



**GENERAL TERMS & CONDITIONS
OF SALE AND DELIVERY
VAN RIEL FORKLIFTS B.V.**

Effective date: 12 July 2016
Version: 1.0

Article 1 - Definitions and scope of application

- 1.1. In these Terms and Conditions, the following definitions apply:
 - Supplier: Van Riel Forklifts B.V., being the party that offers and delivers the goods and/or services;
 - Customer: the other party of the Supplier, being the party that purchases the goods and/or services.
- 1.2. These Conditions apply to agreements - including the actions that are taken to reach such agreements - for the delivery of goods and/or the performance of services and/or the implementation of a work. They are also applicable to any supplementary or subsequent agreements. Furthermore they are applicable to all forms of service provision by (an employee of) the Supplier to (an employee of) the Customer which (in any way) is connected with the agreements stated in the first sentence (such as, for example, providing technical advice).
- 1.3. These Conditions apply exclusively in the sense that specific clauses and standard terms and conditions on the part of the Customer do not apply, except and to the extent that these are emphatically accepted by the Supplier in writing. A derogating clause (condition) applies exclusively to those cases for which the derogation has been adopted.
- 1.4. If, by purchase/sale or exchange of a used internal means of transport, a "Warranty used internal means of transport" is issued, the Conditions in that Warranty also apply. To the extent that the Conditions in the Warranty deviate from these Conditions, the Conditions in the Warranty shall prevail.

Article 2 - Offers and information material

- 2.1. Unless emphatically stated otherwise, all offers by the Supplier, in whatever form these are made, are non-committal in the sense that, even after the acceptance by the Customer of an offer from the Supplier, the Supplier is authorised to revoke the offer within three full calendar weeks after its acceptance.
- 2.2. Unless emphatically stated otherwise, indications and specifications with regards to measurements, capacities, performance or results in illustrations, drawings, catalogues, official price lists, advertising materials and the like are only approximations that do not bind the Supplier.

Article 3 - Delivery, purchase commitment, time and place of delivery and transfer of risk and ownership

- 3.1. The Supplier is entitled to make part deliveries.
- 3.2. The Customer is bound to purchase goods and services, the delivery of which by the Supplier has been agreed, and at the time and place that have been agreed between the parties under the terms of the agreement concerned and/or these Conditions.
- 3.3. The term for delivery or execution commences with the conclusion of the agreement or, if payment to the Supplier of an amount before or at the start of the execution of the agreement is agreed, at the moment that complete payment of this amount has been received. If, for the performance of the Agreement, the Supplier is partly dependent on the cooperation of the Customer and the Customer is, for whatever reason, derelict in that cooperation, the term of implementation shall be lengthened by as much time as the Supplier reasonably needs to rectify the delay caused by the dereliction of the Customer. The same applies if delays in the implementation arise as a consequence of requests by or on behalf of the Customer or a governmental body for a change, adaptation or addition to that which has been agreed. Furthermore, the additional costs that are incurred by the Supplier in connection with a delay as stated above, shall be charged to the Customer. The Supplier shall only be in default for exceeding the term if the Customer, after the agreed term has been exceeded, proposes a reasonable alternative term (which term, however, may never be shorter than thirty calendar days, starting from the day of receipt of the notification) and if the Supplier fails to meet this new delivery commitment for reasons attributable to him.
- 3.4. Unless emphatically agreed otherwise, the delivery shall take place in the factory or warehouse of the Supplier.
- 3.5. The risk for a delivery by the Supplier is transferred permanently to the Customer on arrival at the place of delivery. If the Customer does not accept delivery at the time agreed between the Supplier and the Customer for reasons that cannot be attributed to the Supplier, the risk is transferred at that moment permanently to the Customer. All costs involved with storage and transport which the Supplier must make from the moment of delivery stated in the previous sentence in connection with the matter shall be charged entirely to the Customer.
- 3.6. Even when the Supplier has undertaken to render the ownership of a matter, the ownership of the matter, despite the delivery, remains with the Supplier until the Supplier has received complete payment from the Customer of all that is owed by the Customer to the Supplier pursuant to the goods and services provided and, because of the dereliction in payment is owed by the Customer to the Supplier. The Customer may only use items that are still subject to an ownership reservation within the context of his normal company activities. He may not, however, remove, rent or burden these items with sureties or any other restricted business rights. If the Customer fails to meet any payment obligation, the Supplier is entitled to repossess the items that are subject to an ownership reservation, without requiring the cooperation of the Customer. The Supplier is not bound to compensate the Customer for any damage that the latter may suffer in connection with this repossession. The costs of the repossession and any conversion of the goods into cash shall be charged entirely to the Customer. Any amount that the Supplier has to claim from the Customer shall be reduced by the value that the repossessed goods have for the Supplier in economic traffic. The Supplier, however, is never required to adopt a value that is higher than the price for the goods agreed with the Customer.

Article 4 - Manuals and instructions

- 4.1. With regard to the delivery of machines and installations, the Supplier shall supply the Customer information in the form of a manual or instruction book about the construction, operation and treatment of the machines and installations; should the Customer be Dutch, these shall be supplied wherever possible in Dutch.
- 4.2. The Customer is entitled to free-of-charge user instruction, to the extent that this is agreed in the agreement concerned.

Article 5 - Drawings, software etc.

- 5.1. All drawings, illustrations, catalogues, software and other data, to the extent that these are not the manual or instruction book intended in article 4, that the one party makes available to the other party remain the property of the one party and must be returned if requested. The data referred to here may not be copied or submitted to third parties for perusal without prior written permission.

Article 6 - Price (amendments)

- 6.1. Unless emphatically stated otherwise, the stated or agreed price does not include VAT or any other governmental levy owed in connection with the agreement nor, in the event that the Supplier shall assume the transport, the costs connected with packaging, transport and insurance. The costs for the matters mentioned in the previous sentence can be invoiced separately in full by the Supplier.
- 6.2. If the costs for the execution of the agreement prove higher for the Supplier, because cost factors important for the price such as wages, social premiums and other insurances, materials, the value of foreign currency etc. have increased after the moment of the final (price) quotation of the Supplier, the Supplier is entitled to invoice those higher costs by amending the price, should those costs together amount to more than 0.5% of the agreed price.
- 6.3. If a price between the Supplier and the Customer has been agreed in a currency other than the Euro and that currency has depreciated in value in comparison with the Euro after the final (price) quotation made by the Supplier, the Supplier is entitled to amend that price by an amount that is necessary to compensate fully the depreciation that has taken place until the moment of complete payment.

Article 7 - Payment

- 7.1. Unless emphatically agreed otherwise, the agreed price shall be paid completely, without any deductions and settlement, within two weeks after the invoice date stated on the invoice concerned by depositing the whole amount on the bank account stated by the Supplier for this. The Supplier is also entitled to issue invoices for partial deliveries.
- 7.2. Unless the Supplier has emphatically agreed to deferment of payment, the Customer is not entitled to postpone the payment of the price for the reason that that delivered or performed by the Supplier is, in the opinion of the Customer, unsatisfactory.
- 7.3. If payment does not take place on time, the Supplier is, notwithstanding his other rights pursuant to the law or the agreement and without requiring any notice of default, entitled to:
 - a. suspend the execution of the agreement for which the Customer is in default in payment, together with any other agreement that may exist with the Customer;
 - b. compensation for the damage as a consequence of the failure to pay on time, which compensation shall, in any case, consist of the legal interest (as intended in article 6:119a of the Dutch Civil Code and 6:120 par. 2 Civil Code). The interest shall be paid from the moment that the Customer is in default with payment to the moment at which the Customer has paid in full everything he owes to the Supplier. In addition, after a year has expired, the interest intended in the previous sentence shall also be owed on the claimed but not yet paid interest;
 - c. compensation for all legal and extralegal costs; the costs of the latter are deemed to be at least 15% of the sum that the Customer has not paid on time and that is claimed by the Supplier.
- 7.4. If the Supplier has reason to doubt whether the Customer will meet his payment obligations, whereby the following circumstances on the part of the Customer in any case give sufficient reason for doubt: repeated negligence in payment, an attachment against the Customer, suspension of payments, bankruptcy, partial or complete cessation of the company, all that is owed by the Customer to the Supplier is due and payable and the Supplier is entitled to suspend the compliance with his obligations until complete payment or - to the satisfaction of the Supplier - surety for the payment has been received. Should complete payment or satisfactory surety not take place within fourteen (14) calendar days after a request for this has been made, the Supplier is entitled to declare the dissolution of the agreement concerned, notwithstanding his right to compensation for damage that has been or shall be suffered.

Article 8 - Force majeure

- 8.1. For the Supplier, force majeure means circumstances of an actual, legal or other nature that - whether or not foreseeable - prevent the prompt compliance with the agreement or make such compliance extremely problematic. Such circumstances include:
 - strikes or factory sit-ins;
 - production interruptions as a consequence of machinery break-down, interruptions in the supply of energy and water or fire;
 - import, export and production prohibitions and other governmental measures;
 - transport hindrance;

- breaches by subcontractors and auxiliary persons, all this to the extent that the Supplier cannot be blamed for these circumstances.
- 8.2. Should a circumstance of force majeure arise for the Supplier, he shall inform the Customer of this with due dispatch. Unless there is no doubt that the circumstance of force majeure shall last longer than thirty full working days, the compliance with his obligations which is obstructed by force majeure or which make it extremely difficult for him to comply therewith, and any obligations that are still to be met shall be suspended. Once there is no longer any doubt that the matter of force majeure shall last longer than thirty full working days or once the force majeure situation has lasted longer than thirty full working days, each of the parties is entitled, to the extent that it is affected by force majeure, to dissolve the agreement by sending the other party a written statement. If the Customer has, with regard to the dissolved agreement or the dissolved part thereof already made payments, the amount already paid to the Supplier shall be repaid to him.

Article 9 - Assembly, installation and/or commissioning

- 9.1. If the Supplier delivers items of property, the Supplier shall only undertake the assembly, installation and/or commissioning thereof if and to the extent that it has been emphatically agreed.
- 9.2. If and to the extent that the Supplier undertakes the assembly, installation and/or commissioning, the following applies:
- a. The Customer shall provide all cooperation that is necessary for the Supplier to undertake the assembly, installation and/or commissioning (or have it undertaken) promptly and properly. In any case he shall ensure in advance: a good and safe entrance to the work site (if necessary outside the Customer's usual working hours), the presence of permits (to the extent that the execution of the activities demands this), an unloading place or sufficient storage space (if necessary covered and secured), the necessary energy, water, combustion and lubricating materials and, unless agreed otherwise, any other aids specified by the Supplier.
 - b. The Customer shall ensure that all activities on which the Supplier can rely during the assembly, installation and/or commissioning and for which there is no agreement that the Supplier shall execute these - for example, all dismantling activities and all electrical and plumbing work, all ground work, brickwork, foundation, carpentry and painting and further all other activities of a constructional nature, are carried out properly in advance. The Customer shall consult regularly with the Supplier and provide him all information necessary for a proper coordination of each other's activities.
 - c. The Customer shall provide all cooperation for the effectuation and enforcement of the safety on the work site, and shall take into account all prevailing legal and company regulations. In particular, he shall ensure provisions in connection with fire.

Article 10 - Quality, control, repair of faults and servicing

- 10.1. The Supplier delivers goods and undertakes activities that meet the quality requirements that are emphatically agreed and the legal regulations - in particular those relating to operation, use of roads and safety - that were in force the Netherlands at the time the Supplier made his final quotation. Should the Supplier be faced with new relevant regulations in the Netherlands which arose after the final quotation but before delivery, the Supplier shall inform the Customer of this. In mutual consultation, the work to be performed by the Supplier shall be adjusted. The delivery term shall, if necessary, be adjusted and the additional costs arising from this shall be charged to the Customer. If no emphatic quality requirements have been agreed concerning the goods to be supplied or the performance undertaken, the quality of the goods to be supplied and the performances shall not be lower than the proper average quality.
- 10.2. Should a permit for the possession and/or use of the goods be required, the Customer shall be responsible for obtaining it.
- 10.3. After the delivery of the goods or after notification by the Supplier to the Customer that he has completed the agreed activities, the Customer should carefully check that the goods are complete and sound as soon as possible, but in any event within ten (10) working days after the delivery or the notification from the Supplier. The Customer cannot make any claim on the Supplier for any deficiencies and/or faults (being anything that does not comply with what has been agreed) that the Customer could have discovered after a thorough check within the period stated in the previous sentence or that he has discovered but failed to report in writing to the Supplier within twenty-one (21) after the delivery by or the notification from the Supplier. This also applies to partial deliveries.
- 10.4. Deficiencies or errors, discovered in the check intended in article 10.3 and which are notified on time to the Supplier, and also deficiencies and errors that could not have been revealed during the check intended in article 10.3 but that reveal themselves within six months after the delivery or the notification by the Supplier and are reported within ten (10) calendar days after their discovery in writing to the Supplier, shall be rectified wherever possible by the Supplier through addition or - at his choice - repair or replacement. Unless stipulated otherwise in article 10.5, this rectification shall be at the expense of the Supplier.
- 10.5. The rectification of deficiencies and errors shall be subject to the following provisions:
- a. The Supplier shall make every effort to implement the rectification (or have it implemented) as quickly as possible under the given circumstances. The Customer shall provide all the cooperation demanded by this.
 - b. The rectification shall take place as far as possible on a place designated by the Supplier. The goods shall travel to that place at the risk and expense of the Customer.

- c. Should the rectification take place outside the Netherlands, the travel and subsistence costs of those who investigate and rectify the matter shall also be charged to the Customer.
 - d. Goods or parts that are released through replacement shall automatically become the property of the Supplier.
 - e. Should deficiencies or errors arise with regards to goods that the Supplier has received from third parties, or with regards to activities that the Supplier has had performed by third parties then - notwithstanding that stated in article 10.3 - the rectification of this only takes place free of charge to the extent that the third party assumes the costs for those rectifications.
 - f. The Customer is not entitled to ask the Supplier to rectify deficiencies and errors that can be assumed to have arisen as a consequence of normal wear and tear, of improper or careless use, of use not in compliance with the intended use or through not (correctly) following certain directions or alternatively instructions from the Supplier.
 - g. The right of the Customer to have the Supplier rectify deficiencies and errors lapses when the Customer carries out the rectification without the prior consent of the Supplier or has it carried out by a third party.
 - h. The emergence of deficiencies or errors does not provide grounds for suspension of the payment obligations of the Customer to the Supplier. If the Customer still does not meet his payment obligations after a written demand to that effect, this shall result in the loss of his right to rectification of deficiencies and errors.
- 10.6. If the Customer submits a complaint about a deficiency or error that cannot be rectified by the Supplier or only rectified at unreasonably high costs, the Supplier is not bound to rectify the deficiency or error. In that case, the price of the delivery shall be reduced, and this reduction shall as much as possible be based on consultation between the Supplier and the Customer and with due regard for the unit prices applied when concluding the agreement concerned, or the agreement concerned can be dissolved by either of the parties in writing. The Customer is only entitled to declare the agreement dissolved if the rectification of the deficiency or error is so onerous for him that, despite the price reduction, upholding the agreement concerned cannot reasonably be expected of him.
- 10.7. The emergence of deficiencies or errors, for which the Supplier has the obligation of rectification, can - except in the case stated in article 10.6 - only prove grounds for dissolution of the agreement concerned by the Customer when the Supplier, even after a written demand, neglects to rectify the deficiency or error within a reasonable period that takes into account all the circumstances.
- 10.8. The Customer is, with regards to the delivery of vehicles, machinery and installations, entitled to free maintenance service, to the extent that this is concluded in the agreement concerned.
- 10.9. Every claim by the Customer for compliance, annulment or dissolution of the agreement lapses if he has not lodged in a legally valid way a claim against the Supplier within six (6) months after he has, in compliance with the deficiency or error stated in articles 10.3 and 10.3, not reported this in a timely manner.

Article 11 - Conflict with industrial/intellectual property rights

- 11.1. The Supplier is bound to deliver goods that, in the Netherlands, do not infringe the industrial or intellectual property rights of third parties. Should the Customer be confronted by a third party in connection with conflict in the Netherlands with an industrial or intellectual property right, he shall immediately inform the Supplier thereof and leave the handling and settlement of the claim from the third party to the Supplier. If the Supplier judges the presence of conflict in the Netherlands with an industrial or intellectual property right conceivable, the Supplier is then entitled - at his choice and obviously in consultation with the customer - to solve the infringement through adjusting or replacing the matter involved or by acquiring a licence or by taking back the item involved on repayment of the purchase price received for it. The costs of the handling and settlement of the claim of the third party is at the expense of the Supplier, who otherwise is not bound to compensate any damage.
- 11.2. When the Supplier employs drawings, models, instructions etc. from or on behalf of the Customer in order to fulfil a contract and a third party confronts the Supplier with an infringement on an industrial or intellectual property right in connection with the use of drawings, models, instructions etc. from or on behalf of the Customer, the Supplier shall immediately inform the Customer of this. The Supplier shall leave the handling and the settlement of the claim from the third party to the Customer, who shall pay all costs of himself and of the Supplier in connection with the claim of the third party. The Supplier is authorised either to suspend the execution of the agreement concerned while awaiting the result of the performance of the Customer towards the third party, or to dissolve with immediate effect the agreement concerned without being subject to the payment of any compensation.

Article 12 - Liability for damage

- 12.1. For the liability that the Supplier has with respect to the Customer for damage that the Customer suffers as a consequence of an event that rightly can be attributed to the Supplier, the following provisions apply:
- a. For damage consisting of injury or detrimental to health, whether or not leading to death, and the damage arising from this, the Customer is entitled to a payment to the extent that the Supplier can receive a benefit payment in the matter from a liability insurance, with this condition that a maximum of €1,125,000.00 applies per claim.
 - b. For damage consisting of impairment or whole or partial loss of an item and the damages arising from this, the Customer is entitled to compensation to the extent that the Supplier can receive a benefit payment in the matter from a liability insurance, with this condition that a maximum of €45,450.00 applies per claim or to a series of interrelated claims.
 - c. For damage other than that stated under a. and b., the Customer is not entitled to any compensation, unless the damage is a consequence of intent or recklessness (gross negligence) by the Supplier himself or by a person who clearly has a high executive position in the Supplier's company.
 - d. The Supplier is not liable for damage that reveals itself twelve (12) months after the event that caused the damage and can be rightly attributed to the Supplier. Notwithstanding that stated in the previous sentence, a claim for compensation lapses if no legal claim is initiated against the Supplier within six (6) months of the damage coming to light.
 - e. If the Supplier is confronted by a third party for compensation for damage from an event that can rightly, also in the relationship to the Customer, be attributed in any way to the Supplier, the Customer indemnifies the Supplier against the claims of the third party, to the extent that the Supplier must pay more compensation to the third party that he would have had to pay to the Customer if the Customer had confronted the Supplier concerning his own damage.
 - f. If the Supplier (or one of his employees) is confronted by a third party for compensation for damage from an event that can rightly be attributed in any way to the Customer (or to an employee of the Customer) , the Customer indemnifies the Supplier against the claims of the third party.
 - g. If the Customer claims compensation of damage based on a claim adopted from a third party, whereby the Supplier in some way was directly or indirectly involved, the Supplier can also appeal to the above provisions towards the Customer.
 - h. The provisions above also apply to the persons who are in any way involved in the performance of any obligations the Supplier has towards the Customer.

Article 13 - Governing law; competent judge

- 13.1. The legal relationship(s) between the Supplier and the Customer is/are governed by Dutch material law. The Vienna Sales Convention of 11 April 1980, which came into effect for the Netherlands on 1 January 1980, remains inapplicable.
- 13.2. To the extent that binding legal provisions do not rule otherwise and that the parties still do not agree to arbitration, the judge within whose district the Supplier has his head office, is exclusively competent to hear disputes that arise between the Supplier and the Customer or are connected to the legal relationship between them and which cannot be settled amicably. The Supplier shall, however, still be entitled to confront the Customer in law - at the choice of the Supplier - before the judge in whose district the head office of the Customer is located or in which the Customer's subsidiary most closely involved in the dispute is located.
- 13.3. Should parties later agree to arbitration, this arbitration, unless later agreed otherwise, shall be governed by the rules of arbitration of the Court of Arbitration for the Metal Trade and Industry in 's-Gravenhage.