



## GENERAL TERMS AND CONDITIONS UPON DELIVERY OF GOODS AND PROVISION OF SERVICES BY AVEX B.V. IN BREUKELLEN

### 1 Applicability of these terms and conditions

- 1.1 These conditions, to the exclusion of third party general term and conditions, apply to all delivery of goods and/or provision of services, hereinafter jointly referred to as "products", by AVEX B.V. in Breukelen, hereinafter referred to as "AVEX", to the Customer, as well as to all agreements that pertain to that and to all activities in connection with that (whether these are of a preparatory or an executive nature, such as tenders, order confirmations and deliveries), all this insofar as these general terms and conditions are not expressly derogated from in any framework agreement and/or Further Agreement(s).
- 1.2 In the text below, the "Customer" must be understood to be the party to whom AVEX makes an offer to deliver products, as well as the party with whom AVEX enters into an agreement to deliver products. In these general terms and conditions, "agreement" must be understood to be any agreement to which these general terms and conditions apply.
- 1.3 Conditions in derogation from these only apply insofar as AVEX has expressly accepted them in writing, and will only apply to the relevant agreement(s).
- 1.4 If any stipulation of these general terms and conditions, for whatever reason, should be invalid, the rest of these terms and conditions will continue to apply. In that case, the parties will consult on the content of a new stipulation, the content of which stipulation will be as close as possible to the content of the original stipulation.
- 1.5 AVEX reserves the right to change or supplement these general terms and conditions. Changes and supplements will be communicated to the Customer in writing. In the event that the Customer, as a result of the change, ends up in a less favourable position, it can terminate the agreement as of the date on which the new terms and conditions will come to apply within 14 days of being informed of the change.
- 1.6 These general terms and conditions will be filed with the District Court of Utrecht.

### 2 Tenders and agreements

- 2.1 All tenders of AVEX are always free of obligation, both with regard to prices, content and execution and with regard to delivery times and deliverability, unless expressly stated otherwise.
- 2.2 The content of all price lists, brochures and other details provided with an offer will be as accurate as possible. The relevant details are only binding for AVEX if AVEX has expressly confirmed this in writing. Tenders will be based on the information that the Customer provides in its request.
- 2.3 When the offer is accepted (verbally) or agreement is reached in another manner, an agreement is formed.
- 2.4 In general, the confirmation of the instruction will be considered a reflection of that which has been agreed upon. If, given the nature and/or scope of the activities, no confirmation of the instruction is sent, the invoice will be considered the confirmation of the instruction, which will be deemed to state that which has been agreed upon as much as possible.
- 2.5 If AVEX considers this necessary or desirable, AVEX will be authorised to engage third parties for the proper execution of the instruction given, the costs of which will be charged to the Customer in accordance with the quotation provided by AVEX.
- 2.6 At all times, without giving reasons, AVEX may terminate a continuing performance contract entered into with the Customer in writing, subject to three months' notice, unless the parties have expressly agreed otherwise.

### 3 Payment conditions and other conditions

- 3.1 Quotations are given exclusive of VAT.
- 3.2 Payments must be made within the term stated on the invoice. This term is to be regarded as a strict deadline.
- 3.3 In the event that a payment is not made within the term, the Customer will owe an interest of 1% per month or part of a month on the balance payable on the 1st of each month, from the final day on which the payment should have been made until the day of full payment. In the event that AVEX has to incur costs in the collection of the amount owed, these costs will be at the expense of the Customer, both at law and otherwise.
- 3.4 Payments made by the Customer will always be regarded as having been made to settle any interest and costs owed, and subsequently to settle those payable invoices that have been outstanding the longest, even if the Customer states that the payment pertains to a later invoice. All this is without prejudice to AVEX's right to designate a payment otherwise.
- 3.5 If payment of the invoice takes place within the term set, the prompt payment discount stated on the invoice may be subtracted from the total amount. If payment does not take place within the term set, the Customer will owe the prompt payment discount stated on the invoice.
- 3.6 Unless it has been agreed otherwise in writing, items with a net invoice value of more than € 250 will be delivered to an address in the Netherlands provided by the Customer without charges for freight and packaging. In the event of delivery of items with a net invoice value of less than € 250, AVEX is free to decide whether to charge freight and administration costs or surcharges for small orders or not.
- 3.7 Special or expensive packaging, such as crates, reels, etc. will be charged, but will be taken back against repayment of the amount charged, provided that the Customer returns the packaging to AVEX within 14 days of delivery, postage paid, and the packaging is undamaged upon receipt.
- 3.8 In the event that price changes occur after the agreement is entered into, AVEX will be authorised to incorporate these into the price if it has been agreed that the delivery will take place more than three months after the agreement is entered into.

### 4 Delivery and purchase

- 4.1 Unless the tender or the agreement state otherwise, delivery will be effected by making the products available to the Customer, or to the person deemed to represent the Customer. The time at which the ordered products are received will be considered to be the time of delivery.
- 4.2 The Customer is obliged to cooperate in the delivery, as well as to receive the delivery. Purchase will be deemed to have been refused if the ordered products are offered for delivery, but delivery – for whatever reason – turns out to be impossible. In that case, the day on which purchase was refused will be considered to be the date of delivery.
- 4.3 In the event that purchase is refused as referred to under 4.2, the Customer will be in default by operation of law, without further notice of default from AVEX being required. In that case, AVEX will be free to decide to terminate the agreement or to demand performance thereof by the Customer.
- 4.4 In the event that the Customer refuses to purchase the delivered items, AVEX reserves the right to charge any costs related to that (such as the costs of storage and transport) to the Customer.
- 4.5 From the time of delivery, which includes the time referred to in paragraph 4.2, the delivery will be at the expense and risk of the Customer.
- 4.6 Under no circumstances are stated delivery times to be regarded as strict deadlines, unless the nature of the products provides that the delivery time stated may be considered a strict deadline. In the event of overdue delivery of products with regard to which the delivery times may not be considered a strict deadline, AVEX must be given written notice of default, in which AVEX is allowed a reasonable term in which to make the delivery after all.
- 4.7 If it is suspected that the Customer will not be able to fulfil its payment obligations, AVEX reserves the right to deliver the products cash on delivery, or to postpone the delivery of the products until the Customer has provided sufficient security for payment in another manner.

### 5 Retention of title

- 5.1 AVEX retains the ownership of all items delivered or to be delivered to the Customer as long as the Customer has not paid the debts arising from the relevant and/or similar agreements, which includes claims with regard to interest and costs.
- 5.2 Before full payment, the Customer is not authorised to pledge the items to third parties or to have the items serve as security for the benefit of third parties in the widest sense. The Customer is only allowed to use the items delivered subject to retention of title within the framework of the normal operation of its business.
- 5.3 If it does not fulfil its payment obligations on time, the Customer will, on demand, provide AVEX with the opportunity to collect all the items delivered subject to retention of title from their location.



## **6 Complaints**

- 6.1 Given the nature of the agreement and the products delivered by AVEX, the Customer must submit complaints with regard to transport damage, short deliveries and/or visible defects to AVEX within 24 hours of issue or delivery, at the risk of forfeiting all possible claims to repair, replacement or compensation.
- 6.2 The Customer must submit complaints with regard to invisible defects to AVEX in writing with due speed after it discovers or could reasonably have discovered the defect, at the risk of forfeiting all possible claims to repair, replacement or compensation.
- 6.3 If consideration is given to complaints after expiry of the abovementioned term, this will be completely free of obligation, without the Customer being able to derive any rights from that.
- 6.4 AVEX will not accept returns unless these are sent in connection with a complaint, after AVEX has given its written permission. In that case, freight charges will be at the expense of the Customer.

## **7 Warranty**

- 7.1 AVEX warrants the soundness of the work carried out and the items delivered, on the understanding that, for 1 year or for the longer duration of the manufacturer's warranty, AVEX guarantees the absence of manufacturing or material defects.
- 7.2 Under no circumstances will a warranty be provided in respect of parts that AVEX has obtained from third parties that is more extensive than the warranty the relevant supplier provides AVEX. Under no circumstances will a warranty be provided in respect of defects that are completely or partially the result of regulations that the government may set in respect of the nature and quality of the materials applied after the agreement is entered into.
- 7.3 Defects that are the result of normal wear and tear, improper treatment or improper or incorrect maintenance, or those that arise after alteration or repairs carried out by third parties are not covered by the warranty.

## **8 Liability**

- 8.1 With regard to the products and services provided by AVEX, its liability towards the Customer is limited to that which is contained in Article 7 of this agreement. If AVEX is liable for direct loss, that liability will in any case be limited to the sales price of the products and services provided by it.
- 8.2 Under no circumstances will AVEX be liable for indirect loss with regard to the products and services provided by it, which includes consequential loss, lost profit, lost savings and loss due to business interruption.
- 8.3 In all cases, AVEX's liability will be limited to no more than the amount that, in the relevant case, is eligible for payment under its insurance.
- 8.4 The aforementioned restrictions do not apply if the loss is the result of intent/wilful recklessness on the part of AVEX.

## **9 Indemnification in the event of infringement of third-party rights**

- 9.1 The Customer indemnifies AVEX against all third-party claims in the event that AVEX, within the framework of the carrying out of its activities on the instruction of the Customer, infringes on (intellectual property) rights of third parties.

## **10 Force majeure**

- 10.1 If, as a result of force majeure of a permanent or temporary nature, AVEX is prevented from performing the agreement (any further), AVEX will be authorised to terminate the agreement in full or in part by means of a written notice to that end, without judicial intervention, or to suspend further performance of the agreement, without being liable to pay compensation and without prejudice to AVEX's right to payment by the Customer of the performance already delivered by AVEX. In the event of suspension, AVEX will continue to be authorised to terminate the agreement in full or in part.
- 10.2 Force majeure must be understood to include all circumstances as a result of which AVEX is temporarily or permanently unable to meet its obligations, such as (but not limited to) industrial action at AVEX itself or its suppliers, unforeseen transport problems, fires, unforeseen government measures and operational failures at AVEX itself or its suppliers, as well as unforeseen default on the part of its suppliers, as a result of which AVEX can not fulfil its obligations towards the Customer (any longer).

## **11 Suspension and termination**

- 11.1 AVEX is authorised to suspend fulfilment of its obligations or to terminate the agreement in full or in part:
- 11.2 if the Customer does not fulfil its obligations under the agreement or does not fulfil these in full;
- 11.3 if circumstances that come to the attention of AVEX after the agreement is entered into give good grounds for fearing that the Customer will not fulfil its obligations. In the event that there are good grounds for fearing that the Customer will only fulfil its obligations in part, or will not fulfil them properly, suspension is only permitted insofar as the default justifies this;
- 11.4 if, when the agreement was entered into, the Customer was requested to provide security for the fulfilment of its obligations under the agreement, and this security is not provided or is insufficient;
- 11.5 if the Customer applies for a (provisional) moratorium or is granted a moratorium, applies for bankruptcy or is declared bankrupt; if the company of the Customer is liquidated, or the Customer discontinues its current business; if a considerable part of the capital of the Customer is seized; or if the Customer is no longer considered to be able to fulfil its obligations under the agreement for other reasons.
- 11.6 In addition, AVEX will be authorised to terminate the agreement (or have it terminated) if circumstances arise that are of such a nature that unchanged maintenance of the agreement cannot reasonably be expected.
- 11.7 If the agreement is terminated (in part), AVEX's claims on the Customer will become immediately due and payable. If AVEX suspends fulfilment of its obligations, it will retain its entitlements pursuant to the law and the agreement.
- 11.8 AVEX will continue to be authorised to claim compensation.
- 11.9 Obligations that are by their nature meant to continue even after termination of this agreement will continue after termination of this agreement. These obligations include, among others: confidentiality, liability, dispute resolution, applicable law and election of address for service.

## **12 Applicable law and competent court**

- 12.1 This general terms of conditions and all agreements arising from it are subject to Dutch law.
- 12.2 All disputes arising from or in connection with this general terms of conditions will only be submitted for settlement to the competent Court in the district of Utrecht, unless AVEX – being the claimant – prefers a Court in another district.

Thus established by AVEX B.V. in September 2006 and filed at the registry of the Court of Utrecht under document number 238/2006.