

### Clause 10 - Payment

10.1 In the event of an order, the client receives a down payment invoice of 25% of the order amount, unless otherwise agreed. The payment term of this down payment invoice is seven days, calculated from invoice date.

10.2 Unless otherwise agreed between the parties in writing, payment must be made within seven (7) calendar days after the invoice date.

10.3 On exceeding the payment term, the client is in default by law (without any warning or notification of default being required therefore).

10.4 In the event of default, the client shall owe Nootboom default interest of Euribor + 1.5% per month over the invoice amount, or the unpaid part of such, counting from the due date until the date of payment. Without prejudice to the right of Nootboom to claim the actual loss, the client is in that event required to pay the extrajudicial costs related to the collection to Nootboom. The extrajudicial costs shall be set at 15% of the owed amounts in principal.

10.5 If Nootboom has brought the claim in legal proceedings, including arbitration, the client is required to pay the actual cost incurred in respect of the proceedings to Nootboom. The provisions of this article will continue to apply even if the above-mentioned costs exceed a cost order, if applicable, pursuant to Article 237 et seq. of the Dutch Code of Civil Procedure.

10.6 Nootboom is at all times entitled to demand (cash) payment before or on delivery.

10.7 Nootboom is at all times entitled before delivering or before continuing with the delivery or before continuing with the execution of the order to demand, in its opinion, adequate security for the performance of the obligations of the client. Refusal by the client to provide security entitles Nootboom to terminate the agreement by means of a written declaration.

10.8 Payments made by the client are first applied to pay all costs due, subsequently to the interest due and then to the oldest due and payable invoices even if the client states that the payment relates to a later invoice.

10.9 As soon as the client fails in the performance of an obligation towards Nootboom, all the debts of the client to Nootboom become immediately due and payable.

10.10 The client is not entitled to suspend or offset any payment obligation.

10.11 Nootboom is entitled to offset all it owes at any time, on whatever ground, to the client with all that the client owes to Nootboom on whatever ground.

### Clause 11 - Termination / suspension

11.1 Nootboom is entitled to terminate or suspend the agreement wholly or in part with immediate effect without any judicial intervention being required, without being obliged to pay compensation and without prejudice to the right of Nootboom to, instead of termination or suspension, claim specific performance and without prejudice to its right to compensation if:

- the client fails in the performance of the agreement with Nootboom;
- after entering into agreement, Nootboom becomes aware of circumstances giving good reason to fear that the client cannot perform its obligations pursuant to the agreement;
- the client applies for a moratorium, or has been granted a moratorium;
- the bankruptcy of the client has been petitioned, or the client has been declared bankrupt;
- the client applies for admission to the WSNP [Debt Management (Natural Persons Act)] or has been granted access to the WSNP.
- an attachment is levied on a significant portion of the assets of the client.

11.2 If Nootboom terminates or suspends the agreement on the basis of this clause, each claim of Nootboom on the client becomes immediately due and payable.

### Clause 12 - Liability

12.1 Nootboom is not liable for loss occurring as a result of any failure in the performance of its obligation(s) save in the event of an intentional act or gross negligence by the managers of Nootboom.

12.2 Nootboom is never liable for trading loss, other indirect or consequential loss suffered by the client or third parties, which includes in any event loss due to business interruption, loss of profits, loss of income or loss of use and damage to other goods than the goods delivered by Nootboom.

12.3 The client is obliged to indemnify or compensate Nootboom respectively against all claims by third parties in connection with, or arising from, the agreement.

12.4 In all cases, Nootboom is only liable for loss suffered by the client up to the amount which is paid out by Nootboom's insurance plus the excess. Nootboom's liability pursuant to the agreement entered into with the client is in any event limited to maximum the amount stated on the invoice for the delivery of the goods causing the loss. Nootboom's liability is in any event limited to the amount for which the insurer provides cover.

### Clause 13 - Force majeure

13.1 Nootboom shall never be held liable to pay costs, loss and interest if as a result of force majeure it has not been able to perform any of the obligations resting on it.

13.2 Force majeure in these general terms and conditions mean any circumstance beyond the control of Nootboom - even if at the time of the formation of the agreement this was already foreseeable - which permanently or temporarily impedes the performance of the agreement as well as, insofar not already included, failure to deliver and/or late delivery by suppliers, sickness of personnel of Nootboom and/or of third parties engaged by Nootboom, strike, business interruption and/or other serious breakdowns in the business, fire, leakage, theft, lack of raw materials, consumables, fuels, electricity, transportation difficulties, state of war and threat of war, storm, black ice, snow and similar weather conditions.

### Clause 14 - Applicable law and jurisdiction

14.1 All transactions to which these general terms and conditions apply are subject to Dutch law to the exclusion of the provisions of international conventions including the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods).

14.2 Any disputes that might arise between Nootboom and a client who is located in a Member State of the European Union will be exclusively decided by the Court of Gelderland, Arnhem location.

14.3 Any disputes that might arise between Nootboom and a client who is not located in a Member State of the European Union will be exclusively decided in accordance with the Arbitration Regulations of the International Chamber of Commerce (ICC), by three arbitrators appointed in accordance with those Arbitration Regulations. The location of the arbitration is Nijmegen (the Netherlands) and the language is English.