

General Terms and Conditions of: Nootboom Trading B.V.  
Baardmeesweg 47  
3899 XT Zeewolde, The Netherlands  
C.o.C. registration number: 32128015

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**Article 1: Applicability, definitions**

1. These terms and conditions apply to every offer and every sales purchase agreement of Nootboom Trading B.V., with registered office in Zeewolde, the Netherlands (hereinafter: "Nootboom Trading").
2. Nootboom Trading's opposite party will be referred to hereinafter as "the Buyer".
3. In these general terms and conditions the term "in writing" is understood to mean: by letter, by e-mail, by fax or any other means of communication that, in keeping with the state of technology and according to socially accepted notions, can be considered as equivalent.
4. The possible inapplicability of (part of) a provision of these general conditions shall leave the applicability of the other conditions intact.
5. In the event of a discrepancy or inconsistency between these general terms and conditions and a translated version, the Dutch text shall prevail.
6. These general terms and conditions shall also apply to subsequent orders and part orders flowing from this agreement.
7. If Nootboom Trading has submitted these general terms and conditions to the Buyer several times, a durable business relationship can be said to exist. Nootboom Trading will then not be required to repeatedly provide the general terms and conditions in order to have them apply to subsequent agreements.

**Article 2: Offer, quotations, prices**

1. Every offer and every quotation from Nootboom Trading will remain valid for the period specified therein. An offer of quotation in which no term of validity is indicated is without obligation. In case of a no-obligation offer or quotation Nootboom Trading has the right to rescind this offer or quotation no later than within 2 working days after receipt of the acceptance.
2. The prices indicated in an offer, quotation or price list do not include VAT and any costs, such as transport costs, administrative costs, processing charges and third-party invoices.
3. A compiled offer or quotation will not require Nootboom Trading to deliver part of an offered performance at an agreed part of the price.
4. If the offer or quotation is based on information provided by the Buyer and this information proves to be inaccurate or incomplete or is later changed, Nootboom Trading will have the right to adjust the indicated price and/or terms of delivery.
5. The offer, the quotation and the prices do not automatically apply for follow-up orders or part orders.
6. Estimates of capacities, dimensions, weights and other descriptions in brochures, promotional materials and/or on the Nootboom Trading website are as accurate as possible, but serve only as an indication. The Buyer can derive no rights from these estimates.
7. If (cost) price increasing circumstances arise for Nootboom Trading between the date of conclusion of the agreement and its implementation as a result of changes to the law and regulations, government measures, currency fluctuations or changes in the prices of the required materials and/or parts, Nootboom Trading will have the right to increase the agreed price or rate accordingly and charge it to the Buyer.

**Article 3: Conclusion of agreements**

1. The agreement is concluded after the Buyer has accepted Nootboom Trading's offer, even if this acceptance differs from this offer on minor points. However, if the Buyer's acceptance differs on fundamental points, the agreement shall enter into force only where and insofar Nootboom Trading has agreed to such deviations in writing.
2. Nootboom Trading shall only be bound by:
  - a. an order without first having received an offer;
  - b. verbal agreements;
  - c. additions or changes to the general terms and conditions or agreement;following written confirmation of this to the Buyer or as soon as Nootboom Trading – without objection of the Buyer – has started to execute the order or agreements.

**Article 4: Engagement of third parties**

If Nootboom Rental believes that it is necessary for the proper implementation of the agreement, they can have certain deliveries carried out by third parties.

**Article 5: Buyer's obligations**

1. The Buyer must ensure that:
  - a. the information, documents and so on required for the execution of the agreement is made available to Nootboom Trading promptly and in the manner specified by Nootboom Trading;
  - b. the information carriers, electronic files, software and so on that the Buyer provides to Nootboom Trading are free from viruses and/or defects.
2. The Buyer shall ensure that the information, documents and so on that he makes available are correct, complete and authentic and indemnifies Nootboom Trading against claims by third parties arising from any incorrect or inauthentic and/or incomplete data, documents and so on.
3. Nootboom Trading shall treat the information provided by the Buyer as confidential and will only provide the information to third parties insofar as necessary for the performance of the agreement.
4. The risk of the Buyer's goods that Nootboom Trading has in its possession within the framework of the performance of the agreement remain with the Buyer. The Buyer itself is required to ensure adequate insurance for these goods.
5. If the Buyer fails or fails in time to comply with the obligations referred to above, Nootboom Trading shall be entitled to suspend the execution of the agreement up to the moment that the Buyer has complied with its obligations. The costs in connection with the delay experienced or work hours lost, the costs of carrying out additional work and the other resulting consequences will be for the account and risk of the Buyer.
6. If the Buyer fails to meet his obligations and Nootboom Trading fails to require performance by the Buyer, this shall not influence Nootboom Trading's entitlement to still demand compliance at a later date

**Article 6: Ban on exports to USA and Canada**

1. The Buyer will not, without prior written permission from Nootboom Trading, resell and deliver or otherwise make the goods manufactured by or on behalf of Nootboom Trading under the brand name RINO<sup>®</sup> Trailers to purchasers in the United States of America, Canada and/or territories in which the laws of these countries apply.
2. The Buyer must take all necessary measures to avoid the goods manufactured by or on behalf of Nootboom Trading under the brand name RINO<sup>®</sup> Trailers from ending up in the United States of America, Canada and/or territories in which the laws of these countries apply and is obliged vis-à-vis Nootboom Trading to agree to this obligation by means of a transfer provision with its purchasers.
3. For each violation of the above provisions of this Article, the Buyer will owe an immediately due and payable penalty that is not open to judicial moderation of €50,000.00, without prejudice to Nootboom Trading's right to claim full compensation for damages suffered.
4. The Buyer indemnifies Nootboom Trading against all claims that purchasers of items manufactured by or on behalf of Nootboom Trading under the brand name RINO<sup>®</sup> Trailers in the United States of America, Canada and/or areas in which the law of these countries applies could enforce against Nootboom Trading in the event that the Buyer fails to comply with any provision of this article.

**Article 7: Delivery, terms of delivery**

1. The terms of delivery can never be considered to be mandatory. If Nootboom Trading fails to comply or comply on time with its delivery obligations, the Buyer must declare Nootboom Trading to be in default in writing, while also granting a reasonable term to comply as yet with this obligation.
2. Nootboom Trading is entitled to make partial deliveries, and every partial delivery can be invoiced separately.
3. The risk related to the goods passes to the Buyer at the moment of delivery. This is the moment at which the goods to be delivered leave Nootboom Trading's building, warehouse or premises or the moment at which Nootboom Trading informs the Buyer that it can collect these items.
4. Transport of the goods is carried out at the expense and risk of the Buyer and in a manner to be specified by Nootboom Trading. Nootboom Trading is not liable for damages of any kind – whether to the goods themselves or other damage – in connection with the transport.
5. If Nootboom Trading itself delivers the goods to the Buyer, the risk for the goods transfers to the Buyer

at the moment that these goods arrive at the Buyer's location and are actually placed in the possession of the Buyer.

6. If, due to a cause that is in the scope of risk of the Buyer, it does not appear to be possible to deliver the goods ordered (in the agreed upon manner) to the Buyer or if the goods are not picked up, Nootboom Trading shall have the right to store or station the goods for the account and risk of the Buyer. The Buyer must give Nootboom Trading the opportunity to deliver the goods within a period specified by Nootboom Trading after notification of the storage or stationing or to pick up the goods within this period.
7. If the Buyer remains in default of his purchasing obligation after the period specified in the previous paragraph, he shall immediately be in default. Nootboom Trading then has the right to terminate the agreement in whole or in part effective immediately by means of a written declaration and to sell the items to third parties without resulting in an obligation for Nootboom Trading to pay compensation for damages, costs and interest. The above does not prejudice the Buyer's obligation to pay compensation of any storage or parking costs, losses due to delays, lost profits or other damage or Nootboom Trading's right to claim performance.
8. Terms of delivery that are agreed upon do not take until such time as Nootboom Trading has received from the Buyer all of the information necessary for the delivery and any agreed upon prepayment or payment from the Buyer. If this results in delays, the delivery period will be extended proportionately.

## **Article 8: Complaints and return shipment**

1. Immediately upon receipt the Buyer must inspect the goods received report and any visible deficiencies, defects and/or damage on the bill of lading or consignment note. In the absence of a bill of lading or consignment note the Buyer must report the deficiencies, defects etc. within 2 working days after receipt of the goods to Nootboom Trading, followed by written confirmation of this notification. In the absence of such notice the goods will be considered to have been received in good condition and in accordance with the agreement.
2. Immediately after discovery – but no later than within the agreed upon guarantee period – other complaints must be reported to Nootboom Trading in writing. The Buyer shall bear all risks of failing to report immediately. If no explicit guarantee period has been agreed, the period of 3 months following delivery shall apply.
3. If a complaint has been reported to Nootboom Trading within the periods stated in the above paragraphs, no appeal shall be possible subject to any agreed warranty.
4. Complaints do not suspend the payment obligation.
5. The Buyer must permit Nootboom Trading to investigate the complaint and provide all relevant information to Nootboom Trading. If the goods have to be returned or made available to investigate the complaint, or if it is necessary for Nootboom Trading to come investigate the complaint at your location, this will take place at the Buyer's expense unless the complaint subsequently turns out to be valid. The risks of the transport shall be borne by the Buyer.

## **Article 9: Guarantees**

1. Nootboom Trading shall ensure that the agreed upon deliveries are carried out correctly and in accordance with the standards applicable in its sector, but in respect of these deliveries will never provide a more extensive guarantee in this regard than that expressly agreed between the parties.
2. Nootboom Trading shall be responsible during the guarantee period for the usual quality and reliability of the items delivered.
3. If the goods delivered by Nootboom Trading are guaranteed by the manufacturer or supplier, this guarantee shall equally apply between the parties. Nootboom Trading shall inform the Buyer about this.
4. Notwithstanding the provisions of the preceding paragraph, Nootboom Trading does not guarantee any (general) statements or commitments made by the manufacturer or supplier of the delivered item, for example with regard to capacities and performances such as durability, fuel consumption, CO<sub>2</sub> emissions etc.
5. Defects that are the consequence of technical changes made to the delivered goods or parts thereof by or on behalf of the Buyer are not covered by the guarantee unless parties have expressly agreed otherwise in writing.
6. If the purpose for which the Buyer wishes to use the goods deviates from the standard use of these goods, Nootboom Trading will only guarantee that the goods are suitable for this purpose if Nootboom Trading has duly issued a confirmation to the Buyer.
7. No claim under the guarantee shall be possible as long as the Buyer has not yet paid the price agreed for the goods.

8. In the event of a rightful appeal to the guarantee – at its own discretion – Nootboom Trading will undertake, at no charge, to repair or replace the goods, or to make repayment or issue a discount on the agreed price. If there is any additional damage, this shall be subject to the provisions of Article 10 “Liability” of these general terms and conditions.

## **Article 10: Liability**

1. Except for the warranties, guaranteed results or quality requirements explicitly agreed on or granted by Nootboom Trading, Nootboom Trading shall not accept any liability.
2. Without prejudice to the provisions of the preceding paragraph Nootboom Trading is liable only for direct damages. Any liability of Nootboom Trading for consequential damage such as trading losses, loss of earnings and/or losses sustained, damage caused by delay and/or personal or bodily injury shall be expressly excluded.
3. The Buyer must take all measures necessary to prevent or minimise any damage.
4. If Nootboom Trading is liable for any damage sustained by the Buyer, Nootboom Trading’s obligation to compensate damage shall always be limited to the amount paid by its insurer, or the invoice amount for the goods delivered or work performed, depending which amount is the lowest. If the insurer makes no payment or if the damage is not covered by any insurance concluded by Nootboom Trading, Nootboom Trading’s obligation to provide compensation shall be limited to the invoice amount of the items delivered.
5. The Buyer shall commence proceedings against Nootboom Trading no later than 6 months after he has become aware or could have become aware of the damage suffered by him.
6. Nootboom Trading shall not be liable and the Buyer cannot make a claim against the applicable guarantee if the damage occurred due to:
  - a. improper use or use contrary to the purpose for which the items delivered were intended or the directions, advice, operating instructions, manuals and so on provided by or on behalf of Nootboom Trading;
  - b. improper storage (storing/parking) or maintenance of the goods;
  - c. errors or incompleteness of the information provided by or on behalf of the Buyer to Nootboom Trading;
  - d. instructions or directions from or on behalf of the Buyer;
  - e. a decision by the Buyer that deviates from what Nootboom Trading has advised and/or is customary;
  - f. the decision that the Buyer has made regarding the goods to be delivered;
  - g. normal wear, erosion or corrosion;
  - h. impact on the goods by external influences other than influences against which the goods should normally be resistant to;
  - i. repairs or other work or operations carried out on the goods by or on behalf of the Buyer without the express prior approval of Nootboom Trading.
7. The Buyer shall, in the cases stated in the previous paragraph, be fully liable for all damage flowing from this and shall expressly indemnify Nootboom Trading from all third party claims to compensate for this damage.
8. The limitations of liability specified in this article do not apply in the event and to the extent that Nootboom Trading or its senior management are guilty of intent or deliberate recklessness or if mandatory legal provisions oppose this. Only in these cases shall Nootboom Trading indemnify the Buyer against third-party claims.

## **Article 11: Payment**

1. When concluding an agreement 25% of the agreed upon price must be paid in advance, unless the parties have expressly agreed otherwise in writing.
2. Payment must be made on invoices within 14 days of the invoice date, unless the parties have expressly agreed otherwise in writing. The invoices shall be considered correct if the Buyer has not contested it within this payment period.

3. If an invoice has not been paid in full following expiry of the deadline stated in the previous paragraph, the Buyer will owe Nootboom Trading delay interest in the amount of 2% per month, to be calculated cumulatively on the principal amount, whereby parts of a month will count as a full month.
4. If following reminder by Nootboom Trading payment is still not made, Nootboom Trading shall further be entitled to charge the Buyer extrajudicial collection costs in the amount of 15% of the invoice amount, with a minimum of €40.00.
5. If the Buyer continues to fail to make full payment, Nootboom Trading shall be authorised to terminate the agreement, without further notice of default, by issuing written notice or to suspend its obligations arising from the agreement until the Buyer has made payment or has issued sound security for payment. The right of suspension referred to above shall also accrue to Nootboom Trading if, even before the Lessee is in default of making payment, Nootboom Trading has sound reason to doubt the Buyer's creditworthiness.
6. Nootboom Trading will first deduct payments made by the Buyer from all interest and costs payable and subsequently from the oldest outstanding demandable invoices, unless the Buyer states in writing with the payment that the payment relates to a later invoice.
7. The Buyer may not offset Nootboom Trading's claims against any claims that he has against Nootboom Trading. This is also true if the Buyer applies for (temporary) moratorium or is declared bankrupt.

#### **Article 12: Intellectual property rights**

1. Nootboom Trading is and remains rights holder to all intellectual property rights applicable to, arising from, relating to and/or belonging to the goods, documents etc. delivered by Nootboom Trading in the framework of the agreement, unless otherwise agreed in writing by the parties. Both during and after the performance of the agreement, the exercise of these rights shall be explicitly and exclusively reserved to Nootboom Trading.
2. This means, among other things, that:
  - a. the Buyer may not use the documents provided or produced by Nootboom Trading outside the context of the agreement, make these documents available to third parties, grant third parties access to these documents nor make copies of these documents without prior written permission from Nootboom Trading;
  - b. the Buyer may not copy, alter, reproduce etc. goods or parts of goods supplied or manufactured by Nootboom Trading without prior written permission from Nootboom Trading.
3. The Buyer shall ensure that the documents and files that he provides to Nootboom Trading do not infringe on any copyright or any other intellectual property rights of third parties. The Buyer is liable for any damage suffered by Nootboom Trading as a result of such infringements and shall indemnify Nootboom Trading against any third party claims.

#### **Article 13: Reservation of ownership**

1. Nootboom Trading shall reserve ownership of all items delivered and to be delivered up until the point at which the other party has completely fulfilled all payment obligations towards Nootboom Trading.
2. The payment obligations as intended in the previous paragraph consist of payment of the purchase price for the goods, plus any claim for work undertaken relating to the delivery and claims for attributable shortcomings by the Buyer in complying with its obligations, such as claims to pay compensation, extrajudicial collection costs, interest and any penalties.
3. The Buyer may sell on items subject to reservation of ownership in the context of normal business provided it has also stipulated reservation of ownership on the items delivered with respect to its customers.
4. As long as retention of title rests on the goods delivered, the counterparty is not authorised to sell, pledge or place the goods in the hands of a third party in any way.
5. The Buyer shall be obliged to inform Nootboom Trading immediately in writing if any third parties assert reservation of ownership or other rights on the items subject to reservation of ownership.
6. The Buyer is obliged to store the goods delivered subject to retention of title carefully and as recognisable property of Nootboom Trading.

**Article 13: Reservation of ownership**

7. Nootboom Trading shall reserve ownership of all items delivered and to be delivered up until the point at which the other party has completely fulfilled all payment obligations towards Nootboom Trading.
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9. The Buyer may sell on items subject to reservation of ownership in the context of normal business provided it has also stipulated reservation of ownership on the items delivered with respect to its customers.
10. As long as retention of title rests on the goods delivered, the counterparty is not authorised to sell, pledge or place the goods in the hands of a third party in any way.
11. The Buyer shall be obliged to inform Nootboom Trading immediately in writing if any third parties assert reservation of ownership or other rights on the items subject to reservation of ownership.
12. The Buyer is obliged to store the goods delivered subject to retention of title carefully and as recognisable property of Nootboom Trading.
13. The Buyer shall arrange for such consequential loss insurance or fire and theft insurance that the goods delivered subject to reservation of ownership are covered at all times and to make the insurance policy and the respective premium payment receipts available for inspection by Nootboom Trading on first demand.
14. If the Buyer contravenes the conditions of this article or if Nootboom Trading claims reservation of ownership, Nootboom Trading and its employees shall have the irrevocable right to enter the Buyer's premises and take back the items subject to reservation of ownership without further notice of default. This applies without prejudice to Nootboom Trading's right to compensation of damage, loss of profit and interest and the right to dissolve the agreement without prior notice of default by means of a written declaration.

**Article 14: Exchange/purchase of goods**

1. If the parties agree that the Buyer will also exchange an item when purchasing an item from Nootboom Trading, the item to be exchanged will remain for the account and risk of the Buyer until the time of delivery. In the context of these general terms and conditions "the time of delivery" shall refer to: the time at which the item to be exchanged arrives at Nootboom Trading's premises.
2. Until the time of delivery the Buyer is liable for all maintenance costs, any damage, loss and/or depreciation of the item to be exchanged.
3. Nootboom Trading is not bound by the agreed upon exchange price if the actual delivery of the item to be exchanged – whether due to a delay in the estimated delivery of the purchased item by Nootboom Trading – falls on a later date than agreed upon or anticipated. In that case a percentage agreed to in advance between the parties in terms of depreciation on the exchange or purchase price will be used.
4. The Buyer guarantees that the item that he will exchange is free of rights and claims by third parties, is damage-free or that there is only damage as agreed to between the parties, is in proper and safe condition and has not been manipulated in any way (for instance in regard to the odometer reading or operating hours). The Buyer is required to provide Nootboom Trading with all relevant information relating to the item to be exchanged which he knows or could reasonably know to be of importance to Nootboom Trading.
5. The Buyer is also required to hand over all of the documents and other accessories corresponding to the item to be exchanged to Nootboom Trading.
6. The actual exchange does not release the other party from his obligations as specified in this Article.

**Article 15: Bankruptcy, lack of power of disposition etc.**

1. Nootboom Trading always has the right to terminate the agreement without further notice by means of a written declaration to the Buyer at such time as the Buyer:
  - a. is declared bankrupt or applies for bankruptcy;
  - b. applies for a (temporary) moratorium;
  - c. is subjected to forced sale of collateral;
  - d. is placed under guardianship or receivership;
  - e. loses its power of disposition or capacity in relation to its assets or parts thereof in any way.
2. The Buyer must always inform the guardian or receiver of the (content of the) agreement and present these general terms and conditions.

**Article 16: Force majeure**

1. In case of force majeure on the part of the Buyer or Nootboom Trading, Nootboom Trading shall be entitled to terminate the agreement by means of a written declaration to the Buyer or to suspend the fulfilment of its obligations towards the Buyer for a reasonable period without obligation to pay any compensation for damages.
2. In the framework of these general terms and conditions force majeure on the part of Nootboom Trading shall be understood to refer to: a non-attributable failure by Nootboom Trading, by third parties or suppliers that it engages or other serious grounds on the part of Nootboom Trading.
3. Circumstances which shall be considered as representing force majeure on the part of Nootboom Trading shall include: war, unrest, mobilisation, domestic and foreign disturbances, government measures, strikes within the organisation of Nootboom Trading and/or the third parties or suppliers that it engages and/or of the Buyer or threat of these and similar circumstances, disruptions to the currency exchange rate existing at the moment of establishment of the agreement, business interruptions due to fire, break-in, sabotage, breakdown of electricity, Internet or telephone connections, (natural) disasters, etc. and due to weather conditions, roadblocks, accidents, import and export-hindering measures, etc. and the occurrence of transport difficulties and delivery problems.
4. If the force majeure situation occurs after the agreement has already partially been implemented, the Buyer must under all circumstances comply with its obligations in respect of Nootboom Trading up to that moment.

**Article 17: Cancellation and suspension**

1. If the Buyer wishes to cancel the agreement prior to or during the performance of the agreement, he will owe to Nootboom Trading compensation still to be determined by Nootboom Trading. This compensation shall include all costs already incurred by Nootboom Trading and the damage it incurs due to the cancellation as well as the loss of earnings. Nootboom Trading shall be entitled to fix the compensation and – at its discretion and depending on the deliveries already made – to charge between 20 and 100% of the agreed price to the Buyer.
2. The Buyer shall be liable towards third parties for the consequences of the cancellation and shall indemnify Nootboom Trading for all claims by third parties arising from the cancellation.
3. Nootboom Trading shall be entitled to offset all amounts already paid by the Buyer against the amounts of compensation owed by the Buyer. In the event of suspension of the performance of the agreement by request from the Buyer, all costs incurred up to that point shall be immediately payable and Nootboom Trading shall be entitled to charge these to the Buyer. Nootboom Trading shall also be entitled to charge the Buyer for all costs incurred or to be incurred during the suspension period.
4. If the performance of the agreement cannot be resumed following the agreed suspension period, Nootboom Trading shall be entitled to dissolve the agreement by giving written notice to the Buyer. If the performance of the agreement is resumed following the agreed suspension period, the Buyer shall be obliged reimburse Nootboom Trading for any costs arising from this resumption.

**Article 18: Applicable law/jurisdiction**

1. The agreement entered into between Nootboom Trading and the Buyer is governed exclusively by the laws of the Netherlands.
2. The applicability of the Vienna Convention (CISG) shall be expressly excluded.
3. Any disputes shall be submitted to the competent court in the district where Nootboom Trading has its registered office although Nootboom Trading shall always be entitled to bring the dispute before the competent court in the district in which the Buyer has its registered office.
4. If the Buyer has its registered office outside the Netherlands, Nootboom Trading may also decide to submit the dispute to the competent court in the country or state in which the Buyer has its registered office.

Date: 3 April 2015

