

General terms and conditions of Aart Kok Adventure Flagship Store BV

Clause 1. General

1. These conditions apply to every offer, quotation and delivery by Aart Kok Adventure Flagship Store B.V, hereinafter referred to as: 'the User' as well as to all (additional) agreements, including agreements which are related to and/or arise from distribution agreements between the User and a buyer, hereinafter referred to as: 'the Other Party'.
2. Additional and/or deviating conditions - including the purchase conditions - of the Other Party do not form part of the agreement between the User and the Other Party and therefore do not bind the User, unless the User accepts the conditions of the Other Party either wholly or in part in writing.
3. Departures from these conditions are only binding if and insofar as this has been expressly agreed in writing and exclusively for offers and (additional) agreements to which they apply. In respect of the other offers and (additional) agreements, these general terms and conditions remain in full force.
4. 'Written' in these conditions refers to: by letter or electronically.
5. If one or more provisions contained in these general terms and conditions should at any time be invalid or void, either wholly or in part, the other provisions contained in these general terms and conditions shall continue to apply in full. In such an event, User and Other Party shall consult with a view to agreeing new provisions to replace the invalid or void provisions, which take account of the purpose and scope of the original provisions as much as possible.
6. If uncertainty should arise in relation to the interpretation of one or more provision contained in these general terms and conditions, then these provisions should be interpreted 'In line with the spirit of these terms and conditions'.
7. If a situation arises between the parties that is not provided for in these general terms and conditions, this situation should be assessed in line with the spirit of these general terms and conditions.
8. If User does not require strict compliance with these terms and conditions, such shall not imply that the provisions contained therein are not applicable, or that User shall, to any extent, lose the right to require strict compliance with these terms and conditions in other cases.

Clause 2. Quotations, offers and formation of the agreement

1. All quotations and offers by the User are without obligation, even if a term for acceptance has been stated in the offer. A quotation or offer lapses if the good to which the quotation or offer relates is in the meantime no longer available.
2. User cannot be bound to its quotes or offers if the Other Party can be reasonably expected to understand that the quotes or offers, or part thereof, contain an obvious mistake or error.
3. The prices stated in a quotation or offer are in euros, inclusive of Dutch VAT, exclusive of import duties and other government levies or rights. The prices are based on Ex Works,(EXW, Incoterms® 2010), unless otherwise indicated in writing.
4. A compound price quotation shall not oblige User to execute a part of the order for a corresponding part of the price quoted. Offers or quotes shall not automatically apply to future orders.
5. The agreement is formed by the User accepting the order in writing. The confirmation is deemed to reflect the agreement accurately and comprehensively. Additional agreements and/or changes, made by whoever, are only binding if they have been confirmed by the User in writing.
6. Each offer or undertaking made by a representative of the User is only binding insofar as the latter has confirmed this in writing.

Clause 3. Delivery terms, performance and amendment of the agreement

1. If a term is agreed or stated for the delivery of specific goods, this is never a strict deadline. Therefore, if a term is exceeded, the Other Party should send User a written notice of default. In this notice, User should be given a reasonable term within which it can still execute the agreement.
2. The delivery term does not commence until after an agreement has been formed in accordance with the provisions in clause 2, the Other Party has provided the User the data and information in full required for the performance of the agreement and the User has received the agreed advance payment of the Other Party.
3. As soon as the User observes that the stated term will be exceeded, the User contacts the Other Party. The obligations of the Other Party remain unchanged. Only in the event of excessive exceeding (more than 4 weeks) of the agreed delivery term is the Other Party entitled to terminate the agreement, unless the exceeding is caused by force majeure. The Other Party is however never entitled to any penalty payment or compensation.
4. Delivery conditions are agreed for each separate transaction. All delivery conditions are applicable in accordance with Incoterms® 2010. The Other Party is obliged to accept the goods at the time these are made available to it. If the Other Party refuses to purchase or fails to provide information or instructions required for the delivery, the Other Party is in default and the User is entitled, at its discretion, to (i) store the goods for the account and at the risk of the Other Party; (ii) terminate the agreement without judicial intervention; (iii) ship the goods for the account and at the risk of the Other Party. All costs arising from the circumstances set out above, which includes any loss of revenue, are for the account of the Other Party. The above applies without prejudice to other rights the User might be entitled to.
5. Without this resulting in the User being in default, the User can refuse a request to amend the agreement if this could have qualitative and/or quantitative consequences, for the goods to be delivered in that context for example.
6. Should the Other Party fail to properly fulfil its obligations towards User, the Other Party shall be liable for any loss (including costs) incurred by User, either directly or indirectly.
7. Any change in one or more of the cost determining factors such as purchase prices (whether or not changed with retroactive effect), exchange rate ratios, import duties, turnover tax, price increases in raw material and materials, production costs, currency exchange rate changes, which occur after the formation of the agreement but before delivery, entitle the User, at its discretion, to charge a corresponding higher price or to cancel the order without this entitling the Other Party to any right to compensation.

Clause 4 Suspension, termination and early termination of the agreement

1. User is entitled to suspend compliance with the obligations or to dissolve the agreement if:
 - the Other Party fails to fulfil the obligations under the agreement, or fails to do so fully or in due time;
 - circumstances of which User becomes aware after the agreement has been concluded give sound grounds for concern that the Other Party shall not fulfil its obligations;
2. The User is also entitled to dissolve the agreement if circumstances arise which are of such a nature that it is impossible to comply with the agreement or if otherwise circumstances arise which are of such a nature that User cannot reasonably be required to maintain the agreement unaltered.
3. If the agreement is dissolved, the claims of User towards the Other Party shall become immediately due and payable. If User suspends compliance with the obligations, it shall retain its rights under the law and the agreement.
4. If User suspends or dissolves the agreement, he shall not be held liable in any way in respect of any loss and costs incurred as a result.
5. If the dissolution is attributable to the Other Party, User shall be entitled to compensation for loss, including the costs it incurs as a result either directly or indirectly.
6. If the Other Party fails to fulfil any obligations it has under the agreement and such failure justifies dissolution, User shall be entitled to dissolve the agreement forthwith and with

immediate effect without having any obligation on its part to pay compensation or damages, while, on grounds of its failure, the Other Party shall be obliged to pay compensation and damages.

7. In the event of liquidation, of (application for) suspension of payments or bankruptcy, of seizure – if and insofar as the seizure is not cancelled within three months – of the Other Party's assets, of a debt rescheduling arrangement or any other circumstances as a result of which the Other Party no longer has full control of its assets, the User is at liberty to terminate the agreement forthwith with immediate effect or to cancel the order or the agreement, without having any obligation on its part to pay compensation or damages. In that case, the User's claims towards the Other Party shall be immediately due and payable.
8. If the Other Party cancels a placed order either wholly or in part, the Other Party shall be charged for the items that have already been ordered or made ready in relation to this order, plus any removal or delivery costs thereof and for the labour time reserved for the execution of the agreement.

Clause 5 Force majeure

1. User is not obliged to fulfil any obligations towards the Other Party if it is prevented from doing so due to a situation in respect of which it is not culpable and in respect of which it is not responsible by virtue of the law, a legal act or generally accepted opinions.
2. Force majeure in these general terms and conditions means, in addition to that included in the legislation and case law, all external causes, whether or not foreseen, which are outside the control of the User but as a result of which the User is unable to perform its obligations, including but not limited to strikes at the company of the User or of third parties, including transport problems, fire, impeding government measures, failures by engaged third parties, machine failure, war, sanctions, boycotts, and embargos. User is also entitled to invoke force majeure if the circumstances that prevent the (continued) compliance with the agreement take effect after the User should have fulfilled its obligations.
3. For the duration of the period in which the force majeure continues, User can suspend the obligations under the agreement. If this period continues in excess of two months, each party is entitled to dissolve the agreement, without being obliged to compensate the loss incurred by the other party.
4. Insofar as at the time the force majeure takes effect User has partly fulfilled its obligations under the agreement or will be able to fulfil these, and an independent value is attributed to this fulfilled or to be fulfilled part, User is entitled to invoice this fulfilled or to be fulfilled part separately. The Other Party is bound to pay this invoice as if there is a separate agreement.

Clause 6 Payment and collection costs

1. The User is at all times entitled to demand a full or partial advance payment.
2. Payment shall take place in euros without any deduction, banking costs or any setoff, by means of a deposit or transfer into a bank account indicated by the User. Payment is only deemed to have taken place if the due amount has irrevocably been credited to the bank account of the User. If the Other Party fails to pay the invoice in due time, the Other Party shall automatically be in default. The Other Party then owes interest of 2% per month, unless the statutory interest for commercial transactions is higher, in which case, the statutory interest for commercial transactions shall be payable. The interest payable on the amount due shall be calculated as from the date on which the Other Party was in default until the date on which the full amount is paid.
3. User is entitled to direct that the payments made by the Other Party are allocated first to reducing the costs and thereafter the interest due and finally the principal sum and the current interest.

4. User can, without such causing it to be in default, refuse an offer of payment if the Other Party instructs that the repayment be allocated differently. User can refuse full repayment of the principal sum if the current interest and collection costs owing are not also paid.
5. The Other Party is never entitled to set off amounts owed by it to User.
6. Contestation of the amount of an invoice shall not suspend the fulfilment of the obligation to pay. The Other Party, which is unable to rely on section 6.5.3 (articles 231 to 247 Book 6 Dutch Civil Code) is also not entitled to suspend the payment of an invoice for any other reason. All costs, both the judicial and extra-judicial, relating to the collection of that due by the Other Party and not paid on time, are for the account of the Other Party. The extra-judicial costs are set at minimum 15% of the relevant invoice amount and shall be at least EUR 250 per claim.

Article 7 Retention of title

1. All the goods delivered by the User in the context of the agreement remain the property of the User up until the moment of payment in full of all amounts, including any interest and costs, which the Other Party must pay for goods delivered or to be delivered pursuant to any agreement and/or the failure in the performance of such agreement.
2. The goods delivered by the User which pursuant to paragraph 1 are subject to retention of title, may not be sold on, pledged, encumbered, hired out, given in use and may never be used as payment instrument as long as the Other Party has not complied with his other obligations towards the User in full. The Other Party is, however, entitled to use the goods within its normal business operations.
3. The Other Party must do everything that can be reasonably expected to protect the property rights of User.
4. If third parties seize goods delivered subject to retention of title or wish to establish or assert a right to them, the Other Party shall be obliged to immediately inform User to this effect.
5. The Other Party shall undertake to insure the goods delivered subject to retention of title against loss caused by fire, explosion and water as well as against theft and to make this insurance policy available to User for inspection at the first request for such. In the event of any payout from the insurance, the User is entitled to this money. Insofar as required, the Other Party commits itself towards the User to render its cooperation in advance to all that should or might be required or desirable in that context.
6. In the event User wishes to exercise its ownership rights mentioned in this article, the Other Party shall already give User or third parties to be appointed by User unconditional and irrevocable permission to access all locations where User's property might be found and take these goods back.

Clause 8 Guarantees, inspection and complaints, limitation period

1. The goods to be delivered by the User satisfy the usual requirements and standards which may reasonably be demanded from it at the time of delivery and for which they are intended during normally use in Europe.
2. The guarantee referred to in paragraph 1 of this clause applies for a period of 1 year after delivery, unless the nature of the delivery dictates otherwise or the parties have agreed otherwise in writing. If the guarantee supplied by User relates to goods that are manufactured by a third party, then the guarantee is limited to that which is supplied by the manufacturer of the goods, unless otherwise stated.
3. Any form of guarantee lapses if a defect has arisen as a result of, or arises from, improper use or misuse of such, incorrect storage or maintenance of such by the Other Party and/or third parties, without the written permission of the User, the Other Party or third parties have made or have tried to make changes to the goods, other goods had been attached to it which must not be attached to it or if they were processed or treated in any other than the prescribed manner. The Other Party is not entitled to claim on the guarantee if the defect is caused by or results

from circumstances that User has no control over, including weather conditions (such as, for example but not limited to, heavy rainfall or extreme temperatures) etc.

4. The Other Party is obliged to inspect the delivered goods immediately the moment the goods are made available to the Other Party (or have this done). In this respect, the Other Party must examine whether the quality and/or quantity of the delivered goods comply with what was agreed upon, and meet the requirements that the parties have agreed upon in this respect. Any visible defects must be reported in writing to the User within seven days of delivery. Upon being detected, non-visible defects must be immediately reported to the User in writing, at the latest, within fourteen days of delivery. The report must include a description of the defect that is as detailed as possible so that User is able to react adequately. The Other Party must provide the User with the opportunity to investigate a complaint (have a complaint investigated).
5. If the Other Party files his complaint in due time, his obligation to pay shall not be suspended. In that case, the Other Party must still take delivery and effect payment for the ordered goods.
6. If a defect is not reported in a timely manner, then the Other Party is not entitled to repair, replacement or compensation.
7. If it is established that a good is defective and falls under the guarantee and a complaint has been lodged on time in that respect, the User shall within a reasonable term after it has been returned or, if a return is reasonably not possible, after written notification in respect of the defect by the Other Party, replace the defective good or ensure it is repaired or credit the purchase sum to the Other Party, at the discretion of the User. In the event of replacement, the Other Party is obliged to return the goods to User or to hand over ownership of the goods to User, unless User specifies otherwise.
8. If it transpires that a complaint is unfounded, then the costs involved, including the investigation costs for User, will be entirely borne by the Other Party.
9. Upon expiry of the guarantee period, any repair or replacement costs, including administration, postage and transaction costs, shall be invoiced to the Other Party.
10. Notwithstanding the legal statutory limitation periods, the limitation period for all claims and means of defence against User and third parties recruited by User to execute an agreement, is one year.

Clause 9 Liability

1. Should the User be liable, this liability is restricted to that provided for in this clause 8.
2. The User shall not be liable for any kind of loss caused by the User using incorrect and/or incomplete data provided by or on behalf of the Other Party.
3. If and insofar as the User should be liable for any loss, the User's liability is restricted to the net invoice value of the relevant order, or at any rate that part of the order to which the liability relates. For the application of this clause, a series of connected loss-causing incidents applies as one incident/loss event.
4. User is only liable for direct loss.
5. Direct loss shall be exclusively understood to be: the reasonable costs incurred to establish the cause and the extent of the loss, in as far as establishing the cause and extent relates to loss in the sense of these terms and conditions, the reasonable costs possibly incurred in order to ensure that User's inadequate performance meets the conditions of the agreement, unless such inadequate performance cannot be attributed to the User, and the reasonable costs incurred to prevent or limit the loss, in as far as the Other Party demonstrates that said costs have led to the limitation of direct loss as referred to in these general terms and conditions.
6. Except in the event of an intentional act or gross negligence by the User and subject to statutory liability pursuant to mandatory provisions, the User is never liable for indirect loss, including consequential loss, loss of profit, lost savings, loss due to business interruptions or loss as a result of any liability towards third parties.

Clause 10 Indemnification

1. Unless the loss is a direct result of gross negligence or an intentional act by the User, the Other Party shall indemnify the User against any claims by third parties, directly or indirectly relating to the (use of) the delivered goods and compensate the User for all the loss the User suffers as a result of such claims.
2. If User should be held liable by third parties, then the Other Party is obliged to do its utmost to assist and support User, both judicially and extra-judicially, and to immediately do everything that can be reasonably expected in this respect. If the Other Party fails to take adequate measures, then User is, without giving formal notice, entitled to do so himself. All costs and loss on the part of User and third parties thus incurred, are for the account and risk of the Other Party.

Clause 11 Intellectual Property

1. User shall reserve the rights and powers to which User is entitled by virtue of the Copyright Act and other intellectual laws and regulations. User shall reserve the right to use the knowledge gained due to the execution of the agreement for other purposes, in as far as no confidential information shall be brought to the notice of third parties when doing so.
2. The Other Party is not permitted to copy or change the goods wholly or in part without the written permission of the User.
3. The Other Party is not permitted to furnish delivered goods with a different brand name, or to use the relevant brand in a different manner, or to register such in its own name.

Clause 12 Applicable law and Disputes

1. These general terms and conditions and all offers made by the User and all legal relationships between the User and the Other Party are exclusively governed by Dutch law, even if an obligation is wholly or partly performed abroad or if the party involved in the legal relationship has its place of residence there. The applicability of the Vienna Sales Convention is excluded.
2. The Court in the place of business of the User has exclusive jurisdiction to hear disputes. User shall nevertheless be entitled to submit the dispute to the court deemed competent by law. Disputes between the User and Other Parties based outside the EU are definitively resolved by means of arbitration by the International Chamber of Commerce ('ICC') in accordance with the Arbitration Regulations of the ICC by one or more arbiters appointed in accordance with these Regulations. The language used is English. The arbitration shall take place in Amsterdam (the Netherlands).
3. The parties shall only refer the matter to the court if they have done their utmost to settle the dispute in mutual consultation.

Clause 13 Location and amendment of conditions

1. The most recently filed version shall always apply, or, as the case may be, the version valid at the time when the legal relationship was entered into with User.
2. The Dutch version of these general terms and conditions prevails at all times in the event of disputes relating to the interpretation and purpose of these terms and conditions.