

General Terms of Sale of Aquadeck BV



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With registered office at: De la Minestraat 2, 6021 PJ Budel, The Netherlands.

Article 1: Applicability

1. These general terms shall be exclusively applicable to all offers and quotations made by us, all agreements entered into with us for the purchase and sale of goods and/or the provision of services, as well as to the execution of those agreements and to all other obligations taken on towards us.

Applicability of any terms used by the opposing party, however named, is expressly declined hereby.

2. Deviations from these general terms can be agreed on in writing only and shall be valid only after they have been expressly confirmed by us in writing. If we do not always demand compliance with these terms, this shall not imply that these terms are not applicable or that we lose the right to demand strict compliance with these terms in future cases, whether similar or not.
3. By opposing party shall be understood in these general terms: any legal entity or natural person who has entered into an agreement with us, or has received an offer for such an agreement from us, and in addition to this legal entity or natural person also its/his representative(s), agent(s) and legal successor(s) under universal or special title.

Article 2 - Offers

1. All offers and quotations made by us to the opposing party shall be without engagement.
An offer shall be binding only if it has been made by us in writing with mention of the period during which the offer is open for acceptance. Such an acceptance can be made in writing only.
2. All price-lists, brochures and other data supplied with an offer are as accurate as possible but shall be binding only if this has been expressly confirmed by us in writing in the offer.

Article 3: Agreements

1. In principle agreements will be confirmed by us to the opposing party in writing but if this has not been done that does not affect our right to prove the conclusion and the contents of the agreement in another way. Verbal arrangements, even if these relate to a modification or cancellation of an agreement, will be confirmed by us in writing as much as possible.
That which has been confirmed by us to the opposing party in writing shall constitute conclusive proof of that which is mentioned in the confirmation.
2. For agreements, deliveries and orders for which no written offer, quotation and/or order confirmation has been made, the invoice or delivery ticket shall be considered to be the order confirmation as well which shall be deemed to correctly and fully reflect the agreement.
3. If the opposing party does not, not properly or not timely fulfil any obligation resulting from the agreement concluded with it or from these terms, as well as in the event of bankruptcy, temporary suspension of payment or petitions for bankruptcy or temporary suspension of payment, or if it has lost its freedom of action due to attachments or otherwise or this freedom is limited, or if it has appeared to us that the opposing party is insufficiently creditworthy, of which we shall be the judge, we shall be entitled to dissolve the agreement or consider it as dissolved without any judicial intervention, without being held to any damages and without prejudice to our right to demand compensation by the opposing party for the damage suffered by us. We shall continue to be the owners of the goods delivered by us until payment in full has been made by the opposing party.
4. If the opposing party fails to fulfil its contractual obligations in any sense and in any way, we shall be entitled to recover or have recovered the goods from the opposing party immediately, and the opposing party already now irrevocably authorises us to access the rooms or grounds where the goods are present in order to take possession of the goods.
5. The obligations arising from the agreements are indivisible. If more than one person are parties to the agreement, they are all jointly and severally liable for all obligations arising from the agreement, however named.

Article 4: Prices

1. All prices and rates shall be in euros and exclusive of V.A.T. and any other levies which are imposed by the government at the time of order acceptance.
2. The prices are based on the prices of raw and other materials, exchange rates, wages, taxes, duties, charges, freight rates etc. which apply at the time of the offer. If after the order confirmation one of the above-mentioned cost price factors undergoes a change which is to our disadvantage, we shall be entitled to adjust the agreed price accordingly, this in so far as this is not forbidden by law and regardless of whether or not the change was foreseeable to us at the time of conclusion of the agreement. Changes in the agreed price shall not entitle the opposing party to cancel all or part of the agreement.
3. All prices in the quotation, order confirmation or the prices mentioned in the agreement shall be exclusive of V.A.T. Payments shall be made inclusive of V.A.T.

Article 5: Modifications

1. Although we will always benevolently consider a request to consent to the making of modifications and additions to the agreed activities and/or deliveries, we shall in no way be obliged to grant such consent.
A modification shall be requested from us by the opposing party in writing and shall be binding only if and in so far as that modification has been accepted by us in writing.

2. If a modification or addition to the agreed activities and/or deliveries results in extra work and extra deliveries, these will always be charged by us to the opposing party in accordance with the then applicable rates.
If a modification or addition to the agreed upon activities and/or deliveries results in less work, that may result in a reduction of the agreed price, but we reserve the right to charge to the opposing party the costs already incurred by us, the man hours and equipment which cannot be deployed economically in another way, as well as the lost profit.
3. The occurrence of extra work shall be reported by us to the opposing party in writing at the earliest possible stage, but at any rate prior to its execution. The opposing party shall be deemed to consent to the execution of the extra work and the costs thereof, unless the opposing party objects to such extra work within five days after a written notification from us to that end.
Extra work shall never result in dissolution of the agreement.

Article 6: Term of agreements

If we enter with the opposing party into an agreement which does not provide for the execution of a once-only amount of activities and/or the making of a once-only delivery, but which provides for the periodical or otherwise regular performance of activities by us, such an agreement shall apply for the period expressly agreed upon or, for lack thereof, for a period of one year.

Article 7: Delivery, assembly and installation

1. Any assembly and/or installation activities shall always be at the expense of the opposing party and shall be charged in accordance with the then applicable rates, unless agreed upon otherwise expressly and in writing.
2. The indications of periods of delivery in offers, confirmations and/or contracts shall always be made to the best of our knowledge and shall be respected as much as possible. The fact that such periods are exceeded, by whichever cause, shall never entitle the opposing party to any compensation, dissolution of the agreement or non-fulfilment of any obligation which results for it from the agreement concerned or from any exceeding of the period of delivery, at our discretion, whereupon we shall enter into discussion with the opposing party.
3. The period within which, respectively the time at which the agreed upon activities or the agreed upon deliveries shall have been carried out or made has been laid down in the expectation that the circumstances under which the delivery or completion will take place will not change after the acceptance of the order.
If such a change of the circumstances occurs, regardless whether or not it could be foreseen, so that a delay is caused on the delivery or completion, the agreed time of delivery or completion will be postponed accordingly, and this without prejudice to the provisions laid down in article 16 in the event that an event of force majeure prevents us temporarily or permanently from carrying out the agreement.
4. If it has been agreed that the activities and/or deliveries will take place in stages, we shall be entitled to postpone the start of the activities and/or deliveries which belong to a next stage until the opposing party has acknowledged in writing the completion of the previous stage and has fulfilled all its financial obligations with regard to the partial delivery.
5. Dispatch, transport and/or assignment of goods, materials being included therein, shall always take place at the expense and risk of the opposing party. We shall be held to take out insurance coverage only if and in so far as we have undertaken the obligation to do so expressly and in writing.

Article 8: Performance of activities

1. The working hours of our employees shall be determined in consultation with the opposing party wherever possible.
2. For orders concerning the execution of activities and/or the provision of services for which a fixed price applies, the location and the working hours during which the activities will be carried out will always be determined by us.

Article 9: Co-operation of the opposing party

1. The opposing party shall always supply us in time with all co-operation, data and information which we shall deem useful or necessary in order to be able to carry out the activities or deliveries ordered.
2. The opposing party shall see to it that the rooms where the goods supplied by us to which the warranty obligations relate are located are in agreement with the requirements which apply in order to allow the goods supplied by us to function normally and that these requirements are fulfilled at all times.
3. All costs to be incurred by us as a result of non-fulfilment, late fulfilment and/or improper fulfilment by the opposing party of the obligations mentioned in this article shall be at the expense of the opposing party.

Article 10: Examination and duty of complaint

The opposing party must examine or have examined the items purchased within a period that in view of the circumstances is as short as possible, though within a maximum period of five days after the delivery. The opposing party loses the right to claim that the items do not comply with the agreement if it fails to notify us hereof in writing within a reasonable period, though in any event within eight days after it discovers this or ought to have discovered it, stating the nature of the shortcoming. In all cases the opposing party's right to claim that the items do not comply with the agreement is forfeited if it has installed and/or has processed and/or has put into service the items purchased, this with the exception of a claim by it regarding defects that are covered by the warranty as referred to in Article 13.

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Article 11: Liability

1. We shall never be liable for any damage of any nature, whether direct or indirect, including business interruption damage, stagnation damage, damage to movable or immovable properties, or to persons, all the above on the premises of the opposing party as well as on the premises of third parties, if the damage has been caused by goods supplied and/or installed by us and/or services provided by us or by any other cause, unless the law mandatorily prescribes otherwise and unless there is gross fault or intent on our side. We shall however not be liable for any damage as referred to in the previous sentence if that damage has been caused by intent or gross fault of our subordinates and/or of third parties used by us for the execution of the agreement.
2. The opposing party shall indemnify us and our employees against any claims by third parties with regard to damage of any kind which is caused by the use of the services provided and the products supplied by us.
3. The opposing party shall indemnify us against any claims by third parties which at the instructions of the opposing party carry out activities for the benefit of the agreed projects and/or services. We shall not be liable for any costs or damage which have been caused by acts or omissions of the opposing party or of third parties involved in the project by the opposing party.
4. All risks and liabilities resulting from the services provided by us and/or the activities carried out by us for the benefit of the opposing party shall be deemed to have passed onto the opposing party at the time of receipt or at the time at which the agreement with the opposing party has been terminated and dissolved by virtue of these terms.
5. If we are liable in respect of the opposing party for defects in the items sold by us, we are only obliged to correct the defects or – solely at our choice – to deliver to the original delivery location an item that is the same or equivalent or – solely at our choice – to compensate for the damage with cash. Our liability by virtue of the agreement concluded with the opposing party and by virtue of these general terms shall be limited under all circumstances to the amount of invoice of the agreement exclusive of V.A.T.
Any further liability, whether for direct or for indirect damage, costs and interest, for whichever reason, shall be excluded.

Article 12: Force majeure

1. If we are prevented because of force majeure of a permanent or temporary nature from carrying out the (remainder of the) agreement, we shall be entitled at our choice and without any obligation to pay a compensation or penalty, and without prejudice to our further rights, to suspend the (further) execution of the agreement, or to consider all or part of the agreement as dissolved without any judicial intervention.
2. Force majeure on our side shall exist if we are prevented after the conclusion of the agreement from fulfilling our contractual obligations as a result of (risk of) (civil) war, riot, acts of war, fire, damage caused by water, flooding, work strikes, occupation of industrial premises, lockout, import and export restrictions, government measures, defects of machines, breakdowns in the supply of energy, all this in our business and in that of third parties from which we have to procure all or part of the required raw or other materials, as well as during storage or transportation, whether or not under our own management, and furthermore by all other causes for which we cannot be blamed or which lie outside our area of risk.

Article 13: Warranty

1. We grant a warranty on swimming pools supplied only if and in so far as we have received a warranty from our suppliers. The warranty certificates issued by our suppliers shall be provided to the opposing party upon delivery or shall be available at our office.
On slatted pool covers we grant a warranty of five years after the delivery on polycarbonate slats, of two years after the delivery on PVC slats and of four years after the delivery on motors, on the following conditions. The occurrence of condensation in solar and/or transparent slats is expressly excluded from this warranty.
2. If by virtue of warranty we are liable for defects, our liability is limited to our obligation to correct the defect or – solely at our choice – to deliver to the original delivery location an item that is the same or equivalent. Expressly excluded from the warranty are the labour or labour costs related to the re-installation or replacement of the items on which we grant the warranty. If such costs have to be incurred in connection with the performance of the warranty obligations, we are authorised to charge them to the opposing party at our usual rates.
3. The warranty obligations referred to in the previous sections of this article shall become null and void if the opposing party itself has made or caused to make changes in or repairs to the goods delivered or if the goods delivered are used for other purposes than the intended purposes or if, in our opinion, they have been treated or serviced inexpertly. The opposing party shall not derive any rights from this warranty if we make a reasonable case that it has failed to follow the maintenance instructions and instructions for use issued by or on behalf of us.
4. The rights arising from these warranty provisions may be assigned between our customer and the user of the items purchased only if our customer is a reseller. In all other cases the rights arising from this warranty are personal and may not be assigned.
5. We shall be entitled to charge to the opposing party the costs of tracing defects which in accordance with these provisions are excluded from the warranty, in accordance with our applicable rates.

Article 14: Payments

1. Payment for the goods to be delivered and/or the services to be provided by us shall be made in advance, unless otherwise agreed upon in writing, without deduction of any discount and without setting off of debts, which shall not be allowed unless allowed expressly and in writing by us.
2. Payment of the invoices sent by us for activities carried out and/or services provided and/or products delivered shall be made within fourteen days after the date of invoice, unless otherwise agreed upon in writing, without deduction of any discount and without setting off of debts, which shall not be allowed unless allowed expressly and in writing by us.
3. We shall be entitled prior to the delivery of goods and/or the provision of services to demand (more) security from the opposing party for the fulfilment of its obligations before we proceed or continue with the delivery or provision. This provision shall also apply if a credit has been stipulated. A refusal by the opposing party to put up the desired security shall entitle us to consider the agreement as dissolved, without prejudice to our right to compensation for expenses, business damage and loss of profit.
4. The claim to payment of the entire sum owed shall at any rate be payable immediately if an instalment has not been paid punctually on the maturity date, if the opposing party applies for or has applied for bankruptcy, temporary suspension of payment or placing under guardianship, if any attachment is levied on the goods or claims of the opposing party, and if the opposing party dies, enters into liquidation or, if it is a legal person, is dissolved.
5. If the amount owed by the opposing party in accordance with the invoice has not been paid within the period specified, the opposing party shall be in default by force of law without any notice of default being required and shall owe us as of the date of invoice an interest at a rate of 1.5% per (part of a) month over the total amount still outstanding, and this until the date of payment in full and without prejudice to our further rights.
6. If we are forced to pass on an invoice which has remained (partly) unpaid to a third party for the purpose of debt collection, the extralegal debt collection costs at a rate of 15% of the amount to be collected exclusive of V.A.T. and with a minimum of € 250.- exclusive of V.A.T. as well as the full costs, including the costs of court actions and the fees of our legal advisers, shall be at the expense of the opposing party. This shall be without prejudice to our right to fulfilment or dissolution, both with or without compensation for damage suffered.
7. Any payment by the opposing party shall be applied first against the interest owed to us by the opposing party at the customary rate, next against the debt collection costs incurred by us, and finally against the oldest invoice still unpaid.

Article 15: Retention of title

1. All goods supplied by us to the opposing party shall remain our property until the opposing party shall have fulfilled all its obligations towards us under whichever title.
2. The opposing party shall not be allowed to alienate or encumber the goods supplied to it as long as the amount owed to us has not been paid in full.

Article 16: Applicable law

1. Dutch law shall be exclusively applicable to all offers made by us, all agreements entered into with us and all obligations taken on towards us, as well as the execution thereof.

Article 17: Disputes

All disputes, including those which only one of the parties considers as such, resulting from or in connection with an offer or obligation to which these terms apply, or concerning the terms themselves or their interpretation or implementation, of a factual as well as a legal nature, shall be settled, in so far as the legal provisions so allow, by the absolutely competent judge with the Sub-district Court of Eindhoven and the District Court of 's-Hertogenbosch.

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Aquadeck® offers undisputed top quality in pool covers and is located in Budel (NL). It is a family company that stands for excellent service and continuity in quality, made-to-measure solutions and quick turnaround times. Professionalism, all-round hospitality, the guarantee of top quality and support are key values that are consistently lived up to and delivered. Aquadeck® supplies its products to a carefully selected dealer network in Europe.

