

GENERAL TERMS AND CONDITIONS

Article 1 Definitions

- 1.1. The capitalised terms employed in these terms and conditions bear the meaning assigned to them below:

Agreement	an agreement between Topcats and a Client concerning the purchase of Products and/or Services;
Article	an article in these Terms and Conditions;
Client	a party to or with whom Topcats provides a fee estimate and/or enters into an Agreement;
In Writing/Written	notification by post or email;
Intellectual Property Rights	any (claim to) intellectual property and similar related rights in the broadest sense of the term anywhere in the world whatsoever, which are deemed to include in particular – but are not confined to – (1) copyrights, (2) design rights, (3) trademark rights, (4) trading names, (5) database rights, (6) patents, (7) business secrets and know-how, (8) domain names and rights pursuant to the doctrine of slavish imitation, which is also deemed to include any entitlements (including at any rate the exclusive right to disclosure and replication) which the relevant international legislation and regulations assign or may yet assign to them;
Parties	Topcats and a Client jointly;
Products	any products which Topcats trades in, including catalytic converters, particulate filters and (other) exhaust system products;
Services	the services performed by Topcats for a Client, including any related to (the overhaul, cleaning and upgrade of components in) exhaust systems;
Terms and Conditions	these general terms and conditions;
Topcats	Total Cats International B.V., trading under the name of Topcats and registered with the Dutch Chamber of Commerce under number 39081762.



Article 2 **Scope of application**

- 2.1. These Terms and Conditions shall not apply to consumers but only to parties acting for the purposes of practising a profession or conducting a business.
- 2.2. These Terms and Conditions shall apply to all fee estimates, assignments, order confirmation notices and Agreements issued or concluded to, by or with Topcats, as well as to all (legal) acts performed in relation to them.
- 2.3. Any natural person or legal entity that is directly or indirectly associated with Topcats and is in any way involved in the execution of an Agreement may also invoke these Terms and Conditions. This provision constitutes an irrevocable third-party clause for the benefit of any party associated with Topcats.
- 2.4. These Terms and Conditions shall also apply in the case of any future offer, fee estimate, order or Agreement between the relevant Parties to the exclusion of the application of any of a Client's general terms and conditions.

Article 3 **Procurement of Products**

- 3.1. A Client may place one order at a time for the number of Products that they require through their personal account with the Topcats web shop. Should a Client place an order by phone or email, Topcats shall confirm the order, provided that it can deliver the desired number of Products. By virtue of a Client placing an order or Topcats issuing a notice of confirmation, a separate Agreement shall be concluded between the Parties each time.
- 3.2. In so far as an Agreement has not already been concluded between the Parties, it shall at any rate be concluded at such time as Topcats sends the relevant Products to the Client concerned at the latter's request.
- 3.3. A Client shall be liable for the price for the relevant Products which is applicable when they place the order or Topcats confirms the order as stipulated in Article 3.1. This price may be found in the relevant Client's personal account in the Topcats web shop.

Article 4 **Procurement of Services**

- 4.1. A Client may ask Topcats for an estimate of the fee for the provision of Services in respect of an exhaust system located on the Client's or a third party's premises. A Client cannot derive any rights from such estimate.
- 4.2. After the Client has sent the relevant exhaust system to Topcats and the latter has it in its possession, Topcats shall provide the Client with a fee estimate by telephone or In Writing stipulating the actual price for performing the Services concerned. Once the Client consents to the fee estimate, Topcats shall issue an order confirmation notice. A contract shall be concluded between the Parties by virtue of the order confirmation notice being issued.
- 4.3. In the event that a Client does not use the Topcats fee estimate mentioned in Article 4.2 for any reason whatsoever, the Client shall be liable for the cost of returning the relevant exhaust system or other item(s).
- 4.4. When providing Services, Topcats may also use Products as replacement parts, for example.



- 4.5. Topcats may also supply Products and/or provide Services on a project basis. In that case Topcats shall estimate the costs involved based on the Client's problem description and Topcats' own research. Once a Client consents to a fee estimate, Topcats shall issue an order confirmation notice. By virtue of an order confirmation notice being issued an Agreement shall be concluded between the relevant Parties in the case of that specific project.
- 4.6. In so far as an Agreement has not previously been entered into by any Parties, it shall at any rate be concluded at such time as Topcats starts to supply Products or to provide Services at the relevant Client's request.

Article 5 **Further provisions governing the price of Products, Services and Projects**

- 5.1. All prices mentioned by Topcats (such as those in its web shop, and in fee estimates and order confirmation notices) shall be stated in euros exclusive of VAT, other government levies, transport charges and other costs which Topcats has not explicitly mentioned.
- 5.2. Where Topcats makes the Client an offer, it may only be accepted as is. Even if a Client's acceptance derogates from an offer in minor respects, it shall be deemed to be a rejection of it and shall not be binding on Topcats. The situation shall only be otherwise, provided that Topcats consents to any modified notice of acceptance In Writing.
- 5.3. Topcats shall always be entitled to set prices for its Products, Services and Projects at its own discretion. Topcats shall not be bound by previously quoted prices, including any mentioned in prior fee estimates or Agreements.
- 5.4. Should a Topcats offer or price list contain a manifest or apparent clerical error, mistake or ambiguity, such as a price which a Client knows or could have known is not realistic, Topcats shall be entitled to revoke the relevant offer or to terminate the Agreement concerned without any duty to provide compensation for any costs or damage. This clause shall also apply in the event that a Client has already accepted the relevant offer.

Article 6 **Payment**

- 6.1. Topcats shall be entitled to require full payment in advance before it starts executing an Agreement.
- 6.2. Topcats' invoices must be paid within fourteen (14) days after the relevant invoice date, unless an invoice stipulates a different term of payment or the Parties have made a different payment arrangement In Writing.
- 6.3. A Client shall not be entitled to setoff, suspension or compensation for any debt.
- 6.4. Should a Client fail to pay Topcats on time, they shall be in default by operation of the law. In that case the Client shall be liable for default interest amounting to 1.5% of the unpaid sum each month during which they are in default, where part of a month shall be treated as an entire month, subject to Topcats' entitlement to demand immediate payment of the outstanding amount in full and subject to any other rights that Topcats holds.
- 6.5. Topcats shall be entitled to arrange for any payments made by a Client to serve to reduce any expenses in the first place, then any interest that is due and finally the principal sum and any current interest.

- 6.6. Should a Client be in default with regard to compliance with one (1) or more of their obligations to pay any pecuniary sum, they shall be liable for all reasonable (legal) expenses incurred for the purposes of securing payment judicially and extrajudicially. Compensation for such costs shall amount to no less than 15% of the entire outstanding sum subject to a minimum of €650.00 in all cases.
- 6.7. Topcats shall be entitled to suspend the supply of Products and Services, and the execution of a project as the case may be, for as long as the relevant Client fails to comply with their financial obligations (for any reason whatsoever) or in the event that Topcats has grounds to assume that the Client will be unable to comply with their financial obligations without Topcats having a duty to provide compensation for any costs or damage.

Article 7 **Supply of Products and Services**

- 7.1. Products shall be delivered DAP at the relevant Client's address (Incoterms 2020). The Client shall therefore be liable for any damage which occurs while the Products are unloaded, which is deemed to include (but is not confined to) fire and water damage, theft and damage due to a fall or push. A Client shall be required to notify Topcats of any shipping instructions no less than six (6) days before the delivery date that is envisaged.
- 7.2. Where the Parties have agreed In Writing that the relevant Client will take care of transport, delivery shall be effected Ex Works Lelystad. All risks pertaining to any Products (which are deemed to include risks pertaining to fire and water damage, theft and damage due to a fall or push) shall pass to the relevant Client at such time as delivery occurs. A Client shall have a duty to collect the relevant Products (or to arrange for this to be done) within eight (8) days after Topcats notifies the Client that the Products are ready.
- 7.3. The provisions of Articles 7.1 and 7.2 concerning delivery shall also apply in respect of those items (including exhaust systems) which Topcats returns to a Client following the provision of Services or in the event that a Client does not avail themselves of Topcats' offer as provided for in Article 4.3.
- 7.4. Should Topcats mention a (delivery) term (for instance in its web shop or an order confirmation notice), it shall always be indicative and never material unless otherwise stipulated In Writing in an Agreement.
- 7.5. Furthermore, Topcats shall only be in default in the case of an agreed deadline for delivery, after a Client notifies it In Writing that it is in default and has afforded it a reasonable deadline for compliance.
- 7.6. Topcats shall be entitled to execute an Agreement and issue invoices pursuant to it in instalments.
- 7.7. Under no circumstances shall Topcats have a duty to enter into an Agreement and it may decide at any time to refrain from supplying Products or Services, or from executing a project (or to rescind all or part of an Agreement) as the case may be, for instance, if a Product is no longer available, the relevant Client fails to comply with any of their obligations towards Topcats, the Client is granted a moratorium on payments, the Client files for bankruptcy or is declared bankrupt, the Client ceases to conduct business (or a significant part of it) or any third party that is not a group company or subsidiary within the meaning of Articles 2:24b and 2:24a of the Dutch Civil Code, acquires direct or indirect



control over the Client's operations. Should Topcats proceed with this, it shall not have a duty to pay for any costs incurred or damage suffered by the relevant Client.

Article 8 **Retention of title**

- 8.1. Products shall be supplied subject to retention of title, with the result that any items supplied shall remain the property of Topcats until the relevant Client complies with all of their financial obligations (which are deemed to include the price of the Products concerned, any shipping costs, interest and extrajudicial expenses) pursuant to the Agreement in question and any other Agreements between the Parties.
- 8.2. A Client shall be required to store any Products delivered subject to retention of title as the recognisable property of Topcats and to insure them against the customary risks, including those of fire, damage and theft.
- 8.3. In the event that a third party arranges for any Products subject to Topcats' retention of title to be attached, the relevant Client shall have a duty to notify Topcats of this as soon as possible but by no later than within two (2) days after the time when they learn of the attachment. The Client shall be required to notify the bailiff of Topcats' retention of title when the attachment occurs.
- 8.4. At any point in time Topcats may decide for reasons of its own to collect any Products that are subject to its retention of title from the relevant Client or to arrange for this to be done. A Client shall have a duty to notify Topcats of the location of its Products and to grant it or any other party engaged by it (such as a bailiff) access to such location.

Article 9 **Warranty, complaints and claims**

- 9.1. Topcats shall endeavour to ensure that the Products possess the qualities and properties required for their normal use or those which Topcats has warranted In Writing are present.
- 9.2. Topcats shall provide a two-year warranty on its Products.
- 9.3. Topcats shall warrant its Services for usage of up to one hundred thousand (100,000) kilometres subject to a maximum term of two years.
- 9.4. By way of derogation from Articles 9.2 and 9.3, Topcats shall not provide a warranty for parts subject to wear and tear, and consumables (including particulate filters and catalytic converters), also in view of the fact that their useful life depends on matters beyond Topcats' control (such as the operation or tuning of the engine, the use of the wrong fuel (additives) or any driving). This also implies that no warranty shall be provided on any Service in so far as it involves cleaning parts subject to wear and tear or fitting new parts that are subject to wear and tear.
- 9.5. Topcats' warranty shall only cover the Products themselves. A Client shall be liable for any costs due to related services (such as time spent on (dis)assembly, tuning and adjustments) or materials (such as oil and filters). Furthermore, a Client shall be liable for any administration and shipping costs, and any additional expenses incurred to secure a warranty from a Topcats supplier.



- 9.6. A Client shall be required to check the relevant Products and all items returned to the Client in connection with any Service (including exhaust systems) immediately upon delivery. A Client shall report any shortfall, damage or other deficiency affecting the relevant Products and/or goods themselves or their packaging which is already evident at the time of delivery to Topcats immediately but by no later than within one (1) week. Should such deficiency become evident and it could not reasonably have been known before that deadline, the relevant Client shall be required to report it to Topcats In Writing as soon as possible but by no later than within one (1) week.
- 9.7. A Client shall only be entitled to return Products provided that Topcats has consented to this. The relevant client shall bear the costs and risks associated with such return.
- 9.8. Topcats shall be entitled to modify its Products, even if samples or models have been shown to a Client. A Client may only object to this if any such modification affects the quality of the relevant Products. A deficiency shall also be deemed to mean any minor difference in colour as well as any minor deviation in size and number.
- 9.9. In the event of a complaint, the relevant Client shall always describe the deficiency accurately and provide photographs. The Client shall also provide information which will enable Topcats to trace the Agreement concerned, which is deemed to include the order number.
- 9.10. Where Topcats has procured certain (parts of) Products from a supplier, Topcats shall not be bound by any further warranty or liability towards a Client beyond that to which Topcats is entitled from its supplier.
- 9.11. Quality impairment or damage caused due to improper use (such as due to incorrect assembly, use contrary to instructions or the manual, use for purposes for which a Product is not intended or heat) or excessive use, or because modifications have been made to the relevant Product, may under no circumstances constitute grounds for a claim.
- 9.12. In the event of a justified complaint with respect to a Product, Topcats shall be entitled (acting on the basis of its own decision and at its own discretion) either to repair the Product, replace or redeliver it, or to refrain from further delivery and to credit the relevant Client for the Product's purchase price.
- 9.13. In the event of a justified complaint in respect of a Service, Topcats shall be entitled (acting on the basis of its own decision and at its own discretion) either to provide the relevant part of the Service again or to refrain from further supply and to credit the relevant Client for a proportionate share of the Product's purchase price.
- 9.14. In the event that a complaint does not comply with the provisions of this Article 9, any claim against or liability on the part of Topcats shall lapse.

Article 10 **Intellectual Property Rights**

- 10.1. All Intellectual Property Rights to any Products and their related packaging, labels and tags, as well as to all items provided in relation to Products and Services, including advertising material, documentation, reports, fee estimates and preparatory materials for same, shall be solely vested in Topcats and its licensors. A Client shall only be entitled to the (non-exclusive) use of such Intellectual Property Rights provided that this is necessary, such as



for the purposes of the normal method of advertising and/or selling any Products. No Intellectual Property Rights shall be transferred from Topcats to a Client.

- 10.2. A Client shall not be permitted to register trademarks, trading names or domain names, Google AdWords or similar keywords, or social media pages that include the trading names or trademarks of Topcats, including 'Topcats'.
- 10.3. A Client shall warrant that they will not do or fail to do anything that infringes Topcats' Intellectual Property Rights or those of any other party from whom Topcats has secured a licence, renders such rights invalid or may endanger the property of the relevant rightsholder and/or Topcats' licence to such Intellectual Property Rights.
- 10.4. Under no circumstances shall a Client be allowed to remove any designation regarding Topcats' Intellectual Property Rights on any Products or the other items mentioned in Article 10.1. More specifically, a Client shall not be permitted to sell Products under another name or trademark.
- 10.5. Topcats shall be entitled to mention a Client's trading or other name and trademark, and to use its logo for the purposes of promoting any Products, Services, projects and Topcats' business, including on its website and social media pages.

Article 11 **Liability**

- 11.1. Topcats shall only be liable for damage which directly ensues from foreseeable and avoidable non-compliance for which it may be held culpable and which is directly related to (the execution of) an Agreement.
- 11.2. Any duty on the part of Topcats to pay compensation to a Client for any reason whatsoever, shall at all times be confined to compensation for – only – any direct damage (as defined in Article 11.5) subject to no more than the amount which Topcats' insurer pays out in the relevant case.
- 11.3. In the event that and in so far as Topcats' liability insurer does not proceed with a payout, any duty to pay compensation on the part of Topcats shall be confined to no more than the sum which it has received pursuant to the relevant Agreement (exclusive of VAT).
- 11.4. Under no circumstances shall Topcats' overall compensation for damage suffered by a Client exceed €25,000.00 excluding VAT.
- 11.5. For the purposes of these Terms and Conditions, 'direct damage' shall only be deemed to refer to:
 - a. any reasonable costs which a Client would be required to incur to ensure that Topcats' performance corresponds to the Agreement in question.
 - b. any reasonable costs incurred by a Client for the purposes of determining the cause and extent of any damage, in so far as such determination relates to direct damage within the meaning of these Terms and Conditions; and
 - c. any reasonable costs incurred by a Client to prevent or limit damage in so far as the Client can show that such costs have had the effect of limiting any direct damage within the meaning of these Terms and Conditions.
- 11.6. Under no circumstances shall Topcats be liable for any indirect damage. Amongst other things, for the purposes of these Terms and Conditions 'indirect damage' is deemed to refer



to (but is not confined to) consequential loss, loss of turnover and/or earnings, forgone savings, investments, any loss due to the disruption or stoppage of business and/or any expenses incurred for the purposes of preventing, determining or limiting any indirect and/or incidental loss, and/or liability for same, and any costs incurred for the purposes of securing extrajudicial compensation for such indirect damage. Should Topcats nevertheless be liable for any indirect damage, the provisions of Article 11.1 to 11.4 shall apply, in respect of which the limitations referred to therein shall apply in relation to the sum of any direct and indirect loss.

- 11.7. Any claim for compensation against Topcats shall lapse by virtue of the mere expiry of five (5) months after the damaging event occurred.
- 11.8. A Client shall be required to take out adequate insurance against the usual risks, including against fire, damage, theft and liability.
- 11.9. A Client shall be required to make every effort to reduce costs and damage, regardless of the cause. Under no circumstances shall Topcats have a duty to provide compensation for costs or damage which could have been reasonably avoided or which the Client could have reasonably insured.
- 11.10. The limitations of liability referred to in this section shall cease to apply, if and in so far as the relevant loss is due to a deliberate act or omission, or wilful recklessness on the part of Topcats, such to be proved by the relevant Client, unless otherwise applicable pursuant to the legally stipulated assignment of the onus of proof.

Article 12 **Force majeure**

Topcats shall not have a duty to comply with any obligation towards a Client to provide compensation for costs or damages if force majeure occurs. In the case of Topcats force majeure shall be deemed to occur in the case of war (or the danger of war), rioting, an act of war, fire, a flood, water damage, an industrial strike, a staff shortage, a sit-in, a pandemic or epidemic (or a measure due to either), the unavailability of raw materials or parts, deficient care on the part of transporters, a computer, software, energy, network or internet malfunction or cybercrime (such as hacking and cyberattacks), any of these either in Topcats' business or that of any other party that is relevant for the purposes of executing an Agreement (such as a supplier). Furthermore, force majeure shall be deemed to occur in the case of any other cause which occurs through no fault of Topcats or in respect of which it bears no risk.

Article 13 **Other provisions**

- 13.1. Any amendment of the provisions of these Terms and Conditions or an Agreement shall only come into effect, provided that it is recorded In Writing and it shall only apply to the Agreement in respect of which it has been discussed and not (also) any other Agreement.
- 13.2. In derogation from Article 13.1, Topcats shall be entitled to amend these Terms and Conditions by means of a Written notice addressed to its Clients. A Client shall consent to any reasonable amendment. An amendment shall come into effect at the effective time that is announced or, where no time is mentioned, at such time as Written notice of it is given.



- 13.3. In the event that any provision of these Terms and Conditions or an Agreement appears to be invalid or non-binding, the Parties shall remain bound by the remaining part thereof. The parties shall replace the invalid or non-binding part with provisions that are valid and binding, and whose consequences approximate those of the invalid or non-binding part as far as possible, given the content and scope of these Terms and Conditions or the relevant Agreement.
- 13.4. Should these Terms and Conditions appear in multiple languages and there is a conflict between language versions, what is stipulated in the Dutch version shall prevail.
- 13.5. Any agreement between the Parties (including an Agreement) shall only apply in respect of the Parties themselves. A third party may not accede to an agreement between the Parties. As such, Article 6:254(1) of the Civil Code shall not apply.
- 13.6. A Client shall not be permitted to assign (their rights and obligations pursuant to) an Agreement to a third party without Topcats' Written consent. This article shall have effect under property law.

Article 14 **Choice of law and forum**

- 14.1. These Terms and Conditions and any fee estimate or Agreement shall be solely governed by and construed in accordance with the law of the Netherlands. The Vienna Sales Convention 1980 shall not apply.
- 14.2. The District Court of Central Netherlands, having its seat in Lelystad shall enjoy exclusive jurisdiction to hear a dispute, unless Topcats chooses to bring proceedings before a court in another place (such as the place in which the relevant Client has its registered office).