

Article 1. Definitions

1. Contractor: the private limited liability company M.E.G.A. Sport Equipment B.V. (Chamber of Commerce number 73575402), established in Naaldwijk and with offices in (2671BW) Naaldwijk at the address Gezelstraat 20.
2. Client: the (intended) contracting party of Contractor.
3. Agreement: the agreement concluded between Contractor and Client.
4. Terms and Conditions: the present general terms and conditions.

Article 2. Conclusion of the Agreement

1. An Agreement is concluded when Client (possibly after a request by Client) has explicitly (in writing or by e-mail) or tacitly accepted an offer by Contractor. The Agreement is tacitly concluded in accordance with the offer if Client has not made its objections known to Contractor within 12 (twelve) hours of the apparent commencement of the performance of the Agreement.
2. Amendments/additions to the Agreement can only be agreed upon in writing. Contractor reserves the right to amend these Terms and Conditions unilaterally.
3. If any provisions in an offer, order confirmation or signed agreement conflict with provisions in the Terms and Conditions, the former shall prevail.
4. Client cannot derive any rights from information in offers, advertising materials or from the Contractor's website.
5. These Terms and Conditions shall always apply to all offers and Agreement of Contractor.
6. Derogating terms and conditions of Client are excluded at all times and only apply in exceptional cases insofar as they have been expressly accepted in writing by Contractor and only apply to the relevant Agreement(s) to which the exception relates.
7. If any provision of these general terms and conditions is invalid for any reason whatsoever, the terms and conditions will remain in force for the rest and the parties will negotiate on the content of a new provision, which provision will approach the purport of the original provision as closely as possible.

Article 3. Contractor's obligations

1. Contractor shall, if no specific standards or regulations (such as specifications) have been agreed upon in the offer, deliver in accordance with what Contractor may reasonably assume.
2. Contractor will not give Client any guarantees regarding the quality of properties of the work, unless this is explicitly agreed upon in writing. Client may only invoke such guarantees if he himself has fulfilled all his (payment) obligations towards Contractor.
3. Terms applicable to Contractor are not final, unless the parties have expressly agreed otherwise in writing in the Agreement. An agreed term will only take effect after the Agreement has been concluded and all data necessary for the execution of the Agreement are in Contractor's possession. An agreed term will be extended at least by the number of days that have elapsed between the time the Agreement is concluded and the time when all the data necessary for the performance of the Agreement are in Contractor's possession. An agreed period will also be extended by the period during which there is a situation of force majeure.

Article 4. Client's obligations

1. Unless otherwise agreed, prices are exclusive of VAT, transport and packaging.
2. Price increases resulting from additions and/or changes to the Agreement and/or the specifications of the goods to be delivered, made at the oral or written request of Client, will be born in full by Client.
3. All costs resulting from circumstances which Contractor did not reasonably have to take into account when concluding the Agreement will be borne by Client.

4. All payments by Client to Contractor must be made to a bank account number designated by Contractor, without setoff, in euros and no later than thirty (30) days after the invoice data. This is a 'period determined for payment' within the meaning of Article 6:83(a) of the Dutch Civil Code.
5. If payment is not made in full and on time as referred to in the preceding paragraph, Client will be in default by operation of law, with the following consequences in any event:
 - a. Client shall owe an interests of 1.5% per month on the outstanding invoice(s);
 - b. Client shall owe extrajudicial collection costs of 15% of the outstanding invoice(s) with a minimum of € 250,-;
 - c. If Contractor takes Client to court with respect to its payment obligations, Client will also, in addition to the previous paragraphs, owe Contractor the actual costs incurred for this (such as attorney fees, bailiff fees, court registry fees, etc.).
6. Contractor will be entitled at all times to demand security and/or advance payment from Client for the fulfillment of Client's obligations under the Agreement. This will in any case apply in any term of payment is exceeded, or any other breach of this Agreement on the part of Client. Client will comply with this on first request.
7. Client must ensure that all licenses, exemptions and other decisions that are necessary to carry out the work are obtained in good time. Client is obliged, on first request, to provide Contractor with written proof that this is the case.
8. Client is responsible for the constructions, raw materials, producers and working methods prescribed by it or on its behalf, as well as for the orders, directions and instructions given by it or on its behalf.
9. Client will ensure that Contractor can carry out his work undisturbed and at the agreed time and that in the performance of his work he has access to the necessary facilities, such as:
 - a. gas, water, electricity and internet;
 - b. heating;
 - c. lockable dry storage space;
 - d. facilities prescribed under the Working Conditions Act (*Arbowet*) and regulations.
10. Client bears the risk and is liable for damage to and theft or loss of property of Contractor, Client and third parties, such as tools, materials intended for the work or equipment used in the work, which are located at or near the place where the work is performed or at another agreed location.
11. Without prejudice to the previous paragraph of this article, Client is obliged to take out adequate insurance against the risks referred to in that paragraph. Client must also take out insurance to cover the risk of work-related damage to the equipment to be used. Client must send Contractor a copy of the relevant insurance policy or policies and proof of payment of the premium on demand of Contractor. If there is any damage, Client is obliged to report this immediately to its insurer for further processing and settlement.
12. Unless otherwise agreed upon in writing, Client is obliged to carry out the following work at this own expense and risk:
 - a. groundwork, piling, chopping, demolition, foundation work, brickwork, carpentry, plastering, paintwork, wallpapering, repair work or other construction work;
 - b. the realization of connections for gas, water, electricity, internet or other infrastructural facilities;
 - c. measures to prevent or limit damage to or theft or loss of items present at or near the work site;
 - d. removal of material, building materials or waste;
 - e. vertical and horizontal transport.

Article 5. Extra and less work

1. Changes to the work shall result in any event as extra work if:
 - a. there is a change in the design, the specifications or the terms of reference;

- b. the information provided by Client does not match the actual situation;
 - c. estimated quantities differ by more than 5%.
2. Extra work shall be calculated on the basis of the price-determining factors applicable at the time when the extra work is performed. Client is obliged to pay the price of the extra work at Contractor's first request, without suspension or setoff (also not with less work).
3. Changes in the work will only result in less work if/when:
 - a. Contractor has agreed in writing not to perform the less work;
 - b. The less work actually results in a saving of costs for Contractor and Contractor has confirmed this in writing to Client;
4. Less work will be calculated based on the amounts budgeted by Contractor and will only include savings of materials and external costs, in no case savings of internal costs of Contractor (such as personnel costs).

Article 6. Completion of the work

1. The work will be considered completed in the following cases:
 - a. if Client has approved the work;
 - b. if Client has put the work into use. If Client puts part of the works into use, that part will be deemed to have been completed;
 - c. if Contractor has notified Client in writing that the work is finished and Client has indicated in writing within three (3) days after the day of notification that the work has been rejected;
 - d. if Client does not approve the work on account of minor defects or missing parts which can be repaired or supplied within thirty (30) days and which do not prevent the work from being put into use.
2. After completion, Contractor shall not be liable for any defects in the work.
3. If Client rejects the work within the period referred to in (c) of the previous paragraph, Client must notify Contractor of this in writing, stating the reasons, and give Contractor the opportunity to deliver the work within a reasonable time. This will fix the Client's time limit for lodging a complaint (*klachttermijn*) (as referred to in Article 6:89 of the Dutch Civil Code).
4. Client shall indemnify Contractor against third-party claims for damage to parts of the work that have not been completed caused by the use of parts of the works that have already been completed.

Article 7. Retention of title

1. All deliveries of movable property shall be made under extended retention of title. All goods delivered by Contractor shall remain Contractor's property until Client has fulfilled all its payment obligations arising from all agreements concluded between the parties concerning the sale of moveable property (including obligations to pay interests or (collection) costs). As long as Client has not fulfilled its payment obligations, Client undertakes vis-à-vis Contractor an obligation to treat the goods delivered with due care, to keep them insured and not to pledge them, process them, transfer them or give them to third parties. If the obligation is not fulfilled, the entire purchase price involved in the Agreement will become immediately due and payable.
2. If Client fails to fulfill its obligations towards Contractor, Contractor will be entitled to take back the items for which ownership is reserved with immediate effect. To the extent necessary, Client will grant Contractor, at Contractor's first request, immediate access to buildings and/or grounds of which Client is the owner or manager, so that Contractor can revendicate his property or properties.
3. Payments made by Client will be allocated first and foremost, and as far as possible, to claims of Contractor for which no retention of title applies.

Article 8. Force majeure

1. If Contractor is unable to meet its obligations towards Client due a non-attributable breach, a situation of force majeure exists, and Client is not authorized to terminate the Agreement and the fulfillment of Contractor's obligations will be suspended for the duration of the situation of force majeure.
2. If any force majeure condition has lasted for two (2) months, Contractor shall be entitled to terminate the Agreement in whole or in part in writing.
3. In the event of a situation of force majeure, Client will not be entitled to any compensation or damages, even if Contractor may gain any advantage as a result of the force majeure.
4. In addition to the provisions of the law and case law in this respect, force majeure included all external causes, foreseen and unforeseen, over which Contractor cannot exercise any control, as a result of which the obligations towards Client is wholly or partly impeded or as a result of which the fulfillment of its obligations cannot reasonably be required of Contractor, irrespective of whether the circumstance could have been foreseen at the time the Agreement was concluded. Such circumstances include: strikes, lockouts, fire, machinery breakdowns, stagnation or other problems with production by Contractor's suppliers and/or measures taken by any government body (such as recall actions), as well as the absence of any government permit.

Article 9. Client's liability

1. Client is responsible for the information provided by or on behalf of it, such as prescribed constructions, materials and working methods or orders, directions and instructions given.
2. Client shall be liable for all damage resulting from errors in the information provided by it as aforementioned or from defects in items, building materials, materials or resources made available or prescribed by it.
3. Client shall indemnify Contractor against claims from third parties in respect of damage as referred to above.
4. The consequences of compliance (by Contractor or third parties) with statutory regulations or government decisions will be for the account of Client, regardless of whether the cause/necessity for such compliance is attributable to Client, Contractor or a third party. Contractor will not be liable to Client for any damage resulting from such compliance and Client will be obliged at Contractor's first request to cooperate in such compliance and to compensate Contractor for all damage and costs incurred as a result of such compliance.
5. Client shall be liable for any damage resulting from work performed or supplies made by it or on its behalf by third parties.

Article 10. Contractor's liability

1. Contractor shall not be liable for any indirect damage suffered by Client or a third party in connection with the (execution of) an Agreement or a good of service provided by Contractor, including consequential damage, immaterial damage, business or environmental damage.
2. Any liability for damage incurred by Contractor vis-à-vis Client, on any account whatsoever, will be limited per event (whereby a related series of events counts as a single event) to the invoice amount actually paid by Client to Contractor for the month in which the damage occurred and to the amount for which Contractor is insured and its insurance policy actually pays out.
3. The exclusion of liability in this article will not apply if the damage is caused by intent or gross negligence on the part of Contractor or his managerial staff.
4. Unless the damage is caused by intent or gross negligence on the part of Contractor or its managerial staff, Client will indemnify Contractor against all claims from third parties, directly or indirectly related to (the use of) the goods or the work, and Client will reimburse Contractor for all damages, including (legal) consultancy fees, that Contractor suffers as a result of such claims.

5. Client may only invoke the obligations, as they arise from this article, if he himself has fulfilled all his obligations towards Contractor.
6. Any right of action, on whatever account, of Client against Contractor will lapse at the latest one year after completion of the work.

Article 11. Suspension, setoff, cancellation and termination

1. Client shall not be entitled to suspend or set off its (payment) obligations.
2. Client is – except when it is a private individual – not entitled to terminate or cancel the Agreement, unless Contractor explicitly agrees to this. Contractor may attach conditions to such consent at its own discretion.
3. Client will be in default by operation of law in the following cases and Contractor will be entitled to terminate the Agreement in whole or in part out of court, without any notice of default or judicial intervention being required:
 - a. if Client files for bankruptcy or a (provisional) suspension of payments, is declared bankrupt, is granted a (provisional) suspension of payments or Client is put into or placed under administration or placed under guardianship by virtue of a statutory provision;
 - b. if Client transfers (part of) its business or at least its activities, liquidates or shuts down or discontinues them;
 - c. if a pre-judgment attachment or executory attachment is levied against the customer;
 - d. if Contractor has good reason to fear that Client will fail to fulfill any of its obligations, or if Client has already failed to fulfill its obligations.
4. In the event of dissolution by Contractor on the grounds of the previous paragraph, Client will owe Contractor by operation of law an amount of 25% of the purchase price (including shipping costs) and/or contract price.
5. The foregoing is without prejudice to Contractor's other rights.

Article 12. Applicable law and disputes

1. Only Dutch law shall apply to the Agreement.
2. Only the court that has jurisdiction for the municipality in which Client has its registered office is competent to settle disputes arising from the Agreement, unless Contractor opts for the court with territorial jurisdiction (*relatief bevoegde rechter*) or for arbitration.