



BUS & COACH

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY VDL BUS & COACH BV

1. DEFINITIONS

1.1 Unless the context clearly requires otherwise, these terms shall have the following meaning:

Agreement	an agreement between (amongst others) VDL and the Customer for the delivery of Products
Customer	any party (including its representatives, agents or successors) that VDL is (I) sending an offer to or receiving an offer from or (II) having a legal relationship with
General Conditions	these general terms and conditions of sale and delivery of VDL
Offer	a quotation or offer made by VDL for the delivery of Products
Order	an order for the delivery of Products
Order Confirmation	a confirmation by VDL Bus & Coach bv of an Offer accepted by a Customer
Parties	VDL and the Customer
Preliminary Agreement	a provisional agreement between (amongst others) VDL and the Customer for the delivery of Products
Price	the selling price of a Product
Products	any products or services of whatever nature of VDL or of any of its affiliated companies
VDL	VDL Bus & Coach bv, of Valkenswaard, The Netherlands, and any of its affiliated companies applying these General Conditions

2. APPLICABILITY

2.1 These General Conditions shall apply to all Offers, Preliminary Agreements, Order Confirmations, Agreements and other legal relationships under which VDL provides Products to the Customer. Deviations from and additions to these General Conditions shall only be valid if expressly agreed in writing.

2.2 The application of the Customer's or other general terms and conditions is expressly rejected.

2.3 If any provision of these General Conditions is null and void or annulled, the other provisions of these General Conditions shall remain in full force.

3. OFFERS, PRELIMINARY AGREEMENTS AND ORDERS

3.1 All Offers, Preliminary Agreements and Orders are free of obligations of VDL, even where they include a set period of acceptance. Preliminary Agreements and Orders are binding upon the Customer.

3.2 If an acceptance by the Customer varies from the Offer, this shall constitute a new proposal from the Customer, and shall be regarded as a rejection of the whole of the Offer, even where the variation is only in respect of subordinate Products.

3.3 All Offers and (Preliminary) Agreements of VDL are based upon the fulfilment of VDL's obligations under normal circumstances and during normal working hours.

3.4 Descriptions and illustrations of Products provided by VDL shall have no binding effect. Any measurements, performance specifications and other figures provided by VDL in respect of Products are estimates and shall have no binding effect.

3.5 The Customer warrants the accuracy and completeness of the measurements, requirements, performance specifications and other data which have been stated by or on behalf of the Customer to VDL.

4. AGREEMENTS

4.1 An Agreement shall come into effect only at the moment that both VDL Bus & Coach bv and the Customer sign an Order Confirmation. Any Order Confirmation signed by an affiliate of VDL Bus & Coach bv is valid only if accompanied by a written authorisation of VDL Bus & Coach bv to that effect. VDL retains the right to terminate the Agreement within fifteen working days of the date of the Order Confirmation, without any obligations on the part of VDL.

4.2 The delivery by VDL of new Products to the Customer shall always be a condition precedent to any offer by or agreement of VDL to acquire used Products from the Customer.

4.3 Employees of VDL are not authorized to enter into any agreement on VDL's behalf unless they hold an express written authorization duly executed by VDL.

4.4 VDL shall be entitled to adjust an Order Confirmation by providing written notice to the Customer if the adjustment relates to a change of circumstances, whether or not foreseeable when determining the original Order.

5. PRICES

5.1 All Prices are: (I) net and exclusive of value added tax and exclusive of any other governmental levies imposed, (II) based upon delivery ex-works, unless agreed otherwise, (III) based upon the prices and specifications valid at the date of the Order and (IV) based upon execution of the Agreement under normal circumstances and during normal working hours. Prices are in Euro (unless agreed otherwise) and the Customer shall bear any exchange rate risk.

5.2 VDL shall be entitled to adjust an agreed Price by providing written notice to the Customer if the price increase relates to cost-increasing circumstances, whether or not foreseeable when determining the original Price. Following a price increase, VDL may proportionally adjust any instalment payment.

5.3 Not included in Prices and separately charged are: (I) costs of preparation for transport, packaging, assembly and service costs and costs of loading, dispatch, transport and unloading and (II) costs of insurance and/or storage of any goods made available by the Customer.

5.4 The Customer shall pay to VDL any increase to VDL's costs caused by (I) amendments and/or additions to the Agreement made at the request of the Customer, (II) the failure of the Customer to facilitate the execution of the Agreement and/or (III) circumstances attributable to the Customer.

5.5 Discounts or deductions only apply to Prices if previously confirmed in writing by VDL.

6. DELIVERY

6.1 All delivery and other periods stated or agreed by VDL (I) are subject to the accuracy of the data known to VDL when it entered into the Agreement and (II) have been based on timely delivery of the materials and/or components ordered by VDL and on timely delivery of all data necessary for the completion of the Product.

6.2 VDL shall properly exert its best efforts to observe agreed delivery and other periods. The mere fact that a stated or agreed delivery or other period has been exceeded shall not cause VDL to be in default. In all cases, VDL is not in default because of a time period being exceeded until the Customer has provided it with a written notice of default, specifying the default and giving VDL a reasonable time for repairing the default.

6.3 VDL is not bound by any delivery or other periods (I) which can no longer be met on account of circumstances beyond its control which have occurred after the Agreement was concluded, or (II) if the Parties have agreed to modify the substance or scope of the Agreement (additional work, change in specifications etc.).

6.4 If any delivery or other period threatens to be exceeded, VDL and Customer shall consult with each other as soon as possible. In the event of VDL exceeding a delivery or other period, the Customer is only entitled to compensation, if expressly agreed so in writing by the Parties.

6.5 VDL is entitled to use other materials or to apply changes of design if these reasonably meet the requirements of the Customer. The Customer cannot derive any rights against VDL from such changes.

6.6 VDL is entitled to make partial deliveries. In that event, VDL shall state the delivery times for each separate partial delivery.

6.7 Delivery shall be ex-works (unless agreed otherwise) and at such date as communicated by VDL to the Customer.

6.8 The Customer shall take receipt of the Products at the specified delivery time. Products not taken receipt of by the Customer, following expiry of the delivery date, shall be deemed to be delivered and shall remain available to VDL and shall be stored by VDL or by any third party, for the costs and risk of the Customer. Failure to take receipt of the Products will result in all costs incurred as a result (including but not limited to storage, insurance and freight costs), being charged to the Customer, at VDL's own rates or those applying locally.

6.9 The risk of loss or theft of or damage to Products shall pass to the Customer at the time of delivery, even if VDL has not yet transferred ownership of the Products. Transport is at the risk of the Customer.

7. PAYMENT

7.1 The Customer shall pay VDL any amounts due and payable (I) net, (II) in Euros, unless agreed otherwise, (III) in accordance with the payment conditions stated on the invoice and (IV) into an account to be designated by VDL. The Customer shall not be entitled to set off or to suspend a payment.

7.2 The Customer shall pay VDL at the latest at delivery of the Products, unless otherwise agreed.

7.3 Upon reasonable written request of VDL, the Customer shall pay an advance or instalment payment, and/or provide a bank guarantee or a security right in order to secure the fulfilment by the Customer of its obligations vis-à-vis VDL.

7.4 Payment of the full Price becomes immediately due and payable if the Customer fails to make a timely instalment payment, if applicable.

7.5 If the Customer does not fulfil an obligation vis-à-vis VDL, the Customer is in default without any notice of default being required. If the Customer does not fulfil an obligation vis-à-vis VDL or if VDL has any reasonable doubt that the Customer will fulfil an obligation, VDL shall be entitled to suspend execution of the Agreement in whole or in part, and it shall be entitled to charge the ensuing expenses in accordance with its usual rates, all of this without prejudice to VDL's right to exercise any other legal right.

7.6 Payments of the Customer shall be regarded as payment first in respect of all interest and costs and subsequently as payment of other amounts due for the longest period, regardless of any statement by the Customer to the contrary.

7.7 In the case of the following events, by operation of law and without any notice being required, any payment obligation of the Customer shall become immediately due and payable:

- non-payment or non-timely payment of the agreed (instalment) payments;
- the Customer is declared bankrupt or insolvent;
- the Customer requests suspension of payment;
- a request is issued to place the Customer in receivership;
- any goods and/or claims of the Customer are seized; or
- the Customer's business is wound up or terminated for other reasons besides a business reconstruction or merger.

7.8 If the Customer does not fulfil a payment obligation vis-à-vis VDL:

- the Customer shall pay VDL interest of 1.5% per four-week period to be calculated over the amount outstanding as from the date the amount is due and payable, whereby a part of this four-week period shall be considered to be a full four-week period; and
- the Customer shall pay VDL a fixed amount of 15% of the amount due and payable by the Customer (with a minimum of EUR 115 plus VAT), in order to cover the costs in relation to the collection of this amount, without prejudice to the obligation of the Customer to pay the full amount of these costs if these are more than this fixed amount.

7.9 If VDL requests the bankruptcy of the Customer, the Customer shall also be liable for the costs of the application for bankruptcy.

8. PAYMENT BY TRANSFER OF GOODS

8.1 If VDL has agreed to accept (partial) payment of the Price by means of the transfer to VDL of goods (free of any rights, encumbrances and duties), such transfer shall be regarded a payment of the equivalent amount for the purpose of article 7.

8.2 Until VDL has taken receipt of the goods referred to in article 8.1:

- such good shall continue to be at the cost and risk of the Customer;
- all costs relating to the goods, including the costs of maintenance and of any damage however caused, shall be at the account of the Customer;
- the Customer shall maintain such goods at least in the condition they were in at the date of the Agreement;
- the Customer shall maintain adequate insurance in respect of such goods.

8.3 The ownership and the risk of loss or theft of or damage to goods referred to in article 8.1 shall pass to VDL at the time of VDL taking receipt of the goods. Transport is at the risk of the Customer.

8.4 Ultimately upon the date of the Agreement, the Customer shall provide VDL with correct and complete specifications of the goods referred to in article 8.1.

8.5 Under the following circumstances:

- the specifications referred to in article 8.4 appear to be incorrect or incomplete; or
- the Customer does not comply fully with article 8.2 under c. and d; or
- the goods referred to in article 8.1 are not free of any rights, encumbrances and duties, VDL is entitled (I) to refuse (partial) payment of the Price by means of the transfer to VDL of goods, in which case the Customer shall pay the equivalent amount in cash instead; or (II) to lower the originally agreed value of the goods, in which case the Customer shall pay in addition the balance in cash.

9. RETENTION OF TITLE

9.1 All Products delivered to the Customer shall remain VDL's property, but shall be for the account and risk of the Customer, for as long as there are any payment obligations of the Customer vis-à-vis VDL, whether or not due and payable.

9.2 A Customer acting as a reseller may sell and re-deliver a Product subject to VDL's retention of title insofar as that is common practice in its normal business operations.

9.3 If the Customer creates a new object from the Products delivered by VDL, VDL shall be the owner of the newly-created object and the Customer shall hold such object for VDL until the Customer has paid all amounts owed to VDL, even if the value of the newly-created object is substantially higher than the value of the Product.

9.4 Notwithstanding any delivery obligation, VDL may maintain possession of the Products, objects, proprietary rights, information and documents which have been produced or generated in connection with the Agreement until the Customer has paid all amounts owed to VDL.

9.5 In the event VDL has delivered Products to the Customer that are subject to VDL's retention of title, the Customer shall:

- insure such Products against fire, theft, explosion and water damage, third-party liability and own risk, and to maintain such insurance, and to provide the insurance policies for inspection; the insured amount shall be at least equal to the Price; any of the Customer's rights from the insurance policy are hereby assigned to VDL, until the Customer has fulfilled all of its obligations vis-à-vis VDL;





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- b) pledge to VDL in the manner prescribed in Article 3.239 of the Civil Code, any claim which the Customer may have against its customers through the sale in the course of the normal operation of its business of such Products;
- c) regard such Products as subject to VDL's retention of title and shall treat them with a reasonable degree of care;
- d) act in accordance with VDL's reasonable instructions in respect of the protection of VDL's rights;
- e) notify VDL not later than within 24 hours after a third party attempts to establish or validate any title to any such Products;
- f) indemnify VDL against claims of third parties against VDL in connection with VDL's retention of title;
- g) at the first request of VDL, cooperate in returning such Products immediately to VDL, even if the Products are not stored on the premises of the Customer; and
- h) at the first request of VDL, give VDL access to any property where such Products are stored.
- 10 REPLACED PRODUCTS**
- 10.1** If components of Products are replaced, e.g. in the context of repairs, the replaced components shall become VDL's property and the Customer has no right to any form of compensation.
- 10.2** If components of Products are replaced at the premises of VDL:
- a) such Products shall continue to be at the cost and risk of the Customer;
- b) all costs relating to the Products shall be at the account of the Customer;
- c) the Customer shall maintain adequate insurance in respect of such Products.
- 11 WARRANTY**
- The Warranty Provisions are attached as Exhibit 1 and form an integral part of the General Conditions.
- 12 LIABILITY**
- 12.1** With the exception of VDL's liability for Warranty, VDL's liability for imputably failing to perform the Agreement shall be limited to compensating direct damage caused by intentional acts or omissions or gross negligence by VDL. VDL's liability for Warranty is limited in the manner stipulated in the Warranty Provisions and this article 12.
- 12.2** VDL's total liability to compensate damage under any Agreement shall be limited to the lower of (I) the total Price (exclusive of VAT) and (II) the amount against which VDL is insured, or should reasonably have been insured having regard to the usual practice within the industry. If VDL's liability to compensate damage under any Agreement relates to one or more Products, VDL's total liability to compensate damage under such Agreement shall be limited to the lower of (I) the total Price for these Product(s) (exclusive of VAT) and (II) the amount against which VDL is insured, or should reasonably have been insured having regard to the usual practice within the industry.
- 12.3** 'Direct damage' shall solely mean:
- a) reasonable expenses which the Customer would have to incur in order to make VDL's performance conform to the Agreement; this alternative damage shall not be compensated, however, if the Agreement is rescinded by or at the request of the Customer;
- b) reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of these General Conditions;
- c) reasonable expenses incurred to prevent or mitigate damage, insofar as the Customer demonstrates that these expenses resulted in mitigation of direct damage within the meaning of these General Conditions;
- d) reasonable expenses incurred as a result of damage through death or bodily injury of the passengers.
- 12.4** VDL's liability for indirect or consequential damage and all other forms of damage or injury besides those mentioned in Article 12.1 is excluded.
- 12.5** VDL shall at no time be liable for any damage caused by non-executive employees of VDL and by extraneous persons.
- 12.6** VDL is not liable for third-party claims relating to products delivered by the Customer to a third party which partly consist of a Product, unless the Customer proves that the damage was caused by that Product. The Customer indemnifies VDL against all such third-party claims.
- 12.7** The provisions in this Article shall also apply to damage or theft (including loss) of goods of the Customer which VDL has in its possession in the context of executing the Agreement.
- 12.8** The provisions in this Article and Article 14 shall also apply for the benefit of all legal and natural persons utilised by VDL in executing the Agreement.
- 13 FORCE MAJEURE**
- 13.1** VDL is not liable for damages if VDL has not fulfilled any obligations due to force majeure. Under 'force majeure' are included inter alia all causes which can reasonably be considered beyond the sphere of VDL's influence and which hinder the full or partial implementation of the Agreement. These are circumstances of which VDL could not have been aware at the time of entering into the Agreement, and in consequence of which it would not be reasonable for the Customer to demand the normal fulfilment of the Agreement, such as war or a terrorist attack or the threat thereof, riot, sabotage, fire, flood, lock-outs, occupation of the business, strikes, amended legislation and other government measures, interruptions to energy supplies, machinery breakdown or loss or damage during transportation. 'Force majeure' shall also include a situation of 'force majeure' for VDL's suppliers, improper performance of obligations by suppliers prescribed by the Customer for VDL, as well as defects in objects, materials or software of third parties used by VDL.
- 13.2** If a situation of 'force majeure' lasts for more than 90 days, VDL shall be entitled to terminate the Agreement by rescinding it in writing. What has already been performed pursuant to the Agreement shall in that case be settled proportionately. Following such termination of the Agreement, VDL is entitled to compensation for the costs VDL has incurred or for the work VDL has carried out. In the case of repairs and maintenance, VDL shall only have this entitlement insofar as the Customer has benefited from the works.
- 13.3** If implementation of the Agreement is made impossible by the actions of the Customer, VDL shall be entitled to the amount of the agreed Price, plus any accrued costs, minus the costs saved as a result of non-completion.
- 14 CLAIMS**
- 14.1** The Customer shall inspect the Products immediately upon delivery. Damage sustained in transport must be notified to VDL within 24 hours after delivery of the Products at the destination. Minor variations, or variations of a type regarded as normal within the industry, in quality, number, colour, size, weight, finish, etc., shall not form the basis for any valid claim.
- 14.2** VDL's liability because of an imputable failure to perform an Agreement shall in all cases only arise if the Customer immediately upon the arising of the default provides a written notice of default to VDL, with a reasonable time period provided for remedying the failure and VDL still imputably fails to perform its obligations after that period. If a claim of the Customer relates to a faulty Product delivered or an invoice, the notice of default must be submitted to VDL at the latest within ten days of the receipt of the related Product or invoice. If it is not reasonably possible to discover a fault within this period, the Customer must submit a claim in writing to VDL within ten days after the day on which the fault could reasonably have been discovered.
- 14.3** The notice of default must contain a description of the breach which is as complete and specific as possible, so that VDL can respond adequately.
- 14.4** VDL is not liable in respect of an imputable failure to perform an Agreement if the Customer:
- a) has failed to submit a claim in the manner as stipulated in Articles 14.2 and 14.3, or
- b) did not start legal proceedings within 3 months after the date of the notice of default.
- 14.5** Any claim of the Customer against VDL shall have no effect on any of the Customer's obligations vis-à-vis VDL.
- 14.6** Damage assessments will be carried out at actual costs including VAT, unless agreed otherwise. The Customer shall pay any towing and transportation costs.
- 15 COMPLIANCE WITH LAW AND REGULATIONS**
- 15.1** A Product shall comply with the laws and regulations in respect of safety and environment that are applicable in the European Community on the date of delivery of the Product, unless agreed otherwise.
- 15.2** Any agreement of the Parties that a Product shall comply with regulations in respect of operation and transport related to the field of operation of the Product shall not be valid to the extent this would result in a violation of the laws and regulations referred to in Article 15.1.
- 15.3** If between the date of the Agreement and the delivery of the Product, any laws and regulations referred to in Articles 15.1 and/or 15.2 are amended or if new regulations are introduced that would require amendment of the specifications of the Product, the Parties shall if possible agree which amendments are to be made. All related costs shall be for the account of the Customer.
- 16 INTELLECTUAL PROPERTY RIGHTS**
- 16.1** All intellectual and industrial property rights to Products or other products or materials developed or provided under an Agreement, such as analyses, designs, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by VDL, its licensors or its suppliers. The Customer shall only acquire the rights of use expressly granted in these General Conditions and by law. Any other or more extensive right of the Customer to use or reproduce products or materials shall be excluded. A right of use to which the Customer is entitled shall be non-exclusive and non-transferable to third parties.
- 16.2** Any deviation from Article 16.1, must be agreed expressly in writing between the Parties and shall not affect VDL's right to apply and to use for other purposes the general principles, ideas, designs, documentation, works and the like relating to the products or materials. Nor shall a transfer of intellectual or industrial property rights affect VDL's right to undertake developments for itself or third parties which are similar to those done for the Customer.
- 16.3** The Customer shall not infringe any intellectual and industrial property rights of VDL.
- 16.4** The Customer warrants that there are no third-party rights which are inconsistent with providing VDL with materials intended for use by VDL in relation to the Products. The Customer shall indemnify VDL against any action based on the claim that such provision or use infringes a third-party right.
- 17 CONFIDENTIALITY**
- Each of the Parties warrants that all of the information received by the other Party which is known to be or should be known to be confidential in nature shall remain secret, unless a legal obligation mandates disclosure of that information. The Party receiving the confidential information shall only use it for the purpose for which it has been provided. Information shall in any event be considered confidential if it is designated by either of the Parties as such.
- 18 TERMINATION**
- 18.1** An Agreement can be wholly or partially terminated by mutual agreement in writing between the Parties. In such case, VDL is entitled to a fixed termination penalty of 10% of the principal amount of the Agreement, in order to cover the damages and costs in relation to the termination, without prejudice to the obligation of the Customer to pay the full amount of these costs if these are more than this fixed amount.
- 18.2** Each of the Parties shall only be entitled to rescind the Agreement if the other Party imputably fails to perform material obligations under the Agreement - in all cases, after having received a proper written notice of default which is as detailed as possible and in which it has been given a reasonable period of time in which to remedy the breach.
- 18.3** Each of the Parties may partly or completely terminate the Agreement in writing with immediate effect and without a notice of default if
- a) the other Party is declared bankrupt or insolvent;
- b) the other Party requests suspension of payment;
- c) a request is issued to place the other Party in receivership; or
- d) the other Party's business is wound up or terminated for other reasons besides a business reconstruction or merger.
- VDL shall never be obliged on account of this termination to refund funds already received or to pay damages.
- 18.4** If, at the time of the rescission referred to in Article 18.2, the Customer has already received performance in connection with execution of the Agreement, this performance and the related payment obligation shall not be cancelled, unless the Customer proves that VDL is in default with regard to that performance. Amounts which VDL has invoiced before the rescission, in connection with what it has already properly performed or delivered in order to execute the Agreement shall, subject to the provisions in the preceding sentence, continue to be owed in full and shall be immediately payable at the time of rescission. Following rescission by VDL as referred to in Article 18.2, the Customer shall compensate VDL for all direct and indirect damages, losses and costs caused by such rescission.
- 19 DISPUTES AND APPLICABLE LEGISLATION**
- 19.1** These General Conditions and all Offers, Preliminary Agreements, Order Confirmations, Agreements and other legal relationships to which these General Conditions apply in full or in part are governed by the laws of The Netherlands.
- 19.2** The stipulations of the Uniform Law on the International Sale of Goods (1964) and the Vienna Sales Convention (1980), nor any future international regulation relating to the sale of movable goods, the validity of which may be excluded by the Parties, shall apply to these General Conditions and all Offers, Preliminary Agreements, Order Confirmations, Agreements and other legal relationships to which these General Conditions apply in full or in part.
- 19.3** All disputes between the Parties that cannot be settled amicably may arise in connection with these General Conditions and all Offers, Preliminary Agreements, Order Confirmations, Agreements and other legal relationships to which these General Conditions apply in full or in part, will be settled by the competent judge of the Civil Court of the District 's-Hertogenbosch, The Netherlands.
- 19.4** Regardless of what is stipulated in article 19.3, VDL is entitled to bring any dispute before a judge who is competent to hear it.
- 20 TRANSLATION**
- Where these General Conditions are translated and a difference in interpretation arises between the Dutch text and the text in the foreign language, the Dutch text shall be decisive.