

General Terms and Conditions

APEX Automotive BV

Article 1 Definitions

- 1.1. In these General Terms and Conditions, the terms following hereafter shall be used in the following meaning, unless explicitly stated differently or it shows differently from the context:
 - a. Apex: the user of these General Terms and Conditions: APEX Automotive BV having its seat of business at 3e Loosterweg 44-46 in (2182 CV) Hillegom, the Netherlands, registered at the Chamber of Commerce under CoC number 28079235 and with VAT number NL8023.57.829B01;
 - b. Customer: the company with which Apex concludes an Agreement;
 - c. Agreement: The Agreement between Apex and the Customer;
 - d. Product: The Product that is being sold by Apex.

Article 2 General

- 2.1. These General Terms and Conditions are applicable to all Agreements that are concluded between Apex and the Customer.
- 2.2. The applicability of possible purchase or other terms and conditions of the Customer is explicitly rejected.
- 2.3. These General Terms and Conditions will be made known before or at the conclusion of the Agreement to the Customer and shall apply also for subsequent Agreements and/or subsequent orders.
- 2.4. Stipulations deviating from these General Terms and Conditions are only valid if and insofar Parties have agreed that explicitly in writing or via e-mail.
- 2.5. If one or several stipulations in these General Terms and Conditions on any moment are invalid in whole or in part should be invalidated, then the remainder of the stipulations in these General Terms and Conditions shall remain fully applicable. The invalid or invalidated stipulations shall be replaced by Apex, whereby for as much as possible the purpose and the tenor of the original stipulation (s) shall be observed.
- 2.6. In case Apex omits to make a claim on any stipulation of these General Terms and Conditions on a certain moment, then this does not mean that Apex waives the right to make a claim on any of these stipulations on a later moment.

Article 3 Offer, designated offers and conclusion of the Agreement

- 3.1. Obvious errors or mistakes on the website and in folders, special offers, designated offers, Agreements or publications of Apex do not bind Apex.
- 3.2. The Agreement is concluded after the Customer explicitly has agreed with the offer of Apex and Apex has sent the Customer a confirmation of the order.
- 3.3. Apex reserves the right at all times to refuse an order of a Customer among others, but not solely, if the Customer:
 - a. Harms the reputation of Apex (both directly, and indirectly via a company which forms part of the same group);
 - b. Violates the intellectual property rights of Apex;
 - c. Only uses the brand "Apex" to lure customers and not to sell the Products of Apex;
 - d. Sells on the Products to a party that produces and/or sells counterfeit Products or is an accomplice hereto.
- 3.4. The sale of Products by Apex is definitive. The Products will not be taken back and not be exchanged.
- 3.5. Apex reserves the right to refuse an order or to modify it to the specific terms and conditions if this deviates from the standard quantity, composition or packaging applied by Apex. The Customer will be notified of such a refusal and modification as soon as possible.
- 3.6. Apex has the right to establish for certain Products a minimum number per order.
- 3.7. Special offers or prices do not automatically apply to future Agreements.

Article 4 Obligations of the Customer

- 4.1. The Customer shall ensure that all data, of which Apex states that these are necessary or of which the Customer reasonably should understand that these are necessary for the execution of the Agreement, shall be made available timely to Apex.
- 4.2. It is not permitted for the Customer to remove or modify packaging, brand signs or numbers in whole or in part without written permission of Apex.

- 4.3. The Customer is explicitly forbidden to execute acts or make expressions that can harm the good reputation of Apex and/or of its Products.

Article 5 Delivery

- 5.1. Except for the specific terms and conditions of Apex or insofar agreed differently at the acceptance of the order, the ordered Products will be delivered Ex Works.
- 5.2. Delivery terms shall be stated as precisely as possible, but are not binding because these are among others dependent on the supply and transport options. Exceeding of the stated delivery term gives in no case right to compensation of damages or to dissolve the Agreement.
- 5.3. Apex and the Customer explicitly agree that the Products will be transported for the risk of the Customer, even if Apex takes the shipping costs for its account. Notwithstanding the retention of property, all risks with regard to the Products (inclusive of the risk of loss or damaging) are transferred from the moment of delivery to the Customer. The delivery takes place on the moment of the making available of the Product to the transporter. The Customer commits to conclude for his costs and for the account of Apex an insurance which covers the Products from the moment of transfer of the risk.

Article 6 Complaints

- 6.1. Complaints about missing parts, not ordered parts or the state of the packets and/or Products, or packaging of the packets and/or Products must be reported within 5 working days after receipt in writing or via e-mail to Apex.

Article 7 Prices

- 7.1. The Products will be brought into account against the prices and discounts such as these are in force on the date of acceptance of the order by Apex, this if the delivery takes place within a term of 6 weeks (to be counted from the date of the acceptance of the order), for each order of which the delivery time is longer than 6 weeks, Apex reserves the right to bring the cost price increases of the Products, materials, wages, import duties, turnover taxes and currency exchange rates into account against the prices and discounts as these are in force on the delivery date.
- 7.2. Prices have been established Ex Works, unless contractually other agreements have been made. Special packaging and also the costs of transport will be brought into account separately.
- 7.3. For express orders forfeit surcharges shall apply (these can be requested from Apex).
- 7.4. Stated prices are exclusive of VAT.

Article 8 Payment

- 8.1. The invoices must be paid on the place and within the payment term which is stated on the invoice. Except for specific terms and conditions, the payment term is 30 days after the date of the invoice.
- 8.2. Payment before the ultimate date of payment does give no right on additional discount.
- 8.3. In case of non, not timely or not complete payment of the outstanding invoice/invoices by the Customer, the Customer is from the due date of concerned invoice/invoices in default by law without that therefore any notification of default is required. From this moment the Customer is liable to pay a delay interest of 1% per month, counting a part of the month for a whole month, over the total due amount of the invoice to Apex to be counted from the due date until the day of the overall payment, unless the trade interest by law is higher in which case the trade interest by law shall apply.
- 8.4. All costs including the costs of legal assistance that Apex shall have to make as a consequence of the non-compliance with the payment obligations by the Customer, will be for the account of the Customer. The out-of-court collection costs of Apex to be calculated over the amount to be collected will be established at, at least, 15% of the amount to be collected. If the Customer remains in default with the payment of one or several terms, then Apex reserves the right to suspend its own obligations until the moment on which the due term(s) have been paid in full. The stipulations in previous sentence leaves the right of Apex to compensation of costs, damage and interest unaffected.
- 8.5. A payment by the Customer shall serve firstly to payment of the due delay interest and subsequently to satisfaction of the out-of-court costs falling on the collection. Thereafter payments serve to reduction of the oldest yet outstanding invoices.
- 8.6. Apex can at all times, both at a first order as well as in a later stage, require cash payment or a surety (bank guarantee) from the Customer. The Customer will be notified hereof as soon as possible.

- 8.7. Apex reserves at all times the right to establish or to lower on the basis of its risk assessment and the provided sureties, a credit limit for the Customer and to adapt the payment terms, as well as the manner of invoicing of the Customer.
- 8.8. In case of sale, assignment, provision of a lien or introduction into another by the Customer of goodwill or of material that is necessary for the exploitation thereof, the amounts that are due to Apex will be payable upon demand immediately, irrespective of earlier agreed terms and conditions.
- 8.9. Claim on the basis of any dispute or returning on the basis of warranty stipulations does not suspend the payment obligation of the Customer towards Apex.
- 8.10. Apex and the Customer explicitly agree that Apex at all times can set-off the amounts due by it to the Customer against amounts which the Customer is due to it.

Article 9 Retention of property

- 9.1. All delivered and yet to be delivered Products remain solely property of Apex, until all claims that APEX has or shall acquire on the Customer have been fully paid.
 - 9.2. Apex reserves the right to claim the Products as its property, if payment after becoming due of a single payment term remains absent. The Customer commits to return the Products upon first request of Apex per direct and for account of the Customer.
 - 9.3. The Customer shall notify Apex directly in writing or via e-mail of each incident on material or legal terrain that concerns the Products under retention of property.
 - 9.4. Until full payment of the price the Products shall be stored by the Customer in such a manner that they remain individually recognisable and cannot be mistaken for or be incorporated in Products of other suppliers.
 - 9.5. For as long as the property of the Products has not been transferred to the Customer, the Customer may not:
 - a. Put a lien on;
 - b. Give to third parties any other right on;
 - c. Sell outside his normal conduct of enterprise.
- the Products
- 9.6. The Customer must notify Apex immediately of an amicable settlement with creditors, inability to pay, filing for suspension of payment and more in general each collective payment regulation which can lead to debt sanitation or bankruptcy, so that immediately an inventory can be made up at the discretion of Apex. The Customer is furthermore not permitted to sell on or to use the Products in one of the situations as described in this article for assembly, unless Apex has given thereto explicitly written or electronic permission.
 - 9.7. The stipulations mentioned in this article leave the other rights belonging to Apex, unaffected.

Article 10 Warranty stipulations

- 10.1. On each Product a warranty will rest in case it is unsuitable for the use stated by Apex, because it is not in accordance with the requirements of or functions in a defective manner, which derives from a design error, manufacturing error or materials error.
- 10.2. The warranty applies only for the first end user for the period of 5 years (without kilometre limitation) on springs. On the shock absorbers and the height adjustable sets (RDX) a warranty of 2 years applies (without kilometre limitation) after the date of sale to the first end user of the vehicle, within a maximum term of 36 months after the date of sale by Apex to its Customer, whereby the invoice date is regarded as the sales date.
- 10.3. The warranty is solely applicable on the Products brought into account by Apex, which furthermore must contain legible data with regard to the brand, reference and/or application to be able to retrace the origin to Apex.
- 10.4. The warranty is not applicable:
 - a. if the defect has emerged by abnormal use, in particular: excess load, car races, car rally's, off road events, defective maintenance, unforeseen use or use other than stated in use document delivered with the Product;
 - b. on other elements, parts and accessories of the vehicle;
 - c. in case of incorrect storage or assembly whereby the instructions and prescriptions have not been observed;
 - d. upon normal wear and tear of the Product;
 - e. if by the Customer and/or third parties activities and/or changes and/or repairs to the Product have been executed;
 - f. if the required checks have not been executed;
 - g. if the Product is used for another sort of vehicle than for which the Product is destined.

- 10.5. If Apex does not accept the warranty claim, then Apex has the right to bring the (examination) costs that it had to make because of it, into account to the Customer.
- 10.6. A Product will be regarded as defective if Apex can again establish the defect established by the Customer under normal use circumstances.
- 10.7. Each claim by the Customer on warranty must be accompanied by a fully completed report drafted by the Customer in accordance with the format set-up by Apex. Apex can furthermore request to send the defective Product so that a technical examination/visual check can take place.
- 10.8. Apex can request the Customer to suspend the sale of Products belonging to the same party as the defective Product for the duration of the processing of the warranty claim. Apex cannot be held liable for the possible damage that the Customer suffers by such a request, such as loss of turnover.
- 10.9. If a defect is acknowledged by Apex, then the Customer commits to remove all concerned Products upon request of Apex from the sale and to return to Apex or upon request of Apex let these be destroyed on site and to send to Apex a confirmation hereof.
- 10.10. The warranty is explicitly the limited replacement free of charge or compensation of the Product/Products of which Apex has acknowledged in writing that these are defective, with exclusion of any compensation of damages irrespective of the ground hereof, and in particular with exclusion of any compensation of damages for loss and damage of whichever nature, except for obligations of mandatory law.
- 10.11. Solely Apex is, dependent on the nature of the warranty case, free in its choice between replacement or repayment of the Product of which it has been established that this is defective. Compensation takes place on the basis of the price brought into account by Apex to the Customer.
- 10.12. Replacement on the basis of the warranty has no extension of the original warranty period as a consequence.
- 10.13. The costs of the disassembly and assembly of a Product fall outside the warranty stipulations.
- 10.14. In case of acceptance of the warranty claim by Apex the postage costs shall be compensated upon presentation of evidentiary documents.
- 10.15. The Products which have been replaced or compensated on the basis of warranty become the property of Apex.

Article 11 Liability and statute of limitations

- 11.1. Apex cannot be held to compensation of any damage that is a direct or indirect consequence of:
 - a. An event that actually its outside its control and therefore cannot be imputed to its acts and/or omissions, such as described among others in article 12 of these General Terms and Conditions;
 - b. Any act or omission of the Customer.
- 11.2. Apex is not liable for damage, of whichever nature, because Apex has relied on incorrect and/or incomplete data provided by the Customer.
- 11.3. Apex is not liable for possible accidents with or because of the Product or damage to the Product by for instance wrong or inexpert use, use in violation with the use directions or because the Product has been assembled or built-in incorrectly.
- 11.4. In no case is Apex liable for damage, which has emerged or is cause because the Customer the Product has used for another purpose than for which it is destined.
- 11.5. If the Customer or a third party introduces changes to the Product, Apex excludes any liability with regard to the working and possible (consequential) damage.
- 11.6. Apex is not liable for damage of whichever nature deriving from or imputable to deviations of and/or defects to the vehicle in which the Product is built-in or on which the Product has been assembled.
- 11.7. Apex is not liable for damage, such as bodily harm, death, material damage or damage to third parties, as a consequence of the use of the Product. The end user of the Product is at all times self-responsible for that he and/or a third party carefully deals with the Product and that the Product will be correctly and safely assembled or built-in. The use of the Product is entirely for the risk of the end user.
- 11.8. Apex is never required to payment of compensation of damages as a consequence of consequential damage. As consequential damage will in any case be regarded: missed turnover, missed profits, missed savings, production damage, enterprise damage, enterprise disruption, stagnation damage, delay damage, substituting transport, travel costs, environmental damage and indirect damage, irrespective of their origin.
- 11.9. Except for rules of mandatory law, Apex is not liable for damage that is caused by the Product to other goods for

damage which is caused directly or indirectly by fittings/parts which have not been brought into account by its and/or other fittings or parts which have been applied to form part of an entirety. In particular, Apex is not liable for a defect of one of its Products that is caused by other adjoining parts or parts which are in connection herewith, or damage deriving therefrom.

- 11.10. Apex is not liable for any immaterial damage such as loss of customers or affection of image, or for damage deriving from claims of third parties towards the Customer or court ruling against the Customer.
- 11.11. The liability of Apex on the basis of Production and sale of its Products for each damage of whichever nature is per year in any case limited to an amount of 100% of the turnover exclusive of the VAT which is realised with the concerned Customer for the Product that the has caused damage, during the last 12 months prior to the date of the emergence of the damage.
- 11.12. The Customer safeguards Apex from claims that third parties instigate against Apex regarding incidents, acts or omissions, for which Apex is not liable on the basis of the previous. The Customer is required to indemnify Apex upon first request for all costs, damages and interests that might emerge for Apex as a direct or indirect consequence of a claim instigated against it by a third party as referred to in this section.
- 11.13. Rights to claim and other authorities of the Customer on whichever basis towards Apex become forfeit in any case after the expiry of 1 year from the moment on which a fact occurs that the Customer can apply these rights and/or authorities towards Apex.

Article 12 Force Majeure

- 12.1. In all instances in which the shortcoming in the compliance with an obligation is the consequence of Force Majeure, then all legal obligations of Apex will be suspended without that Apex therefore becomes liable to pay damages towards Customer/third parties.
- 12.2. Under Force Majeure which could be the foundation for a non-delivery, delayed delivery or a defective delivery will be understood, each event that lies reasonably outside the control of Apex, such as in particular: a strike which hits the branch of Apex or of its suppliers or transporters, accidents with equipment, disasters of nature, fire, theft, power disruption, disruption of the internet, government measures, import or export limitations, war or riots, weather circumstances, traffic disruption, without that this summation is limitative.

Article 13 Intellectual and industrial property

- 13.1. Design drawings, schedules, specifications, technical and commercial data, referral documents, test results, industrial catalogues, brochures, manuals, patents drawings and models which the Customer has ever received from Apex, will remain the property of Apex. It is therefore not permitted to disclose these in whichever manner or to multiply them without prior permission of Apex.
- 13.2. The Customer must notify Apex as soon as possible if any infringement is made on the intellectual or industrial property rights of Apex and must provide Apex upon its request with all possible assistance for the protection of these rights.

Article 14 Brand

- 14.1. The Customer shall use the brand and logo of Apex such as this has been provided by Apex. The Customer may use this on his print work of the company, on the front wall of the building and as outdoor advertising. One is not allowed to use the name and the logo of Apex in his company and trade name or make a reference thereto.
- 14.2. It is explicitly forbidden for the Customer to use the name Apex on the internet as domain name or as part of a domain name and/or e-mail address.
- 14.3. The Customer may use the brand and logo of Apex on his website if he complies with the terms and conditions below:
 - a. The graphic prescriptions of Apex must be observed;
 - b. The Customer may not use the logo on his website without prior written or electronic permission of Apex;
 - c. The Customer must endure himself that the manner of use and presentation on his website can give no cause to confusion with the site of Apex;
 - d. If the Customer wished to create on his website a link to the website of Apex, then the Customer Apex must request for prior written or electronic permission.
- 14.4. Apex reserves at all times the right to request the Customer to introduce changes or to withdraw his permission for

use of the brand and logo or the link, if Apex is of the opinion that the abovementioned terms and conditions have not been complied with by the Customer, or the brand Apex is only used to lure customers and not to sell the Products of Apex.

- 14.5. Apex reserves on any moment the right to check whether the data concerning the Products of Apex, as stated on the website of the Customer, are correct and request the Customer in a prevalent case to rectify incorrect statements immediately.
- 14.6. The Customer shall waive any claim against Apex and shall indemnify Apex for all consequences deriving from claims of third parties, of whichever nature, emerged by use of one or several brands and/or logo's belonging to Apex on his website.
- 14.7. The Customer is fully liable for the content of his website in accordance with the current regulations.
- 14.8. Notwithstanding the above stipulations shall the present terms and conditions in no case whatsoever constitute a transfer of the brand or the logo of Apex.

Article 15 Suspension and dissolution

- 15.1. Apex is authorised to suspend the execution of the Agreement with immediate effect if circumstances come to the knowledge of Apex after the conclusion of the Agreement gives good ground to fear that the Customer shall not comply with the obligations.
- 15.2. Apex is authorised to dissolve the Agreement, if the Customer does not or does not fully comply with the obligations from the Agreement and the Customer has not responded to a sent notification of default. If compliance is permanently impossible, then a notification of default can remain absent.
- 15.3. Furthermore, Apex is authorised to dissolve the Agreement if circumstances arise which are of such a nature that compliance with the Agreement is impossible or according to standards of reasonableness and fairness can no longer be required or if otherwise circumstances arise which are of such nature that unchanged maintaining of the Agreement may not be expected in reasonableness.
- 15.4. Apex is authorised to dissolve the Agreement, if the Customer files for suspension of payment or this is granted to the Customer, in case the Customer is declared bankrupt or a request thereto is filed, in case the Customer is not able to pay his debts, proceeds to termination or liquidation of his company, is being put under supervisor ship, or in case a receiver is appointed.
- 15.5. If Apex proceeds to suspension or dissolution, then it is in no manner whatsoever required to compensation of damage and costs emerged because of it in any manner.

Article 16 Secrecy

- 16.1. Both Parties are obliged to secrecy of all confidential information that they have acquired in the framework of their Agreement from each other or from another source. Information is regarded as confidential if this has been communicated so by the other Party or if this derives from the nature of the information. The Party that receives confidential information, shall only use this for the purpose for which it has been provided.
- 16.2. If on the basis of a stipulation in the law or a court ruling, Apex is required to provide confidential information to third parties designated by the law or the competent court, and Apex in that regard cannot claim an exemption right in the law or acknowledged or permitted by the competent court, then Apex is not required to compensation of damages or indemnification and is the Customer is not authorised to dissolution of the Agreement on the basis of any damage, emerged because of this.

Article 17 Applicable law and competent court

- 17.1. The Laws of the Netherlands are applicable to the General Terms and Conditions, the sales to which these apply and to all Agreements.
- 17.2. In case of disputes with regard to the interpretation or execution of the present General Terms and Conditions, each Party has the right to deploy an independent expert which has the task to mediate and let the Parties reconcile with each other. The independent expert shall be appointed in mutual consultation by the Parties. If the Parties can reach no agreement about the appointment of an independent expert, shall the latter be appointed by the president of the District Court in Amsterdam, the Netherlands.
- 17.3. Each Party retains the right to present each dispute in connection with the Products or the agreements applicable thereto, including these General Terms and Conditions before the competent court in Amsterdam, the Netherlands, which has exclusive judicial power.

17.4. If Apex is planning to start a summary proceedings or injunction procedure or to let conservatory measures, then it reserves the right to appoint another court.

Article 18 Changing of the General Terms and Conditions

18.1. Apex reserves the right to periodically change the General Terms and Conditions. The Customer must before he proceeds to placing an order, whether he is in the possession of the General Terms and Conditions in force on that moment. Apex shall upon request of the Customer send the most recent version.

Article 19 Permission

19.1. There where in these General Terms and Conditions permission is required of Apex and Apex has granted this permission, Apex can then withdraw that permission at all times with immediate effect without being liable for damages towards the Customer or third parties.