

# GENERAL TERMS AND CONDITIONS OF SALE

of Netherlands Car Trading, with its registered office at Meijewetering 19, 3543 AA, Utrecht, listed in the Commercial Register of the Chamber of Commerce in Utrecht, under file number 30004070

## Article 1 – General

- 1.1. These general terms and conditions of sale, delivery and payment (hereafter: the 'Conditions') form part of every agreement entered into between Netherlands Car Trading (hereafter: 'NCT') and any third party (hereafter: 'Buyer') and of all offers issued by NCT, in respect of the delivery of new and used cars. NCT and the Buyer are hereafter jointly referred to as the Parties.
- 1.2. The involvement of NCT in the delivery of new and used cars can be in two forms. NCT can act as a broker and place an order with the supplier on the instructions of the Buyer. In this case NCT shall not become a party to the purchase agreement. In addition NCT can act as a seller. In that case, NCT takes delivery of the order from the supplier and sells the new or used car on to the Buyer. NCT shall in principle in respect of every agreement it enters into with a Buyer clearly indicate whether it concerns a brokerage agreement or a purchase agreement. If it is not indicated what kind of agreement it is, the Buyer must assume that it is a brokerage agreement.
- 1.3. If NCT acts as a broker, it acts as an intermediary in the sense of article 3(11) of EC regulation 1475/95. If so requested the Buyer shall have to sign a separate brokerage agreement. In that case the Buyer declares to purchase the car for his own use, without the intention to sell it on as new.
- 1.4. Also in the event the Buyer approaches NCT via a broker, NCT shall regard the Buyer as the client. The relevant broker shall furnish NCT with an authenticated copy of the listing with the Chamber of Commerce. Any changes in activity, address and/or other relevant data shall be passed on to NCT immediately.
- 1.5. The Conditions shall, after they have become part of any agreement between NCT and the Buyer, also form part of any agreement between NCT and the Buyer subsequently entered into, even if, at the formation of that subsequent agreement entered into, the applicability of the Conditions has not been referred to.
- 1.6. Any departures from the Conditions only apply insofar these have been expressly agreed by the parties in writing and NCT has accepted these departures in writing. The departures apply exclusively to the offers or the agreement for which they were made.
- 1.7. The new cars which are purchased from or via NCT are tax free and manufactured for the Dutch market, unless it is expressly indicated that this is not the case.
- 1.8. Total or partial nullity of any provision in the Conditions does not affect the validity of the other provisions of the Conditions.

## **Article 2 – Offers and formation of agreements**

- 2.1. Every offer by NCT is without obligation unless it has been expressly stated in writing that it is irrevocable, and terminates by operation of law after thirty (30) calendar days, counting from the date of the offer unless expressly determined otherwise in writing. Offers from NCT can only be accepted in writing.
- 2.2. Agreements (both brokerage and purchase agreements) between the Parties are only formed after the Buyer has returned NCT's offer or order form signed for approval, together with a copy of a valid identification document (passport or driving licence), via post or fax to NCT and NCT has, after NCT has placed the order with the supplier and NCT has received a confirmation from the supplier, sent the Buyer an order confirmation. The order confirmation contains the file number and an indicative delivery date.
- 2.3. If the Buyer is a consumer, the Buyer is entitled to cancel the formed agreement without stating further reasons, within a period of seven (7) calendar days from the signing of the offer or order form of NCT.
- 2.4. NCT shall only order the new or used cars from the supplier after the down payment as indicated by NCT (at least 10% of the order amount) has been received by NCT and, if it concerns an agreement with a consumer, the aforementioned period of seven (7) calendar days has expired.
- 2.5. Amendments or additions to an already formed agreement as well as any side agreements are only binding if the supplier agrees with these changes and NCT has confirmed these changes to the Buyer in writing.
- 2.6. The supplier can, after formation of the agreement, change prices, equipment standard or delivery times. The price changes are integrally passed on to the Buyer. NCT is not responsible for changes in the equipment standard or the delivery time.

## **Article 3 – Prices**

- 3.1. All prices referred to by NCT in its offers are, unless expressly agreed in writing, not binding.
- 3.2. The payment of local taxes which are levied on the car is the responsibility of the Buyer. A certificate of conformity, issued by the supplier, forms in principle a guarantee that the car shall also be allowed on the road in other countries.
- 3.3. All prices are exclusive of turnover tax (VAT).

## **Article 4 – Delivery**

- 4.1. If NCT shows or provides a drawing, photograph, model, design, calculation or any other information, this is done by way of indication only. The final goods to be delivered may deviate from what has been shown.
- 4.2. NCT is responsible for the transport of the car from the supplier to the delivery address as desired by the Buyer. Unless otherwise agreed, the delivery shall be ex works (Incoterms 2000) from one of the following delivery locations: NCT's business premises in Utrecht, from one of the business premises of PGA Nederland, from the site of Autodistributiecentrum Gefco

Benelux in Oosterhout or from the site of Fleetpoint B.V. in Schijndel. The time of delivery shall be the moment the car leaves the chosen delivery location. The Buyer bears the risk of the car from the time of delivery.

- 4.3. The Buyer is obliged to take possession of the purchased goods at the moment of delivery. If the Buyer refuses to take possession of the goods or is in remiss in providing the information or instructions necessary for delivery, the goods shall be stored at the risk of the Buyer. In that case the Buyer shall pay the storage charges, without prejudice to the right of NCT to claim performance and/or full compensation and to proceed to terminate the agreement.
- 4.4. The car shall be delivered with the necessary documentation such as (if agreed for an extra charge) an export registration number, insurance and a certificate of conformity (CVO).
- 4.5. If the Buyer has the car collected from the chosen delivery location by a carrier, the carrier must have the chassis number of the relevant car.
- 4.6. After the car, after or at delivery to the Buyer, has received a final registration number, a copy of the registration number must be sent to NCT by return of mail. If this does not happen within fourteen (14) calendar days, a penalty may be imposed. NCT shall pass this penalty on to the Buyer.
- 4.7. The Buyer is obliged to, within seven (7) calendar days after actual delivery, inspect the delivery for technical and visual defects, the presence of parts and/or accessories and any other shortcomings or instances of damage, or to carry out this inspection, or have this carried out, after notification by NCT that the car is available to the Buyer.

#### **Article 5 – Delivery time**

- 5.1. A statement as regards the delivery time is always by approximation only and is not a deadline, unless expressly agreed otherwise in writing.
- 5.2. NCT is in no way whatsoever liable for exceeding the delivery time, through whatever cause. Exceeding the delivery time does not oblige NCT to pay any compensation and does not entitle the Buyer to terminate the contract or to refuse taking possession or to rely on suspension of any of the Buyer's obligations.

#### **Article 6 – Force majeure**

- 6.1. In addition to the provisions of article 6:75 of the Dutch Civil Code, force majeure includes: industrial action (both official and unofficial) within the company of NCT or the supplier, a general shortage of goods or services required for the realisation of the agreed performance and general transport obstructions, the (whether or not attributable) non-performance by the supplier of NCT and lack of staff.
- 6.2. During a period of force majeure, the delivery and other obligations of NCT are suspended. If the period, in which the performance of the obligations by NCT is no longer possible due to force majeure, lasts longer than 6 months, both parties are entitled to end the contract wholly or in part by giving notice terminate or by terminating it, without there then being any obligation to pay compensation or to have it undone.

- 6.3. NCT is entitled to claim payment for all that already carried out in the performance of the relevant agreement before the circumstance causing the force majeure became apparent.
- 6.4. NCT is also entitled to rely on force majeure if the circumstance constituting the force majeure occurs after NCT should have already delivered the performance.

#### **Article 7 – Guarantee**

- 7.1. A manufacturer's warranty applies to all new cars which the Buyer can rely on with every arbitrary dealer of the relevant make within the European Economic Area (EEA).
- 7.2. Depending on the make, the age, and the damage and maintenance history, the remaining European manufacturer's warranty applies to used cars, unless expressly indicated otherwise in writing.
- 7.3. The fact that the Buyer claims under the warranty does not release the Buyer of his obligations such as payment and taking possession by virtue of the agreement(s) entered into with the NCT.

#### **Article 8 – Complaints**

- 8.1. Complaints must be made as soon as possible and in writing but at the latest within eight (8) calendar days after delivery or, in respect of non-visible defects, within eight (8) calendar days after the defects could reasonably have been observed, specifying the exact nature and grounds of the complaint(s) and the alleged basis of the liability of NCT for replacement, repair or compensation. Complaints which are not, or insufficiently, supported by reasons are not processed by NCT.
- 8.2. After expiry of the above term, the Buyer is deemed to have approved that what has been delivered. Complaints are then no longer processed by NCT.
- 8.3. Returning the delivered can only occur with NCT's prior written consent, in accordance with conditions to be determined by NCT.

#### **Article 9 – Liability**

- 9.1. NCT's liability for any unlawful acts it has committed is excluded except insofar they are the result of an intentional act or wilful recklessness by managerial employees of NCT. Also excluded is NCT's liability for indirect and consequential loss suffered by the Buyer as a result of an attributable failure in the performance of NCT's obligations under any agreement, such as but expressly not limited to: loss of profit, lost turnover, immaterial damage, lost opportunities and injury to the good name, unless the loss is the result of an intentional act or wilful recklessness by managerial employees of NCT.
- 9.2. NCT's liability for direct loss suffered by the Buyer which is the result of, or is related to, an attributable failure on the part of NCT in the performance of its obligations towards the Buyer under an agreement entered into with the Buyer, is limited to those cases in which the Buyer proves that the loss is the direct result of the attributable failure and is furthermore, per event or series of connected events with a common cause, limited to the value (exclusive of VAT) of

the obligation(s) agreed as between the parties, in the performance of which NCT has thus attributably failed, and in such event per delivered good, with a maximum of €2,500 per event or series of events with a common cause, except insofar these are the result of an intentional act or wilful recklessness of managerial employees of NCT unless a further-reaching limitation ensues from the following paragraphs.

- 9.3. Every claim against NCT on the basis of an agreement entered into with NCT, lapses by the mere expiry of period of a year, unless a legally valid summons has previously been issued. The due date starts the day following the day the Buyer has become aware of both the loss and the liable party.
- 9.4. Any defence which NCT could derive from the agreement entered into with the Buyer to contest its liability can also be relied on against the Buyer by its personnel and any third party it has engaged in the performance of the agreement as if its personnel or the aforementioned third party were themselves party to the agreement.
- 9.5. Liability limiting, excluding or determining conditions which could be invoked by third parties against NCT, can also be invoked by NCT against the Buyer.

#### **Article 10 – Indemnity**

The Buyer indemnifies NCT, its personnel and any possible third party engaged in the context of the performance of its obligations under the agreement, against any claim by other third parties for compensation for any (alleged) loss suffered by the last-named, caused by or otherwise related to, NCT's performance under the agreement.

#### **Article 11 – Payment conditions**

- 11.1. Unless expressly agreed otherwise, every invoiced sum must be paid at the latest within thirty (30) calendar days from the invoice date and in accordance with the manner indicated on the invoice. The payment must be made in the agreed currency without setoff, reduction and/or suspension. NCT shall only deliver the car after full payment by the Buyer. If the Buyer pays in cash, an €45 administration charge must be paid.
- 11.2. When selling a used car, whereby NCT organises the refund of the private motor vehicle and motorcycle tax (BPM - belasting personenauto's and motorrijwielen) with the Dutch Tax Authorities, NCT receives 50% of the amount to be reclaimed from the Buyer with a minimum of €2,500. The amount to be received by the Buyer shall be paid by NCT immediately after receipt of the payment notification from the Tax Authorities. All cars exported by NCT are exported permanently. This means that, within one year after export, an exported car may not be registered in the Netherlands.
- 11.3. In the event of overdue payment of an invoice, the Buyer is in default without notice of default being required and all payments obligations of Buyer become immediately due and payable. This is also the case if the Buyer is declared bankrupt or applies for a moratorium.
- 11.4. In the event of overdue payment of an invoice, the Buyer must pay the statutory (commercial) interest (article 6:119(a) of the Dutch Civil Code), plus 2% on the invoice amount, from the due date of the invoice. In addition, NCT is entitled to charge €7.50 default charges.

- 11.5. Furthermore, all judicial and extrajudicial costs reasonably incurred by NCT (such as, but not limited to: bailiff's costs and costs of legal assistance) made in the context of the non-performance of the Buyer of his obligations are for the account of the Buyer such with a minimum of 10% of the principal sum owed (including VAT) or an amount of € 250 insofar such is higher, which minimum payment must (partly) be viewed as an incentive for the Buyer to properly perform its (payment) obligations (penalty clause).
- 11.6. The payments made by the Buyer shall first be applied to settle all interest and costs payable and subsequently to pay those invoices which have been outstanding for the longest period, even if the Buyer states that the payment relates to a later invoice.
- 11.7. Irrespective of the foregoing, NCT is at all times entitled to demand payment in cash or, before proceeding to any further performance of the work, demand adequate security from the Buyer for payment on time. The security is given by means of the provision an irrevocable bank guarantee from a Dutch banking institution of good standing, or by means of the provision of another security of reasonably equal standing.

#### **Article 12 – Retention of title**

- 12.1. All goods delivered to the Buyer remain the property of NCT up until such time all that the Buyer owes NCT for whatever reason, including interest and costs, has been paid.
- 12.2. The Buyer is not entitled to dispose the goods which are subject to the retention of title, unless disposal takes place in the context of the Buyer's normal business operations. The Buyer is not entitled to pledge the goods or to establish any other right on them.
- 12.3. Without prejudice to any other rights to which it is entitled, NCT shall be irrevocably authorised by the Buyer, if he does not perform his obligations entered into towards NCT, or does not perform them on time, to, without any notice of default or judicial intervention being required, to take possession of the goods delivered by NCT and to this end enter the place where these goods are to be found. During the period when the delivered goods are still the property of NCT, the Buyer shall adequately insure them against the usual risks.

#### **Article 13 – Termination and cancellation**

- 13.1. Without prejudice to the provisions in article 6:265 of the Dutch Civil Code, NCT is entitled to end the contract entered into with the Buyer by giving notice terminate or to terminate it without being liable for compensation if:
  - a) The Buyer is declared bankrupt, files for bankruptcy or a petition for such is being filed;
  - b) The Buyer applies for a (provisional) moratorium or proceeds to liquidation;
  - c) The assets, or part thereof, of the Buyer are seized;
  - d) The car, after arrival at NCT, has after 6 weeks not been collected by the Buyer (in that case the Buyer is obliged to compensate NCT for all loss suffered).
- 13.2. Unless the supplier agrees with a (partial) cancellation in writing, the cancellation of a brokerage or purchase agreement which has been formed is not possible. If the supplier agrees to a (partial) cancellation, the Buyer is entitled to wholly or in part cancel (give notice to terminate) the agreement by means of written statement directed at NCT, on a payment of

15% of the agreed order sum which corresponds with the part of the agreement that has been cancelled. The cancellation only comes into effect after the above payment has been received by NCT.

- 13.3. In the event of the termination of a brokerage agreement, the right to remuneration continues to exist if the Buyer, within one year after termination of the brokerage agreement, enters into an agreement with the supplier in respect of whom NCT provided brokerage services.

#### **Article 14 – Applicable law and disputes**

- 14.1. All offers from, and agreements with, NCT are exclusively governed by Dutch law, with the exception of the Vienna Sales Convention.
- 14.2. Any dispute, including any disagreement which only one party considers to be a dispute, arising from, or relating to, the agreement to which these Conditions apply or in respect of the Conditions themselves and their interpretation or performance, both of a factual and legal nature, shall exclusively be settled by the competent court in Utrecht, unless NCT prefers to submit the dispute to the competent court in the place of residence/business of the Buyer.

#### **Article 15 – Inconsistency between the Dutch text and the translation**

In the event of inconsistency between the text of these Conditions in the Dutch language and, in the relevant case, that in a different language, the Dutch version shall be binding.

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