

# Groeneveld Transport Efficiency

## GENERAL TERMS & CONDITIONS GTE

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*Your efficiency is our Challenge!*

# 1. DEFINITIONS

- 1.1 In these general conditions of Groeneveld (hereinafter: *General Conditions*) the following wording(s) have the following meaning (both in the singular and in the plural):

**Agreement:** any agreement and/or other type of legal relationship between Parties concerning the delivery of Goods and/or Services and related matters, relating to Goods and Services as described in [www.groeneveld.nl/GTE\\_ENG](http://www.groeneveld.nl/GTE_ENG);

**Customer:** any entity or legal entity with whom Groeneveld wishes to enter into, enters into or has entered into a legal relationship;

**Dealer:** a seller or distributor, recognized in writing by Groeneveld, of Goods purchased from Groeneveld, such in Dealer's name and at Dealer's expense and risk;

**Defects:** certain defects in Goods that mean that those Goods do not meet the relevant functional specifications agreed between Parties in writing. Such defects can only be the case if these can be proven and/or reproduced and if Customer has advised Groeneveld of these defects forthwith by Guarantee Notification;

**Goods:** Equipment, Software, Groeneveld Goods and/or Groeneveld Software;

**Groeneveld:** any company or subsidiary company forming part in any way whatsoever of the Groeneveld Groep B.V. concern which wishes to enter into, enters into or has entered into any form of legal relationship with Customer;

**Groeneveld Goods:** certain Goods developed by or on behalf of Groeneveld;

**Groeneveld Software:** certain Software developed by or on behalf of Groeneveld;

**Guarantee Notification:** a written statement by Customer to Groeneveld in which he reports any Defect in a detailed and substantiated manner invoking guarantee as worded in the Agreement and/or these General Conditions;

**Equipment:** all equipment, components and/or materials of Groeneveld or their suppliers, as well as certain documentation that may be provided or has been provided by or on behalf of Groeneveld;

**Order:** any request by Customer to Groeneveld to enter into an Agreement concerning the delivery of Goods and/or Services, relating to Goods and Services as described in [www.groeneveld.nl/GTE\\_ENG](http://www.groeneveld.nl/GTE_ENG);

**Parties, respectively Party:** Customer and/or Groeneveld;

**Quotation:** any quotation, offer and/or tender by Groeneveld to Customer in respect of Goods, Services and related matters, relating to Goods and Services as described in [www.groeneveld.nl/gte](http://www.groeneveld.nl/gte);

**Services:** all services to be made available in any manner and/or work of any nature whatsoever to be carried out by or on behalf of Groeneveld;

**Software:** computer software in object code, from Groeneveld or their suppliers as well as certain documentation that may be provided or has been provided by or on behalf of Groeneveld;

**Working day:** a calendar day from 08.30h to 17.00h, except weekends and officially recognized holidays in the country of the delivering legal entity of Groeneveld;

## 2. GENERAL CONDITIONS

- 2.1. The General Conditions shall apply to all Quotations, Orders and/or Agreements. Parties declare and recognize explicitly that no other general (and/or special) purchasing, delivery or other conditions shall apply to such Quotation than the present General Conditions. These Conditions may only be deviated from with prior explicit permission from Groeneveld and agreement in writing on this matter between Parties.
- 2.2. Should one or more provision of these General Conditions be null and void or be nullified, the remaining provisions of these General Conditions shall

remain in full force and Parties shall consult in order to agree new provisions to replace the null and void and/or nullified provision(s), whereby as far as possible the objective as well as the nature and tenor of those provisions shall be taken into consideration.

- 2.3. These General Conditions have been drawn up in the Dutch and English languages and may be drawn up in other foreign languages. The Dutch text shall be binding and shall prevail in the case of any discrepancy or difference between said Dutch text and other texts.

### 3. AGREEMENT

- 3.1 All Groeneveld's Quotations shall be without engagement and shall consequently only be deemed to be an invitation to place an Order. The previous sentence shall not apply if a term of validity is stated expressly in the Quotation.
- 3.2 An Agreement shall only be considered as concluded when (i) Groeneveld has expressly confirmed said Agreement by post, fax, e-mail and/or other means of electronic communication customary in the market, or (ii) Groeneveld carries out acts from which it is apparent that Groeneveld has accepted the Order.
- 3.3 If there is a question of supplementary work, Groeneveld shall so advise Customer at the earliest opportunity and will advise him of the consequences thereof in terms of prices, fees, specifications, schedu-

les and terms. Amendments and/or supplements desired by Customer to deliveries of Goods and/or Services agreed between Parties shall only take effect after approval in writing by Groeneveld. As supplementary work is considered: any amendments and/or supplements that, in Groeneveld's view, may lead to such deliveries becoming more difficult or extensive. This supplementary work shall - in the case that Groeneveld accepts the desired difficulty or extension - be invoiced to Customer separately, also if Parties had previously agreed a fixed price.

- 3.4 Groeneveld retains the right to outsource and/or transfer its rights and obligations from any Agreement wholly or in part. Customer shall not have the right to cancel and/or transfer any Agreement (wholly or in part).

### 4. DELIVERY OF GOODS

- 4.1 Delivery of Goods shall take place against a net sum determined by Groeneveld Ex works (EXW, as expressed in the Incoterms 2000) at the location where Groeneveld is established of which Customer has been notified, unless otherwise agreed in writing by Parties. Groeneveld is authorized to deliver Goods in parts and to request payment for each (sub)delivery, unless otherwise agreed by Parties in writing.
- 4.2 Groeneveld shall pack Goods for delivery according to the customary standards applying at Groeneveld. Should Customer require a special form of packing, the relevant additional costs shall be for Customer's account. Customer shall treat the used packing materials from delivered Goods in a manner corresponding with the relevant regulations. Customer shall hold Groeneveld indemnified against claims by third parties due to

Customer's failure to comply with those and any other regulations.

- 4.3 Unless otherwise agreed between Parties in writing, Goods shall be considered to have been accepted by Customer at the moment of delivery by or on behalf of Groeneveld and if Customer has not laid a substantiated and specified claim appeal before Groeneveld in writing within eight (8) Working Days after said delivery and Groeneveld has been given the opportunity by Customer to investigate the Goods concerned within that term.
- 4.4 Groeneveld shall only accept returned Goods as set in Article 9 of these General Conditions, and solely if and to the extent that Groeneveld has given prior written permission for the return of Goods by Customer as per Article 9.

### 5. TRANSFER OF RISK & OWNERSHIP

- 5.1 From the moment upon which Goods have been placed within actual power of disposal of Customer or of an auxiliary person used by Customer, including the moment of delivery by or on behalf of Groeneveld as referred to in Article 4 paragraph 1, the Goods delivered shall be for Customer's risk.
- 5.2 Ownership (not being intellectual property rights and ownership) of the Goods delivered shall only be transferred to Customer after full payment by Customer of all accounts receivable arising from the Agreement. As long as Goods remain the property of Groeneveld,

(i) Customer shall at no time have the right to alienate, process or treat, encumber, pledge, lease and/or put Goods into use in any other manner, and (ii) Customer has the obligation to treat the Goods with the necessary care and to store them or have them stored as recognizable property of Groeneveld. Groeneveld shall at all times be entitled to repossess these Goods, wherever they may be. After reclamation Customer shall be credited for the prevailing market value of those Goods at that time, which may in no case be higher than the original price, less repossession costs.

## 6. SERVICES

- 6.1 If Customer should wish to have certain Goods maintained and/or supported by Groeneveld, Parties shall further arrange, specify and lay down the (manner of) delivery of said Services and related matters in an Agreement. Goods which are subject to the conditions of said Agreement will be specified in the Agreement, whereby it shall likewise be laid down for those Goods which specific Services have been agreed upon. Groeneveld reserves the right to carry out an inspection of aforementioned Goods before incorporating them in such an Agreement. Groeneveld shall carry out the Services with due care based on material and/or information as expressed in the Agreement and in Article 8 of these General Conditions. In the case that Customer has not entered into an Agreement with Groeneveld concerning maintenance Services for such Goods simultaneously with the conclusion of the Agreement on delivery of Goods, Groeneveld cannot be obliged by Customer to conclude such a maintenance agreement at a later point in time.
- 6.2 The agreed fees arising from an Agreement in respect of maintenance Services shall apply for a period of twelve (12) months, to be calculated from the date upon which such Agreement takes effect and will be invoiced in advance per twelve (12) months, unless
- 6.3 otherwise agreed between Parties in writing. Unless otherwise explicitly agreed in writing, an Agreement in respect of maintenance Services shall have a minimum duration of twelve (12) months, to be calculated from the date upon which such Agreement takes effect. After expiry of the minimum period referred to in the previous sentence, the Agreement shall tacitly be continued, each time for twelve (12) months, except in the case of termination by any Party by registered letter which should take place at least three (3) calendar months prior to the expiry date of that Agreement valid at that time.

## 7. FEE & PAYMENT

- 7.1 Customer has the obligation to pay fees to Groeneveld for the Goods and/or Services rendered, and/or related rights of use, such in conformity with the provisions of the Agreement and of the present General Conditions. Fees, prices and rates are expressed in Euro (EUR) and are exclusive of VAT and other government levies and taxes that are or may be due, unless otherwise stated by Groeneveld in writing.
- 7.2 Groeneveld reserves the right to charge for administration, handling, packing and/or forwarding costs.
- 7.3 Groeneveld shall have the right at all times to require from Customer that Customer shall provide satisfactory security for the fulfilment of his obligations to Groeneveld (including for example: bank guarantees). Should Customer refuse in such a case to provide Groeneveld with satisfactory security, Groeneveld shall have the right to terminate the Agreement concerned, in which case Customer shall have the obligation to reimburse Groeneveld for loss of income and to pay a reasonable compensation for costs incurred.
- 7.4 Groeneveld is entitled at all times to adapt the currently valid fees, prices and rates as mentioned in any Agreement to meet any increase in related price-
- determining factors, including: salary costs, social security charges, currency rates, purchasing prices, et cetera.
- 7.5 Groeneveld's invoices shall be immediately due and payable and shall be paid in full by Customer at the latest within thirty (30) days from invoice date, unless otherwise agreed between Parties in writing. Payment shall take place without any set-off, deduction and/or suspension.
- 7.6 Should Customer fail to pay any sum owed within the term of payment of thirty (30) days from invoice date of the invoice concerned, (i) Groeneveld shall have the right (notwithstanding all other rights accruing to them) – without any further notice of default being required – to suspend execution of any Agreement and Groeneveld shall have the right to charge Customer for any expenses incurred thereby in this respect, and (ii) Customer shall – without any further notice of default being required - owe interest over said due sum of at least one and a half (1.5%) percent per month or (if higher) the statutory trade interest rate. Should Customer continue to fail to meet the claim after notice of default, in additions to the sums then owed, Customer shall also be obliged to pay in full any extra judicial costs including collection costs.

## 8. OBLIGATIONS CUSTOMER

8.1 Customer is obliged to timely provide all access, facilities, Equipment, software and licences thereto, means and auxiliary means and information (including technical and functional documentation and other information) which Groeneveld will reasonably need for the proper execution of any Agreement (and/or that may be useful in any other way), without charging Groeneveld in this respect. Customer shall also give Groeneveld all necessary and adequate cooperation required for the proper execution of any Agreement and shall give Groeneveld instructions (on security and other relevant subjects) likewise without any charge to Groeneveld.

8.2 If Customer does not adequately and timely comply with the provisions of Article 8.1 then Groeneveld

shall in any case have the right to suspend execution of the Agreement concerned and Groeneveld shall have the right to charge for the costs thereby incurred according to the current prices and fees valid at that time. Customer holds Groeneveld indemnified against claims by third parties suffering damage in connection with the execution of any Agreement that is the consequence of acts or omissions of Customer.

8.3 Customer shall be exclusively responsible for the selection, use, security, back-up action and application of Goods and/or Services delivered by Groeneveld within Customer's organization or outside, unless previously and unambiguously otherwise agreed between Parties in writing.

## 9. OBLIGATIONS GROENEVELD

9.1 Groeneveld shall make available qualified persons for the delivery of Goods and/or Services and shall make every effort to carry out delivery to the best of their knowledge and ability.

9.2 Groeneveld shall deliver Goods and/or Services during Working Days, unless otherwise agreed between Parties in writing. All schedules and terms mentioned by Groeneveld and/or agreed with Groeneveld have been described and planned to the best of their knowledge on the basis of the information and circumstances known to Groeneveld when the Agreement was concluded. Groeneveld shall make every effort to adhere to said schedules and terms; the occasional exceeding of such term or schedule shall not be considered an attributable shortcoming of Groeneveld. In the case that there is a risk of exceeding such term or it has already been exceeded, Parties shall consult as soon as possible.

9.3 The exclusive guarantee and liability framework for Goods is described in the present Article 9.3.

**a.** Groeneveld guarantees that any Goods delivered by and/or on behalf of Groeneveld will function substantially according to the specifications laid down by Groeneveld for a period of twelve (12) months from the time of delivery by or on behalf of Groeneveld, copy of which specification(s) shall be presented to Customer for inspection upon demand. The guarantee term shall not recommence in case of replacement and/or repair of the Goods concerned; the original guarantee period shall in all cases remain intact.

**b.** In no case shall the guarantee as referred to in this Article apply (i) to the delivery, replacement or introduction of consumer materials, (ii) for Defects in any way related to (a) external influences, (b) repairs,

modifications and careless, inexpert and/or incorrect use, and/or similar acts by Customer or by third parties, and/or (iii) in cases of non-attributable shortcoming on the part of Groeneveld.

**c.** Customer may only invoke the right to any guarantee after Customer shall have fulfilled all his financial and other obligations in respect of Groeneveld concerning the Goods delivered. Should a Defect occur in Goods delivered to Customer by Groeneveld, Customer must so advise Groeneveld or a Dealer by means of a Guarantee Claim as early as possible after such has arisen (but in any case at the latest within eight (8) days after Customer has become aware of said Defect or should have been aware thereof) in default whereof right to guarantee shall lapse. Such Guarantee Claim should include, but in any case, mention and specify: the Goods concerned, the serial number or other identifiable details of those Goods, the manner of use, the Defect, the date upon which the Defect was discovered, in default of which right to guarantee shall lapse.

**d.** In the case that Groeneveld – based on the first available information – can concur with (the contents of) the Guarantee Claim, for the Goods concerned Groeneveld will (i) repair the Defects to the best of their knowledge and ability and send Customer a credit note for the related sum, or replace the Goods concerned or (ii) send Customer a credit note for the sum that Customer had paid for those Goods, such at the discretion of Groeneveld.

**e.** As the occasion arises or in case Groeneveld is not able (based on such first available information) to assess the Guarantee Claim, Groeneveld shall inform Customer in writing whether or not (and where to) the Goods concerned should be returned by Customer. Article 4.4 of the present General Conditions shall

apply unimpaired. In such cases the reasonable transport expenses for a shipment by Customer per normal transport shall be in the first instance for Groeneveld's account.

**f.** In all other cases than described in Article 9.3.e - and if it should ultimately transpire after final investigations by Groeneveld that the Goods show no defect within the guarantee framework - transport, investigation and related costs shall be finally for risk and account of Customer and the remainder shall be charged according to the valid prices and rates of Groeneveld at that time. From the moment at which Goods have been placed within actual power of disposal of Groeneveld, the Goods concerned shall be for Groeneveld's risk.

**g.** In the case that Groeneveld shall have elected for replacement of the Goods concerned in conformity with Article 9.3.d, Groeneveld shall supply Customer with appropriate new Goods or parts of such Goods or other adequate Goods or parts thereof, such at the discretion of Groeneveld.

**h.** In other cases Customer shall be obliged to store the Goods concerned during a period of six (6) months for own risk and account, so that Groeneveld shall have the opportunity during that period to examine or further examine the Defects.

9.4 Except for the provisions of the present General Conditions and the Agreement, all other explicit and/or tacit stipulations, guarantees, conditions and obligations, whether ensuing from the law or not, in respect of fulfilment by Groeneveld of their obligations arising from any Agreement, shall be excluded, to the extent permitted by law. Groeneveld shall not be liable in respect of Goods, Services and related events beyond the framework as described in the present Article 9.

9.5 All Goods and/or Services delivered to Customer beyond the framework of the guarantee obligations of Groeneveld (as described in these General Conditions and Agreement) shall be charged by Groeneveld in conformity with the prices and rates of Groeneveld valid at that time.

## 10. INTELLECTUAL PROPERTY RIGHTS

10.1 All intellectual property rights relating to Goods and Services shall solely be held by Groeneveld or its licensor(s) respectively. Customer shall not acquire any rights (of use) and/or other powers whatsoever, unless granted in the present General Conditions, any Agreement and/or otherwise expressly agreed in writing between Parties.

10.2 Groeneveld holds Customer indemnified – within the framework of Article 10 – against claims by third parties in respect of said Goods, exclusively due to an infringement or alleged infringement of any intellectual property right applying in the Netherlands. In such cases, at Groeneveld's request Customer shall: (i) advise Groeneveld immediately in writing concerning the existence and the content of the claim, (ii) give Groeneveld the required and adequate cooperation,

(iii) leave handling of the case concerned to Groeneveld, and (iv) if necessary provide Groeneveld with adequate powers of attorney to refute the claim, if necessary in Customer's name.

10.3 The indemnity referred to in Article 10.2 shall cease to exist (i) if and insofar the infringement concerned is connected with any change to the Goods made by others than Groeneveld and/or (ii) if the infringement concerned is not attributable to Groeneveld.

10.4 In the case of the aforementioned claims by third parties, Groeneveld shall have the right to replace or change Goods or any part thereof, or to terminate the Agreement concerned wholly or in part, such at Groeneveld's discretion.

## 11. NON-ATTRIBUTABLE SHORTCOMING

11.1 Groeneveld shall not be liable for entire or partial failure to comply with any obligation of and/or on behalf of Groeneveld arising from an Agreement, if such failure to comply cannot be imputed to (nor is a consequence of) their fault, nor is accountable to them pursuant to law, juristic act and/or generally accepted practice (anticipated or not) and which therefore cannot be imputed to Groeneveld. Such a situation may be understood to include a non-attributable shortcoming of suppliers and/or Dealer.

11.2 In such situations Groeneveld shall have the right to suspend the present and related obligations without the intervention of the court and/or - if such a situation has gone on for longer than two (2) calendar months - to terminate the Agreement concerned wholly or in part, in writing, without Groeneveld being held to any compensation and/or guarantee. In the case of whole or partial termination, that which has already been performed pursuant to the Agreement shall be settled in proportion, without any further mutual debt between Parties.

## 12. LIABILITY

- 12.1 Groeneveld's total liability arising from the Agreements, General Conditions, Quotations and/or the performance thereof is described exhaustively in the provisions of Article 12 and its paragraphs; beyond the cases mentioned in this Article 12 and the paragraphs thereof, Groeneveld shall be subject to no further liability for compensation, irrespective of the nature of the claim(s) concerned
- 12.2 Any right of Customer to compensation shall only arise if Customer reports such damage to Groeneveld in detail in writing, as early as possible after it occurs (but in any case within fourteen (14) days after Customer has become aware of such damage, or should have been so aware). Customer shall have no right to compensation if the Goods to which the damage relates have been wholly or partly processed or treated and/or otherwise altered by and/or on behalf of Customer.
- 12.3 If and to the extent that any action and/or omission of Groeneveld should result in death and/or bodily injury, Groeneveld shall be liable for a maximum sum of EUR 1.000.000 (in writing: one million Euro) per event, whereby a series of connected events shall count as a single event, such with the exception of intention or gross negligence on the part of the management of Groeneveld.
- 12.4 Except in cases of intention or gross negligence on the part of the management of Groeneveld, Groeneveld shall not be liable for (i) indirect damage (including but not limited to consequential loss, loss of profit, missed savings, damage to data files and damage due to business interruption) as well as (ii) any other damage exceeding the total sum (excluding VAT) invoiced by Groeneveld to Customer and paid by Customer to Groeneveld, pursuant to the Agreement concerned (or the relative part thereof) whereby the aforementioned - total - sum to be paid shall not exceed EUR 500.000 (in writing: five hundred thousand Euro) per calendar year. Under 'other damage' as referred to in the previous sentence shall exclusively be understood: (i) reasonable costs incurred by Customer (a) in order to determine the cause and extent of that 'other damage', (b) to prevent or limit such 'other damage', and (c) to ensure that the performance of Groeneveld meets the Agreement concerned, to the extent that such Agreement has not been dissolved by Customer, (ii) reasonable costs incurred or to be incurred by Customer in cases such as described in Article 10.2, and (iii) material damage to Goods and/or other matters belonging to Customer and/or third parties that are directly connected to Goods and/or Services delivered by Groeneveld, such excluding damage to Software and data files.
- 12.5 Without prejudice to the above provisions in Article 12 and its paragraphs (but except in cases of intention of gross negligence on the part of the management of Groeneveld), Groeneveld shall only be liable for damage covered by insurance taken out by Groeneveld. A copy of which insurance and the appropriate policy shall be handed over to Customer for inspection upon demand.

## 13. CONFIDENTIALITY AND & NON-ACQUISITION OF STAFF C.A.

- 13.1 Each Party shall treat all information of a confidential nature received from the other Party, including information relating to commercial, strategic, financial, technical and/or other information and/or knowledge relating to the other Party with the strictest confidence and shall make no statements concerning this to third parties. Such information shall in any case be considered as confidential if this is so indicated by one of the Parties. Parties shall reciprocally be held to take adequate measures and precautions to maintain the secrecy of such confidential information.
- 13.2 Deviation from the provisions of Article 13.1 may only take place if (i) said information is disclosed with prior written permission from the other Party and/or (ii) said information must be disclosed to meet a decision to that effect by a judicial authority, in which case the Party who is forced to disclose shall so notify the other Party in advance and shall take such steps as the other Party may reasonably desire to limit such publication as far as possible and to protect the confidentiality of said information to the greatest possible extent.
- 13.3 Each Party engages in respect of the other Party, during the term of any Agreement and for one (1) year after termination (irrespective of the reason for termination and/or who initiated such termination) and/or expiry thereof, not to employ, either directly or indirectly (either for himself or for the benefit of others) staff or other co-workers of the other Party who have been involved in execution of said Agreement, Party, nor to have aforementioned staff or co-workers work for them in any other manner, such with the exception of prior, explicit written permission from and agreement with that other Party.
- 13.4 In the case of infringement of the provisions of Article 13.3 the infringing Party shall owe other

Party, among other things, an immediately due and payable fine equal to one (1) gross annual salary per staff member or co-worker concerned, without pre-

judice to the right of said other Party to recover the entire damage from the infringing Party.

## 14. TERMINATION

14.1 Each Party shall be authorized to terminate the Agreement concerned forthwith, without further notice of default and without prior judicial intervention, if (i) the other Party applies for suspension of payments or is declared bankrupt, or (ii) the other Party is a legal entity and this legal entity is dissolved.

14.2 The Agreement concerned may be terminated by Groeneveld forthwith in whole or in part, without further notice of default to Customer and without prior judicial intervention, by registered letter, if Customer remains in default in respect of - timely - fulfilling of any obligation arising from that Agreement (including but not limited to payment of sums owed by Customer) and after fourteen (14) days

have passed after the date of a written notice of default to Customer, such without prejudice to the other rights accruing to Groeneveld.

14.3 If at the time of termination Customer has already taken delivery of any Goods and/or Services of Groeneveld, these and the related obligation to pay shall not be subject to undoing. Sums that Groeneveld shall have invoiced prior to termination in connection with that which Groeneveld had already delivered upon execution of the Agreement, will remain due and shall be payable forthwith at the time of termination, without prejudice to any other rights accruing to Groeneveld.

## 15. LAW & FORUM

15.1 The laws of the Netherlands shall exclusively apply to these General Conditions, Quotations and Agreements and/or the performance thereof. The application of the Convention on Contracts for the International Sales of Goods (April 1980) is hereby excluded.

15.2 All disputes arising from the General Conditions,

Quotations and Agreements and/or the performance thereof and/or are related thereto shall exclusively be laid before the competent court in Dordrecht, unless Groeneveld as plaintiff or petitioning Party elects for the competent court of the domicile or place of business of Customer or unless Parties shall agree a binding ruling or arbitration in the relevant case.

