

# Tonke B.V. General Terms & Conditions

## 1 General

1.1 In these General Conditions of Sale and Delivery, the terms below are defined as follows:

Seller: Tonke BV

Buyer: The other party with whom Tonke BV contracts.

GCSD: The latest version of these general conditions of sale and delivery.

1.2 These conditions apply to all offers of the Seller, all contracts entered into by the Seller and all contracts that could result from them.

1.3 The Seller expressly rejects the applicability of any general conditions of the Buyer.

1.4 Any deviations from these general conditions of sale and delivery must be expressly agreed in writing. These deviations do not apply to subsequent legal relationships that arise between the Seller and the Buyer.

1.5 The Dutch version of these general conditions of sale and delivery take precedence over the English version or any other version of these general conditions of sale and delivery translated into another language.

1.6 In case of delivery to a person pursuing professional or commercial activities, by accepting the offer, placing orders and/or giving instructions, the Buyer waives their general conditions and accepts these GCSD.

1.7 These GCSD always take precedence over any general conditions of the Buyer. This also applies if the Buyer's conditions, where applicable, contain a similar prevention provision. Each contract is entered into under the condition subsequent that these GCSD apply.

## 2 Offers and formation of the contract

2.1 A contract is formed when the Seller sends written confirmation of an order or instruction to the Buyer.

2.2 The offer from the Seller is made orally, in writing or electronically and – if a period for acceptance has been specified – remains in force during the specified period. Acceptance of the offer by the Buyer is valid only if it occurs within the specified period for acceptance. Electronic acceptance of the offer by the Buyer is valid only once the Seller has accepted it. If no period for acceptance has been specified, the

offer remains in force for 14 working days provided that the product concerned remains unsold. An offer is always without any obligation, even if it includes an explicit period for acceptance.

2.3 The written or electronically recorded contract always includes:

- a description of the item and any accessories

- the price at the time of sale and purchase

- the probable or definitive delivery date

- a reference to the warranty conditions

- the method of payment.

The Buyer may also request inclusion of the following:

- the year of manufacture of the item

- its weight and load-bearing capacity

- advice about when next to give the item a maintenance check.

2.4 Any change in the probable delivery date must be explicitly recorded in writing in the purchase contract, always after proper consultation between the Seller and Buyer. The anticipated delivery date of the vehicle is never a strict deadline. The delivery period starts after the contract is concluded, after the Buyer has received all necessary information from the Seller, after the necessary formalities have been completed and after the Seller has received payment of the first instalment of the purchase price.

2.5 The delivery period is based on the known working conditions at the Seller when the contract is concluded and on a normal supply of goods by third parties. If a delay occurs through no fault of the user because of a change in the working conditions or the late delivery of the goods by third parties, the delivery period will be extended, if necessary, in consultation with the Buyer. The Buyer is not entitled to compensation if the delivery period is extended as mentioned above.

## 3 Amendments

3.1 If the Buyer wishes to make changes or add options to the order after signing the contract, the Seller will apply a surcharge of 40% based on the consumer pricelist.

After delivery, this surcharge will also be 40%.

3.2 The Seller reserves the right to refuse changes if they create impossible situations.

3.3 Changes are no longer possible once construction of the item starts.

## 4 Price and price changes

4.1 Unless stated otherwise, all prices quoted include VAT.

4.2 Changes in taxes, excise duties and similar statutory and other government levies may be passed on in the price of both new and used items at any time after the contract is concluded but before delivery.

4.3 In respect of business customers, the Seller reserves the right to pass on price increases resulting from changes in factory and/or importer prices, exchange rates and/or inflation in the price of both new and used items after the contract is concluded but before delivery. In that case, the business customer may not terminate the purchase contract.

4.4 In respect of consumers, the Seller reserves the right to index-link the price of both new and used items to the consumer price index three months after the contract is concluded, but before delivery, using 2015 as the base year (2015=100). If this results in a price increase, the consumer may terminate the contract in writing within ten days of the notice of the price increase.

## 5 Intellectual property

5.1 All models, plans, documents and tools made or adapted by the Seller and the related technical information and know-how remain its property, even if the related costs are charged to the Buyer or if improvements are made after the sale, whether or not at the Buyer's request. No part of them may be copied without the Seller's written consent other than for internal use by the Buyer, nor shown to or otherwise disclosed to any third party, nor used or made available by the Buyer other than for the purpose for which the Seller provided it.

## 6 Manufacture and permitted alterations

Permitted alterations to weight, performance capacity and mass are the normal alterations permitted in

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the trade for the specified type of requisites.

## 7 Delivery

7.1 Delivery is ex works.

7.2 The risk of total or partial loss or destruction of the goods passes to the Buyer at the time and place of delivery as specified in paragraph 1 above.

7.3 The Seller is entitled to perform its part of the contract in instalments.

7.4 Items may differ from what has been ordered or from previously built products. Such variations can never constitute a breach of contract by the Seller.

7.5 Showing the Buyer completed products serves as an indication and does not create any obligation towards the Buyer to make what has been ordered in the same way. Such variations can never constitute a breach of contract by the Seller.

7.6 If the probable delivery date of the item is exceeded, the Buyer may send the Seller a written notice of default. Unless the Seller delivers within six weeks of the notice of default, the Buyer may terminate the contract by letter without judicial intervention. If the Seller delivers the sold item within that six-week period, it may not pass on any price increase that occurred during this period. The Buyer can never claim compensation from the Seller if the anticipated delivery date specified in the purchase contract is exceeded. The Buyer also cannot claim compensation from the Seller for the specified six-week period during which the Seller still has the opportunity to deliver the vehicle to the Buyer.

7.7 If the probable delivery period of the item is exceeded because of force majeure affecting the Seller, both the Buyer and the Seller may terminate the contract by letter, but without any entitlement to compensation. This right to termination arises if delivery has not been made within six months of the notice of default.

7.8 If the supplier where the Buyer ordered the vehicle cannot deliver the vehicle on time, the Buyer and Seller will make a new arrangement for the anticipated delivery date. The Buyer cannot claim compensation from the Seller or make any other claims against the Seller with regard to this later anticipated delivery date of the

vehicle. If the Seller has notified the Buyer that goods are ready to be collected and they are not collected, regardless of whether they have already been paid, the Seller may and will charge storage costs of €20 per m2 (excluding VAT) per month or part of a month, payable when or before the goods are collected. This storage may be outside. Damage or theft is entirely at the Buyer's risk.

7.9 For each item delivered, the Seller draws up an end-user declaration in consultation with the Buyer and the supplier of the vehicle.

## 8 Shipment and shipper; inspection

If the Seller delivers 'carriage paid' or the Seller is otherwise responsible for the shipment of the goods to the Buyer, the Buyer must always carefully inspect the goods on their arrival. If the Buyer notices any visible damage or defects, they must notify the Seller of this within 48 hours. If there is visible damage or any defects, the Buyer is not entitled in any way to suspend payment.

## 9 Retention of title

9.1 Following delivery, the Seller remains the owner of the goods for as long as the Buyer:

- fails or will fail to perform their obligations under this contract or other concluded contracts

- has not paid or will not pay for the goods delivered or to be delivered

- has not paid claims arising from the failure to perform the above contracts, such as loss, penalties, interest and costs.

9.2 Until the transfer of ownership occurs, the Buyer must exercise the utmost care with regard to the goods. The Buyer must have the delivered goods maintained at their expense. After actual delivery, the goods delivered are entirely at the Buyer's expense and risk.

9.3 Until the transfer of ownership occurs, the Buyer must ensure the goods are insured in accordance with statutory requirements regarding their use and take out insurance against total or partial loss (third-party insurance and insurance against fire, theft and damage).

9.4 The Seller will not indemnify the Buyer against any liability as holder of the goods.

9.5 The Buyer may not dispose of all or any part of the delivered goods while they are subject to a retention of title.

9.6 The Buyer may not encumber the delivered goods, except in the normal course of their business, while they are subject to a retention of title. If the Buyer encumbers the delivered goods under retention of title without the Seller's consent, the purchase price of the delivered goods becomes immediately due and payable.

9.7 The Buyer must notify the Seller, both orally and in writing, of any attachment order or other third-party intervention without delay.

9.8 If the Seller is unable to rely on its retention of title because the goods have been processed, mixed with others or acceded, the Buyer must pledge the newly created goods to the Seller.

9.9 Once the Seller has relied on its retention of title, it may take back the goods. The Buyer must permit the Seller to enter the premises where the goods are located.

9.10 In all cases in which the Seller relies on a retention of title, it may retain all or part of any advance payment received from the Buyer as compensation for its loss, including future loss.

## 10 Payment terms

10.1 Unless specified otherwise in the purchase contract, the following payment obligation applies: 30% of the price will be invoiced when the purchase contract is signed, a second 30% of the price will be invoiced before commencement of the work or no later than two months after the purchase contract is signed, and a third 30% will be invoiced during the work or no later than six months after the purchase contract is signed. The remaining 10% of the price will be invoiced no later than two weeks before delivery.

10.2 Invoices must be paid no later than two weeks after the invoice date. Payment must be made by bank transfer or in cash. The final instalment must be paid on or before delivery. The Buyer will be in default immediately if an invoice payment term has expired.

10.3 If a consumer has not paid by the due date, the Seller will send the Buyer a payment

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reminder, with no added charges, in which it gives the Buyer the opportunity to pay the invoice concerned within 15 days. After expiry of the 15-day period, the Buyer will owe the Seller the statutory interest and the extrajudicial collection costs (in accordance with the Extrajudicial Collection Costs (Fees) Decree, Bulletin of Acts and Decrees 2012, 141).

10.4 The statutory interest for consumer transactions is fixed by the Dutch government. For the purpose of calculating interest, part of a month is deemed to be a whole month.

10.5 If a Buyer pursuing professional or commercial activities has not paid by the due date, the Buyer will be in default immediately after the payment term has expired. The Buyer will then immediately owe default interest and extrajudicial collection costs.

10.6 Default interest: in commercial transactions, the Buyer is liable for default interest as from thirty days after delivery. For payment arrears, the default interest accrues by operation of law with no need for a demand or notice of default.

10.7 The default interest rate is the interest rate of the European Central Bank plus 7%. For the purpose of calculating interest, part of a month is deemed to be a whole month.

10.8 If payment is not made within the agreed period, the Buyer is liable to the Seller for all extrajudicial collection costs. These costs are fixed at 15% of the amount due unless the Buyer can show that the Seller has suffered less loss.

10.9 Regardless of the agreed payment terms, the Buyer must provide the Seller on request with such security to cover payment as the Seller deems sufficient. If the Buyer fails to comply with this request within the stipulated period, they will immediately be in default. The Seller may then terminate the contract and recover its loss from the Buyer.

10.9.1 The Buyer may not set off any claim they have against the Seller unless the Seller has been declared insolvent. The full amount due becomes immediately payable if:

a. a payment deadline has been exceeded

b. the Buyer is insolvent, or has a moratorium on the payment of their debts

c. the Buyer, as a company, is dissolved or liquidated

d. the Buyer, as a natural person, is placed under guardianship or dies.

10.10 If the Seller completes its assigned work and gives notice to the Buyer and the Buyer fails to collect the relevant item within two weeks of that notice, the Seller may charge storage costs in line with the relevant local rates.

10.11 If the Seller builds a product specifically for the Buyer, the Seller will give the Buyer a single opportunity to visit the workshop at the Seller's express invitation during manufacturing. The workshop is otherwise closed for visits during product manufacturing.

## 11 Termination and/or Cancellation

11.1 If the Buyer has not, has not punctually or not properly fulfilled their obligations under this contract, if the Buyer is insolvent or has a moratorium on the payment of their debts, or the Buyer's business has shut down or been liquidated, the Buyer will be deemed to be in default by operation of law and the Seller may, with no further notice of default and no judicial intervention, at its option:

- terminate or declare all or part of the contract terminated, without the Seller liable to pay any compensation, bound by any warranty or otherwise; and/or

- suspend the performance of its obligations towards the Buyer. All without prejudice to the Seller's right to compensation from the Buyer for loss, costs and interest. If the Buyer terminates the contract, they will forfeit at least 50% of the amounts already paid as compensation for the loss suffered and/or to be suffered by the Seller.

11.2 The Buyer may cancel the purchase contract within one week of concluding it, regardless of whether the Seller has failed to perform its obligations. This cancellation can only be made in writing. In that case, explicitly no contract comes into being. Within one week of this cancellation, the Buyer must compensate the Seller for all loss suffered because of the cancellation. This loss is set at 15% of the purchase price of the cancelled item. If the Buyer has not paid this compensation within 14 days, the Seller may notify the Buyer in writing that it demands

specific performance of the concluded contract. In that case, the Buyer can no longer rely on the cancellation. The Buyer's obligation to pay this compensation is a payment obligation as defined in Article 9 of these general conditions for which a moment of payment has been expressly agreed. The right to cancel ceases to apply if the Seller has delivered the purchased item to the Buyer.

11.3 If the Buyer obstructs the Seller in the performance of its obligations, even after a notice of default, the Seller may terminate the contract.

11.4 If force majeure affecting the Seller continues for longer than six months, either party may terminate the purchase contract.

## 12 Objections and complaints

12.1 The Buyer must examine the goods on delivery to determine whether they meet the contractual requirements.

12.2 Any complaint must be made in writing as quickly as possible, although no later than 48 hours after delivery or, in the case of hidden defects, within two weeks of delivery. Defects in no way entitle the Buyer to suspend payments, including partial payments.

12.3 Any justified claim or defence that the delivered goods do not satisfy the contractual requirements has a limitation period of one year following delivery.

12.4 If the delivered goods do not satisfy the contractual requirements, the Seller has no further obligation other than to deliver any missing goods, or to choose either to repair or replace the delivered goods.

## 13 Warranty

13.1 a. New vehicles and Truck bed Campers are covered by a 24-month warranty, excluding the exterior. A 12-month warranty applies to the exterior.

b. Used Tonke vehicles and Tonke Truck bed Campers are covered by a six-month warranty, excluding the exterior. No warranty applies to the exterior.

c. No warranty applies to used vehicles from other manufacturers.

d. Products, other than vehicles or Truck bed campers,

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produced by Tonke have a 12-month warranty.

13.2 If suppliers of Tonke have their own warranty scheme, their scheme applies and the Tonke warranty scheme is cancelled (e.g. refrigerator, toilet, water pump and vehicle). Tonke gives no warranty on any battery in the living area. Tonke gives no warranty on the vehicle or vehicle part, new or used. The warranty for new vehicles is provided by the vehicle importer.

13.3 a. Article 13, paragraph 1a and Article 13, paragraph 1b do not apply to products or changes made by the Buyer or previous users, or to products supplied by the Buyer or previous users and fitted by Tonke Campers at their request.

b. Article 13, paragraph 1a and Article 13, paragraph 1b do not apply to our products if they are or have been leased to third parties. In these cases, new products are covered by a six-month warranty and used products by a two-month warranty. In these cases, no warranty applies to the exterior.

13.4 The Buyer must notify the Seller of any defects within 14 days of the defect occurring, specifying the nature of the defect and the circumstances under which it arose. The Seller will then decide either to repair or replace the defective goods, but without having any further liability to pay compensation.

13.5 The Buyer's warranty claims cease to apply in case of:

- a. normal wear and tear of materials
- b. defects caused by products added by, or acts or omissions of, any party other than the Seller
- c. a failure to properly follow instructions for use or maintenance guidance
- d. attempts by the Buyer or any third party to carry out repairs without the Seller's prior written consent.

13.6 Goods or parts of goods that are replaced under warranty or a repair contract become the property of the Seller as a result.

13.7 No warranty is given for:

- a. emergency repairs
- b. separately supplied used parts

c. loss caused by natural conditions (damage by hail, storm, etc.).

13.8 If the Buyer wishes for damage to be repaired under the stated warranty provisions outside the Netherlands, they must first notify the Seller. In such a case, the repair costs will be paid on the basis of the maximum price level applied in the Seller's business. This payment will never exceed the actual costs incurred.

### 14 Liability

14.1 The Seller is only liable for loss suffered by the Buyer that is the direct and sole result of an attributable failure by the Seller, on the basis that loss is eligible for compensation only if the Seller is insured against it or reasonably ought to have been insured against it based on industry practices. The following restrictions must also be considered.

14.2

a. Business loss, loss of income, etc. are not recoverable losses, whatever the cause.

b. The Seller is not liable for loss caused by the deliberate act or gross negligence of any third party.

c. Compensation payable by the Seller will be reduced if the price paid by the Buyer for the goods is minimal in relationship to the amount of loss suffered by the Buyer.

d. The Seller is never liable for damage to or theft of goods belonging to the Buyer that the Buyer makes available to the Seller.

### 15 Force majeure

15.1 If performing the contract is prevented or becomes extremely onerous due to force majeure, the Seller may demand that the contract be adapted to the circumstances or terminate the contract (or have it set aside) or suspend performing the contract for the duration of the impediment.

15.2 In these GCSD, force majeure means any circumstance or event not attributable to the Seller as a result of which fulfilling an obligation of the Seller is wholly or partly impeded or on the basis of which performance cannot reasonably be required.

15.3 In these GCSD, force majeure at least includes war or danger of war, riots, acts of war, fire, water damage, natural disasters, floods and other hindering weather conditions, traffic impediments, illness of personnel,

strikes, factory or office sit-ins, lockouts, import and export impediments, government measures, machine breakdowns, disruptions in energy supplies, business interruptions and force majeure of suppliers, as well as if the Seller is not enabled by its own supplier(s) to fulfil its obligations under the contract with the Buyer.

15.4 The Buyer can never derive any right to compensation from the termination, alteration and/or suspension of performance of the contract because of force majeure.

15.5 Suspension, amendment or termination of the contract on the basis of force majeure does not release the Buyer from the obligation to pay for what has been delivered and/or performed when the force majeure situation occurs.

### 16 Applicable law and choice of forum

Unless a provision of mandatory law specifies otherwise, the only court competent to hear any dispute is the court with civil jurisdiction for the place where the Seller has its registered office. Only Dutch law applies to this contract and all disputes arising from it.

### 17 Proof and validity

17.1 For the purpose of the financial extent of the obligations under the contract(s) between the Seller and the Buyer, the Seller's administrative data will be decisive, subject to proof to the contrary.

17.2 If any provision of these GCSD is void or annulled, the other provisions of these GCSD will remain in full force and the Seller and the Buyer will consult to agree on new provisions to replace the void or annulled provisions, taking into account the aim and purpose of the void or annulled provision as much as possible.

### 18 Effective date

These GCSD take effect from 21<sup>st</sup> November 2023.