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## General Terms and Conditions of Sale and Delivery of Avalon B.V.

### Definitions:

Vendor: Avalon B.V., the user of these General Terms and Conditions of Sale and Delivery.  
Purchaser: The party with whom Avalon B.V. is dealing.  
Agreement: The agreement between Avalon and the other party.

### Article 1. Applicability of these terms and conditions

1. These general terms and conditions of sale and delivery apply to all quotations, offers, agreements and legal relationships, by whatever name, of Avalon B.V., unless explicitly agreed otherwise in writing. These conditions apply in particular to agreements entered into by Avalon B.V. for the delivery of goods to their purchasers.
2. Whenever these general terms and conditions of sale and delivery refer to "purchaser", it must be understood to mean every natural or legal entity in negotiations with Avalon B.V. and/or having entered into a legal relationship, by whatever name, with Avalon. In particular, the term "purchaser" shall be understood to mean the party by whose order and at whose expense goods are supplied.
3. Variations of the provisions laid down in these general terms and conditions of sale and delivery shall only and exclusively be valid if and insofar as expressly laid down in writing.
4. In the event of the party of Avalon B.V. referring to its general terms and conditions, those terms and conditions shall not apply and are expressly excluded. This shall be deviated from only if and insofar as the applicability of the terms and conditions of the purchaser are not in conflict with our general terms and condition of sale and delivery. If they do, only the provision in our terms and conditions apply. Any other stipulation in the terms and conditions of the purchaser shall not affect the above.
5. For the purpose of these general terms and conditions of sale and delivery, the term "delivery (of goods)" shall also be understood to mean the provision of services and activities of whatever nature.
6. If part of these general terms and conditions of sale and delivery are declared invalid or non-binding, the parties continue to be bound by the remaining part. In that instance, Avalon B.V. shall be entitled to replace the invalid or non-binding part with provisions that are valid and binding and of which the legal consequences, with a view to the contents and purport of these general terms and conditions, correspond to those of the invalid or non-binding part as much as possible.
7. If one or more provisions in these general terms and conditions are null and void or may become null and void, the other provisions of these general terms and conditions remain applicable.

### Article 2. Offers

1. All offers, in whatever form, are without obligation, unless it specifically states a term for acceptance. Hence offers without a term of acceptance are by no means binding. An instruction given to us is valid as an offer, which shall only be regarded as accepted by us after our written confirmation (i.e. confirmation of instruction), with due observance of these general terms and conditions of sale and delivery.
2. Offers made by Avalon B.V. include designs, drawings, models, samples, descriptions, pictures and suchlike, as well as any appendices and documents relating to our offers. All this shall remain the property of Avalon and must be returned to Avalon at its request and shall not be reproduced and/or disclosed to third parties without its express written consent. Avalon reserves all intellectual and industrial property rights.

### Article 3. Prices

1. The stated prices are exclusive of turnover tax, government levies and any other costs in relation to export, dispatch, freight, administration and packaging, unless explicitly agreed otherwise.
2. The prices listed in offers, contracts and confirmations of instruction are based on cost factors such as exchange rates, manufacturers' prices, (raw) material prices, wage and transport costs, insurance premiums, taxes, import duties and other government levies prevailing on the date on which the agreement is concluded.
3. In the event that one or more of the cost factors have increased after the date on which the agreement has been concluded, yet before the date of delivery, Avalon B.V. reserves the right to pass on these increases to the purchaser. Avalon B.V. has the right to fully or partially dissolve the agreement in such cases without any legal intervention being required. This latter right shall also be vested in the purchaser, however, only if Avalon B.V. takes the viewpoint that changes in the costs justify an increase in the price stated in the confirmation of instruction, within 3 months of the agreement being concluded. In the event that the purchaser exercises this right, the purchaser must invoke the dissolution by sending us a registered letter within 5 days of receiving the relevant notification.

all quotations, transactions and deliveries are confirmed in our general conditions of sales



## Article 4. Conclusion of agreement

1. An agreement shall only be concluded subject to Avalon B.V. having accepted an instruction, in writing. An agreement shall be considered to have been concluded the moment the confirmation of instruction is sent.
2. The purchaser is bound to his instruction for a period of 14 days after the instruction date or (if it concerns a verbal instruction) after giving the instruction. A statement of the purchaser that he wishes to cancel or change his instruction issued during this 14-day period cannot prevent an agreement being formed on the basis of the (original) instruction, should Avalon B.V. accepts/confirm the instruction within this 14-day period.
3. The confirmation of instruction sent by Avalon B.V. to the purchaser is deemed to be a complete and correct reflection of the contents of the agreement that has concluded. The purchaser is deemed to agree to the contents of the confirmation of instruction, unless within 7 days of the date of our confirmation of instruction he notifies us that he is unable to agree to the contents.
4. Any additional agreements and/or commitments, entered into and/or made by our employees or entered into and/or made on behalf of us by other persons acting as representatives shall only be binding upon us if these agreements and/or commitments have been confirmed in writing by our director(s) who has/have been allocated power of representation.
5. In the event that a natural person concludes an agreement on behalf or at the expense of another natural person, he declares to be authorised to do so by signing the contract. Besides the other natural person, this person is jointly and severally liable for all obligations arising from the agreement.

## Article 5. Terms

1. The delivery times stated by Avalon B.V. are effective from the day the agreement was formed, provided all information needed by us to execute the instruction is in our possession. The delivery times stated by us can never be regarded as final deadlines and are issued for indicative purposes only, unless expressly agreed otherwise in a separate agreement. We must therefore be given notice of default in the event of late delivery. If, contrary to the above, the separate agreement expressly stipulates a penalty in the event of exceeding the delivery time, the penalty shall not be payable if the delivery time is exceeded as a result of force majeure, in the cases as referred to in article 10 of these general terms and conditions.
2. The goods are supplied ex-warehouse, unless the confirmation of instruction stipulates otherwise. Foreign purchasers are also supplied ex-warehouse, unless otherwise agreed. In addition, the goods are transported at the expense and risk of the purchaser. (Inward) clearances shall be arranged by us, yet at the expense of the purchaser.
3. Unless the purchaser arranges for a carrier himself, the goods shall be dispatched using a method deemed most appropriate by us, using a carrier of our choice, at the expense and risk of the purchaser.
4. If, at the request of the purchaser, the goods must be supplied via a method other than usual, the corresponding additional costs shall be passed on by us to the purchaser.
5. If the delivery is carried out in parts, Avalon B.V. shall be entitled to regard every delivery as a separate transaction.
6. The purchaser is obliged to take delivery of the ordered goods within the agreed period. Failing which Avalon B.V., at its discretion, shall be entitled to demand from the competent court to be released from its obligation to supply the agreed goods by virtue of the provisions of article 6:60 of the Netherlands Civil Code or to demand payment of the purchase price of the part that has not been taken delivery of, without prior notice of default. The purchaser failing to fulfil his payment obligations shall entitle Avalon B.V. to declare the agreement dissolved, without judicial intervention being required. If in accordance with the above the purchaser remains in default, the goods shall be deemed supplied, after which the goods shall be stored at the expense and risk of the purchaser, subject to compensation of the costs arising from that.
7. In the event of delivery by the vendor, the purchaser is obliged to ensure that the delivery address can be freely accessed by the vendor. In the event of circumstances as a result of which the delivery address cannot be accessed at the planned delivery date, the purchaser must notify the vendor timely in advance of the delivery. The vendor reserves the right to postpone or suspend deliveries, if it appears that the delivery address cannot be freely accessed. Any additional costs incurred by the vendor in connection with those special circumstances are at the expense of the purchaser.

## Article 6. Complaints

1. The purchaser guarantees the correctness and completeness of and is responsible for any details he has provided us with. The purchaser must take into account small discrepancies, modifications or improvements in the goods supplied by us, in respect of the information, dimensions, authentic colours and suchlike stated in our offer, or whatever forms part thereof in accordance with article 2, paragraph 2. This applies more in particular to deviations in the contractual volume. In this instance too, the purchaser must take into account discrepancies that are commonly accepted in the industry. Consequently, the goods supplied by us may show some deviation compared to the description in the instruction, if and insofar this concerns limited differences in terms of dimension, quantity and minor modifications or improvements.
2. Complaints by the purchaser in relation to defects to goods that can be visibly detected must be reported to us by the purchaser within 5 working days of the delivery. The notification must be sent by registered letter providing a clear and accurate description of the complaint and which further includes an invoice reference under which the relevant goods were invoiced. The purchaser is obliged to carry out a careful, complete and timely inspection of the goods.
3. The right of claim by the purchaser against Avalon B.V. in relation to the goods supplied by Avalon B.V. lapse if:
  - a. the defects have not been reported to Avalon B.V. within the terms referred to in paragraphs 2 and 3 above and/or in the manner explained therein;
  - b. the purchaser fails to render (sufficient) assistance in carrying out an inquiry into the validity of the complaints;
  - c. the purchaser has failed to set up, handle, use, store or maintain the goods correctly or he has used or handled the goods under circumstances or for purposes other than intended by us;
  - d. the application of the use of the goods with regard to which the complaint has been expressed is continued by the purchaser;
  - e. the warranty terms referred to in the separate agreement has expired or, in the event of the absence of such term, the complaint is first expressed after expiry of more than 6 months since the delivery time.



4. In the event of disputes in respect of the quality of the goods supplied by Avalon B.V., an expert appointed by Avalon B.V. shall issue a binding advice.
5. If, in accordance with the preceding paragraph, a complaint is submitted timely in advance, the purchaser shall remain obliged to take delivery of and pay for the ordered goods. If the purchaser wishes to return faulty goods, he must do so subject to the prior, written approval of the vendor, at the expense of the purchaser, in the original packaging and in the manner as indicated by the vendor.
6. Complaints must at all times be submitted before they have been processed or cut. In the event that the goods have already been (partly) processed or cut, the right of claim is forfeited in full and the goods shall be deemed as accepted.

## Article 7. Liability

1. The liability of Avalon B.V. is at all times limited to the amount of the cover provided by the liability insurance taken out by Avalon B.V.
2. The purchaser can solely assert his (warranty) claims against Avalon B.V. if the warranty obligations in view of the goods supplied by us are not undertaken by third parties (such as manufacturers). In that case our liability shall be limited to defects as a result of manufacturing faults.
3. In the event of a complaint combined with liability as referred to in paragraph 1, we are solely obliged to undertake the following, at our discretion:
  - a. repair of the defects (free of charge);
  - b. supply replacement goods and/or parts, subject to the faulty goods and/or parts having been returned;
  - c. refund of the purchase sum/crediting of the purchase invoice combined with a dissolution of the agreement, without judicial intervention;
4. If the purchaser has repaired and/or modified the goods without obtaining prior, explicit written permission, or has arranged for any such work to be done, any warranty obligation on the part of Avalon B.V. shall cease to exist.
5. Subject to any obligations by us on account of the foregoing, Avalon B.V. shall not be obliged to pay the purchaser and other parties any compensation, unless it concerns intent or gross negligence on the part of Avalon B.V. In particular, we shall not be liable for any direct or indirect damage or (trading) losses, by whatever name, including loss of profits and losses due to downtime suffered by the purchaser, its subordinates and by third parties employed with or by the purchaser, on account of full or partial (re-)delivery of goods, delayed or improper supplies, failure to supply or on account of the goods themselves.
6. The purchaser is not entitled to return the goods on the basis of an unsubstantiated complaint. If the goods are nevertheless returned without stating a valid reason, all costs in connection with the return shall be at the expense of the purchaser. In that instance, Avalon B.V. shall be free to store the goods with third parties, at the expense and risk of the purchaser.
7. The purchaser is obliged to indemnify Avalon B.V. against any third-party claims against Avalon B.V. in respect of the execution of the agreement, insofar as the purchaser bearing the damage and costs involved is not contrary to the law.

## Article 8. Retention of title and security

1. The goods supplied by Avalon B.V. remain the property of Avalon B.V. until full payment of all that is owed by the purchaser to Avalon B.V. by virtue of, in relation to or arising from the goods supplied by us. Avalon B.V., at its discretion, may demand security from the purchaser with regard to meeting his (payment) obligations.
2. The purchaser is not entitled to create a pledge on unpaid goods or to create a non-possessory pledge or any other private or commercial right thereon for a third party.
3. Without prejudice to the provisions in this article, the purchaser is allowed to sell the goods to third parties, yet solely within the framework of his normal business operations. In that instance, the purchaser is obliged to immediately forward on the proceeds to us or, if sold other than for cash, the claims obtained through that transaction.
4. If due to adaptation or processing by the purchaser our retention to title has been lost, the purchaser is obliged to immediately create a non-possessory pledge on the goods for us, as they are after adaptation or processing.
5. We are at all times entitled to take possession of goods held by the purchaser (or third parties), yet to which we retain title, once it is reasonable for us to assume that the purchaser shall fail to meet his (payment) obligations. The above is without prejudice to our rights under general law: we in particular reserve the right claim compensation from the purchaser after having taken possession of the goods.
6. The purchaser is obliged to insure unpaid goods against the risk of fire and theft at sale value and to produce the policy at our request.
7. The goods supplied by the vendor, which by virtue of paragraph 1 of this article are subject to retention of title, may only be resold within the framework of normal business operations and never be used as means of payment.

## Article 9. Payment

1. Payment must be effected in Euros, unless otherwise agreed, without any deduction, set-off or discount. Payment must be effected by means of transfer into a bank or giro account in accordance with our instructions, immediately after delivery of the relevant goods, yet later than 14 days after the invoice date, unless expressly agreed otherwise in writing. In the event of payment by bank or giro, the date on which our bank or giro account is credited shall be regarded as the date of payment.
2. In the event the purchaser fails to pay in time (and in full), he shall be in default without a notice of default being required. If and insofar the purchaser is in default (of payment), Avalon B.V. shall be entitled to suspend all its obligation towards the purchaser, without prejudice to all its other rights pursuant by law.
3. Avalon B.V. is entitled to demand payment in advance or security for all future deliveries. If purchaser fails to meet his obligations in that respect, Avalon B.V. shall be entitled to suspend its obligations or to dissolve the agreement extra-judicially, in which case the purchaser is obliged to return the goods supplied or to otherwise compensate Avalon B.V. for its performance, without prejudice to its right to compensation. If the purchaser remains in default to pay in time, he shall be liable to pay us, or the credit insurer of the vendor, interest, without a further notification required on our part, from the due date until payment in full, which interest shall be equal to the statutory interest plus 2% per month, calculated on the outstanding amount, and which interest shall be payable immediately without a further notice of default being required.



4. All costs involved in the collection of the invoiced amounts (including the costs of extrajudicial collection) shall be at the expense of the purchaser. The extrajudicial costs payable are at least 15% of the principal sum, subject to a minimum of € 75, exclusive of turnover tax. In addition, all adverse effects due to price drops or otherwise ensuing from late or non-payment at the expense of the purchaser, even if the purchaser, in accordance with the laws of his country, would have met the payment obligations in time, yet circumstances or measures beyond his control have meant that the transfer has been effected in a manner which is unfavourable to us.
5. In accordance with article 6:44 of the Netherlands Civil Code, payments shall first be allocated to the costs referred to in paragraph 3, subsequently to any interest due and finally to the principal sum and accrued interest.
6. If after conclusion of the agreement, yet before delivery of the goods, the financial position of the purchaser shows a substantial deterioration, we shall be entitled to decide against further execution of the agreement, partly or in full, or to demand that the payment terms are changed.
7. The vendor shall be entitled to transfer its claims by virtue of all transactions to a credit insurer of its choice.

### **Article 10. Force majeure**

Force majeure must be understood to mean all circumstances beyond our control, which are of such nature that continued and full execution of the agreement cannot reasonably be demanded from Avalon B.V. Force majeure further includes: war, disturbances and hostile acts of any nature, blockades, boycotts, natural disaster, epidemics, a lack of or shortages in raw materials, prevention and disruption of the possibility to transport, breakdowns in our business and/or that of our suppliers, import and export restrictions or bans, impediments caused by measures, laws or decision of international, national and regional (government) authorities. In the event that Avalon B.V., due to force majeure, is unable to fulfil its obligation to deliver, or unable to do so properly or timely, Avalon B.V. shall be entitled to dissolve the agreement, or the part thereof not yet executed, extra-judicially, or to suspend this for a definite or indefinite period of time, this at its discretion. In the event of force majeure, Avalon B.V., cannot be held liable for the damage incurred by the other party.

### **Article 11. Applicable law**

The offers submitted by Avalon B.V. and all agreements entered into by Avalon B.V. are exclusively governed by the laws of the Netherlands, thereby excluding the Vienna Sales Convention. In the event of international agreement the Rome I Regulation applies (Directive EC 593/2008).

### **Article 12. Settlement of disputes**

All disputes, of whatever nature, relating to and/or arising from agreements entered into by Avalon B.V. and services provided by Avalon B.V. shall be heard by the competent court of Zwolle, the Netherlands.