



## **GENERAL TERMS AND CONDITIONS**

*Version 2023.01 of 07.02.2022*

## ARTICLE 1: APPLICABILITY

In these general terms and conditions, the following terms are defined as stated below:

Seller or contractor: Aqua Drolics, established at Sportlaan 9, 5683 CS Best, registered in the Chamber of Commerce under number 17194289; Buyer or client: the counterparty of the seller or contractor, acting in the course of a profession or business; Agreement: the agreement between the seller and the buyer.

The provisions of these general terms and conditions apply to all offers and to all agreements between the seller and the buyer to which the seller has declared these general terms and conditions applicable. All this insofar as the parties have not explicitly deviated from these general terms and conditions in writing. These general terms and conditions are stipulated for the buyer and also for any third parties to be engaged by the seller.

In the event of nullity or nullification of one or more provisions of these general terms and conditions, the other provisions of these general terms and conditions remain in full force. The seller and the buyer will in that case consult to agree on new provisions to replace the null or nullified provisions.

The general terms and conditions of the client do not apply and are explicitly dismissed.

## ARTICLE 2: QUOTATIONS/OFFERS/PRICES

All quotations are valid for six months, unless a different term is stated in the quotation. The seller is bound by the quotation only if the buyer

has confirmed his acceptance thereof in writing.

If the client provides the contractor with data, drawings, etc., the contractor may assume these are correct and complete and base his quotation and design on this information.

The prices stated in the quotation are based on delivery ex works. The prices are exclusive of shipping, transport and packaging costs and exclusive of turnover tax, unless stated otherwise.

A compound quotation (offer) does not oblige the seller to deliver part of the matters included in the quotation or offer at a proportional part of the quoted price. Quotations or offers do not automatically apply to repeat orders.

If, in the period between order confirmation from Aqua Drolics and delivery of the products to customer, the raw material price of any material or the price of any semi-finished product increases 10% or more, we reserve the right to adjust the sales price proportionally.

## ARTICLE 3: INTELLECTUAL PROPERTY RIGHTS

Unless agreed otherwise, the contractor retains the copyrights and all intellectual property rights to the quotations, designs, images, drawings (test) models, software provided by him.

The rights to the data referred to in paragraph 3.1 remain vested in the contractor, regardless of whether the client has been charged for the creation thereof. This data may not be copied or disclosed to third parties without the explicit, prior consent of the contractor. In the event of a breach of this provision, the

client must immediately pay the contractor a fine of € 25,000 per day (in words: TWENTY-FIVE THOUSAND EUROS). This fine can be claimed virtue of the law, in addition to compensation for the damage suffered.

The client must return the data provided to him and referred to in paragraph 1 on demand, within the term set by the contractor. In the event of a breach of this provision, the client must pay the contractor a fine of € 1,000 per day (in words: ONE THOUSAND EUROS). This fine can be claimed virtue of the law, in addition to compensation for the damage suffered.

## ARTICLE 4: ADVICE, DESIGNS AND MATERIALS

The client cannot derive any rights from advice and information received from the contractor, if not directly related to the instruction.

The client is responsible for the drawings and calculations and the functional suitability of materials prescribed by or on behalf of him.

The client indemnifies the contractor against any third-party claim with regard to the use of drawings, calculations, samples, models, etc. provided by or on behalf of the client.

Prior to processing, the client is entitled to examine the materials that the contractor wants to use, at his own expense. If the contractor suffers any damage because of this, it will be payable by the client.

## ARTICLE 5: DELIVERY TIME

The delivery time is stipulated by the contractor by approximation.

When stipulating the delivery time, the contractor assumes

he will be able to execute the instruction under the conditions known to him at that time.

The delivery time does not commence until an agreement has been reached on all technical and details, until all necessary information, final drawings, etc. are in the possession of the contractor, the agreed payment (or instalment) has been received and the necessary conditions for the execution of the instruction have been met.

In the event of circumstances other

than those known to the contractor when he stipulated the delivery time, the contractor will be entitled to extend the delivery time to the extent needed to execute the instruction under these circumstances. If the work cannot be scheduled into the planning of the contractor, it will be finalised once his planning allows it.

In the event of contract extras, the delivery time will be extended by the time needed to deliver the materials and parts for this and to perform the contract extras. If the contract extras cannot be scheduled into the planning of the contractor, they will be finalised once his planning allows it.

If the contractor has suspended his obligations, the delivery time will be extended by the duration of the suspension. If the continuation of the work cannot be scheduled into the planning of the contractor, it will be carried out once his planning allows it.

In the event of weather conditions not permitting the work, the delivery time will be extended by the resulting delay.

Exceeding the agreed delivery time does in any case not constitute a right to compensation unless agreed in writing.

If the contractor cannot deliver on time due to the fault of the client, the second instalment invoice will follow no more than 4 days later.

#### **ARTICLE 6: TRANSFER OF RISK**

In the case of purchase, delivery takes place ex works; the risk of the service repair work or the delivery of goods is transferred the moment the seller makes them available to the buyer.

Regardless of the provisions of the previous paragraph, the client and the contractor may agree that the contractor organises the transport. In that case too, the risk of storage, loading, transport and unloading rests with the client. The client can take out insurance to cover these risks.

Even if the seller performs the service repair work sold or the delivery of goods, the risk of the service repair work or the delivery of goods transfers the moment the seller makes the goods available to the buyer at the business premises of the buyer or at another agreed location.

In the event of a trade-in upon purchase and the client, in anticipation of delivery of the new goods, continues to use the goods to be traded in, the risk of the goods to be traded in remains vested in the buyer until he has made these available to the seller.

#### **ARTICLE 7: IMPRACTICABILITY OF THE INSTRUCTION**

The contractor is entitled to suspend fulfilment of his obligations if the contractor, due to circumstances which could not have been foreseen at the

time of conclusion of the agreement and which are outside his sphere of influence, is temporarily unable to fulfil his obligations.

Circumstances which could not have been foreseen by the contractor and which are outside his sphere of influence include suppliers and/or subcontractors of the contractor not fulfilling their obligations or not fulfilling them in time, weather conditions, earthquakes, fire, loss or theft of tools, the loss of materials to be processed, road blocks, strikes or walkouts and import and trace restrictions.

The contractor is not entitled to suspend his obligations if fulfilment is permanently impossible or if a temporary impossibility has lasted for more than six months. In that case, the agreement can be dissolved for those obligations not yet fulfilled. In that case, the parties are not entitled to compensation for any damage or loss suffered as a result of the dissolution.

#### **ARTICLE 8: SCOPE OF THE WORK**

The client must ensure that all permits, exemptions and other decisions needed to carry out the work have been obtained in due time.

Unless otherwise agreed, the price of the work does not include:

The costs of groundwork, pile driving, cutting, demolition work, foundation work, masonry, carpentry, plastering, painting, wallpapering, repair work or other construction work;

Connection charges for gas, water, electricity or other infrastructural facilities;

The costs of preventing or limiting damage to goods at or near the work;

The costs for disposal of materials, building materials or waste;  
Travel and accommodation expenses.

#### **ARTICLE 9: CHANGES IN THE WORK**

Changes in the work will in any case result in contract variations if:

In the event of a change in the design or specifications;

If the information provided by the client does not correspond to actual practice;

If estimated volumes are exceeded by more than 10%.

Contract extras are calculated on the basis of the value of the price-decisive factors applicable at the time the contract extras are carried out. Contract reductions are calculated on the basis of the value of the price-decisive factors applicable at the time the agreement was concluded.

If the balance of the contract reduction exceeds that of the contract extras, the contractor may charge the client 10% of the difference of the balances when drawing up the final account. This provision does not apply if the contract reduction is the result of a request by the contractor.

#### **ARTICLE 10: EXECUTION OF THE WORK**

The client ensures that the contractor can carry out his work without disturbances, at the agreed time and that the contractor, during the execution of his work, is given the disposal of the necessary facilities, such as:

Water and electricity; within a radius of 10 metres from the workplace there must be an earthed power connection of 220V/3 x 3.5 kW;

Heating; if the temperature in the work area is lower than 7°C, a wind and watertight

tent must always be placed over the work when working outside. This must completely span the work by at least 1 m, without the use of centre posts and with a minimum working height of 2.5 m (calculated from the concrete slab). This tent must be placed at least 2 days before the start of the installation work.

The work area must be easily accessible so that loading and unloading can take place smoothly.

Delivery assistance may be required and is available. Possibility to test the products with water within the installation period; if this is not possible, an invoice for the extra travel and possible accommodation expenses will follow.

In all other cases in which the client has not complied with one of the conditions stated in these terms and conditions, as a result of which the contractor's technicians must return home without delay, all additional travel and accommodation expenses will be borne by the client.

When constructing a paddling pool, the client ensures that the floor is dry (hardened for approx. 1>3 weeks), flat and even (finely structured floor, on a sand cement basis) and that the piping has been realised in accordance with the contractor's specifications. "Flat" means level or a maximum deviation of a 2% angle of inclination to a maximum of 4 cm.

The client must take care of empty pits, without Styrofoam.

In the case of an Aqua Drolics pool, the contractor takes care of the finishing up to the outside of the pool. The contractor does not take care of the

space outside the pool, unless otherwise agreed (it is possible to have extra floor space laminated at an additional cost).

The contractor is not responsible for connecting the pool to surrounding equipment. The client is aware that during the installation process, there will be nuisance with regard to stench, noise, dust, etc. The client is responsible for the choice to open the spaces to the public during the installation work. The client cannot invoke nuisance of any kind to suspend or discontinue the work.

The client is liable for all damage as a result of loss, theft, burning or damage to tools, materials and other items of the contractor that are located at the place where the work is performed.

If the client fails to fulfil his obligations as described in the previous paragraphs causing delays in the execution of the work, the work will be carried out once the planning of the contractor allows it. In addition, the client is liable for all resulting damage suffered by the contractor, such as extra man hours, travel and accommodation expenses, etc.

The work is carried out consecutively as much as possible, so deviating working hours must be taken into account.

Only standard working hours are included, for example night-time hours are subject to a surcharge.

#### **ARTICLE 11: DELIVERY OF THE WORK**

The work is deemed to have been delivered, if:

The client has approved the work.

For this, the client must be ready to deliver and to sign

the packing slip for approval immediately after the end of the work. If not, the work will be regarded as having been completed if:

The client has put the work into operational service. If the client only puts part of the work into operational service, that part will be deemed delivered;

The contractor has notified the client, in writing, that the work has been completed and the client, within 14 days of this notification, has not stated, in writing, whether the work has been approved or not;

The client rejects the work on the basis of minor defects or missing parts that can be repaired or delivered subsequently, within 30 days, and which do not impede putting the work into operational service.

If the client rejects the work, he is obliged to notify the contractor thereof, in writing, stating the reasons.

If the client rejects the work, he must offer the contractor the opportunity to deliver the work again. The provisions of this article re-apply thereupon.

Immediately after completion of the work of the client, it must be possible to carry out a test with water. If this is not the case, the work is considered to have been delivered and the payment term will run as agreed. If the contractor has to return to the work to still test with water or if he later notices there are defects that he must repair, the extra travel and accommodation expenses are for the account of the client.

## ARTICLE 12: LIABILITY

1. Subject to the warranty given, the contractor is no longer liable for shortcomings in the work that the client should reasonably have discovered at the time of delivery, after the day on which the work is delivered or is considered to have been completed.
2. The contractor is only liable insofar as the client demonstrates that the contractor has imputably failed in the performance of the agreement and the damage is the direct and exclusive result of that shortcoming and he is therefore not liable for damage caused by third parties.  
In the event of an attributable shortcoming on the part of the contractor, he is only liable for direct damage and he will be in no way liable for trading loss, losses due to delay, loss of profit, loss of turnover, pure financial loss, personal injury, labour costs, losses due to stoppages, business interruption loss, damage to property in the care, custody or control of, but not owned by the insured, interest costs, repair costs, transport costs and fines or other consequential damage suffered by the client. Damage to property in the care, custody or control of, but not owned by the insured, among other things, is understood to mean damage caused during the execution of the work to goods that are being processed or that are in the vicinity of the place where work is carried out.
3. The contractor is not liable for damage caused by intent or wilful recklessness on the part of auxiliary persons. In the event of an attributable shortcoming on the part of the contractor, the client must give

the contractor the opportunity to repair/eliminate the defect.

4. If the costs of repair for a defect or of the elimination of a shortcoming for which the contractor is liable are not in reasonable proportion to the interest of the client in the case of repair, the contractor may instead pay reasonable compensation to the client.
5. The contractor is insured against liability. Liability for damage is explicitly limited to the amount paid out by its insurance in the relevant case, increased by the excess. If the insurance does not pay out for whatever reason, liability for damage is explicitly limited to the invoice amount, exclusive of VAT, for the delivery the damage relates, that is, the delivery the damage is associated with.
6. Damage is in any case understood to include damage due to shortcomings, termination damage and damage based on an unlawful act.
7. The client indemnifies the contractor against claims from third parties - including employees and (other) auxiliary persons - arising from and/or related to Work delivered and/or work performed by the contractor under the Agreement.
8. When the client assembles the playground equipment, the contractor is never liable for damage or possible accidents. It is suspected that any damage or accidents in that case are the result of incorrect installation of the playground equipment.
9. Every further liability is explicitly excluded.
10. Claims for compensation must within 1 year after discovery be submitted by the client to the competent court named for that purpose in accordance

with these terms and conditions. The right of action lapses after the period referred to in this paragraph has elapsed.

#### ARTICLE 13: WARRANTY

The contractor guarantees the proper execution of the agreed performance for a period of 60 months after delivery or completion.

If the agreed performance consists of the contracting of work, the contractor, for the period referred to in paragraph 1, warrants the reliability of the construction supplied and materials used, provided the contractor was free in his choice thereof.

If the constructions delivered and/or the materials used appear to be faulty, the contractor will repair or replace them. The parts that are repaired at or replaced by the contractor must be sent to the contractor. Disassembly or assembly of these parts, transport costs and any travel and accommodation expenses will be payable by the client.

If the agreed performance consists of processing materials supplied by the client, the contractor, for the period referred to in paragraph 1, guarantees the reliability of the processing.

If the processing appears to be faulty, the contractor, at his discretion, will either:  
Redo the processing. In that case, the client must supply new materials, at his expense;  
Remedy the defect. In that case, the client must return the materials to the contractor at the former's expense;  
Reimburse the client for a proportional part of the invoice.  
If the agreed performance consists of the delivery of service repair work or goods, the

contractor, for the period referred to in paragraph 1, guarantees the reliability of the goods.

If the delivery appears to be faulty, the goods must be returned to the contractor at the client's expense. Subsequently, the contractor, at his discretion, will either:

Repair the goods;  
Replace the goods;  
Reimburse the client for a proportional part of the invoice.

The client will provide proper packaging for return shipments from the contractor. Any transport damage will be recovered from the client by the contractor.

If the agreed performance (partly) consists of the installation and/or assembly of goods supplied, the contractor for the period referred to in paragraph 1, guarantees the reliability of the installation and/or assembly.

If the installation and/or assembly appear to be faulty, the contractor will remedy this. Any travel and accommodation expenses will be payable by the client.

The client must in all cases provide the contractor with the opportunity to remedy any defect or redo the processing. The client can only claim under the warranty subject to the client fulfilling all its obligations towards the contractor, which includes full payment.

No warranty is given if the defects are the result of:  
Normal wear and tear or any other gradual effect;  
Wear of rotating and moving parts. Under normal use, these should be replaced once every season;  
Wilful damage;  
Vermin;  
Improper use;

A lack of or incorrect maintenance;  
Frost damage or a failure to store the products without preparing them for winter;  
Force majeure such as natural disasters, storm, rain, wind;  
An installation, assembly, modification or repair by the client or third parties;  
Water quality with a pH value that is too high (> 7.2) or too low (<6.8), which affects the polyester parts;  
A water temperature higher than 32°C, which affects the polyester parts;  
Deviating water quality.  
Slight discolouration due to the influences of UV and/or chlorine cannot be prevented and is therefore not covered by the warranty.  
No warranty is issued for goods delivered that were not new at the time of delivery.

#### ARTICLE 14: COMPLAINTS

1. Shipping and receipt:  
Upon receipt of the playground equipment, the client is obliged to immediately check the number of packages and the condition of the packages and to report any defects, deviations or damage within 24 hours of delivery at the latest. If an order is ordered ex works, the contractor cannot be held responsible for transport damage and therefore no warranty applies to this.
2. Performance:
  - a. The client can no longer invoke a visible defect in the performance if he does not test the products within 7 days and has not made a written complaint to the contractor about the defect within 48 hours after testing, supported by photos.
  - b. The client can no longer invoke a defect that is not

visible, if the defect has not been reported in writing to the contractor within 7 days of discovery.

3. If a complaint is not made to the contractor within the periods referred to in paragraphs 1 and 2 of this article, the delivered product/work will be considered correct, both in fact and at law. In that case, the onus is on the client to prove otherwise.

#### ARTICLE 15: FAILURE TO TAKE DELIVERY OF GOODS

If the client fails to take delivery of goods after expiry of the agreed delivery time, the goods remain at the disposal of the client.

Goods that have not been taken delivery of will be stored at the expense and risk of the client. If the agreed delivery time is exceeded by more than 30 days, the contractor will charge the client a fee and interest for storage in accordance with the following table:

Project sum	
< € 25,000	8%
Project sum	
≥ € 25,000 < € 75,000	7%
Project sum	
≥ € 75,000	6%

The interest is on an annual basis. When calculating the interest rate, part of a month is regarded as a full month.

#### ARTICLE 16: PAYMENT

1. Payment is made at the place of business of the contractor or into a bank account designated by the contractor.
2. Unless otherwise agreed, payment must be made as follows:
  - Cash, in the case of counter sales;
  - If payment in instalments has been agreed on:
    - first instalment upon instruction (must be paid before the start of production);

second instalment before delivery of the products (must be paid before installation);  
third instalment upon delivery (must be paid within 7 days of the invoice date);

- In all other cases, within 7 days of the delivery date.

3. Regardless of the agreed payment terms, the client, at the request of the contractor and at his discretion, is obliged to provide sufficient security for payment. If the client fails to do so within the set term, he will automatically be in default. In that case, the contractor is entitled to dissolve the agreement and recover any damage incurred from the client.

4. The client's right to set off his claims against the contractor is excluded unless the contractor has gone bankrupt.

5. The full claim for payment (including in any case all invoices) is immediately due and payable if:

- A payment term has been exceeded;
- The client has gone bankrupt or has applied for a moratorium;
- Goods or claims of the client are seized;
- The client (company) is dissolved, liquidated or if he has been granted a moratorium;
- The client (natural person) is placed under guardianship or dies.

6. If payment is not made within the agreed payment term, the client owes the contractor interest immediately. The interest stands at 1.5% per month, yet is equal to the statutory commercial interest rate should that be higher. When calculating the interest rate, part of a month is regarded as a full month.

7. If payment is not made within the agreed payment

term, the client owes the contractor all extrajudicial costs. The extrajudicial collection costs amount to at least 15% of the outstanding amount, subject to a minimum of € 250.

If the extrajudicial costs effectively incurred are higher, the costs effectively incurred will be due.

8. All judicial costs to be incurred by the contractor in order to achieve the fulfilment of the client's obligations will be at the expense of the client. The judicial costs also include the costs for a bankruptcy application as a means of collection.

#### ARTICLE 17: RETENTION OF TITLE AND RIGHT OF PLEDGE

After delivery, the contractor remains the owner of the goods as long as the client:  
Fails or will fail in the fulfilment of his obligations under this agreement or other, ensuing agreements;  
Fails or will fail to pay for work performed or to be performed under such agreements;  
Has failed to pay claims arising from non-performance of the above agreements, such as damage, fines, interest and costs.

As long as the goods delivered are subject to retention of title, the client is not permitted to encumber the goods outside his normal business operations.

After the contractor has invoked his retention of title, he is entitled to take repossession of the goods supplied. The client allows the contractor to enter the place where these goods are located. If the contractor is unable to exercise his retention to title due to the goods supplied having been mixed, deformed

or subjected to accession, the client is obliged to pledge the newly created goods to the contractor.

#### **ARTICLE 18: DISSOLUTION**

If the client wishes to unilaterally dissolve the agreement without the contractor being in default, the agreement will be dissolved. In that case, the contractor is entitled to the following compensation:

For standard products:

In the case of cancellation within 2 weeks of the order: 25% of the agreed contract price;

In the case of cancellation more than 2 weeks after the order: 100% of the agreed contract price.

Specials and custom products:

These can NOT be cancelled, in the event that the client does so, 100% of the project sum will be charged.

If the client wishes to dissolve the agreement and the contractor agrees to this, the contractor is entitled to compensation of 30% of the agreed contract price.

#### **ARTICLE 19: APPLICABLE LAW AND CHOICE OF FORUM**

1. Dutch law applies.
2. Only the civil court with jurisdiction in the contractor's place of business will be competent to hear disputes unless this is in conflict with mandatory law. The contractor may deviate from this jurisdiction rule and apply the statutory jurisdiction rules.

The parties may agree on an alternative form of dispute resolution, such as arbitration or mediation.