

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions are applied by Escada B.V., established at Risseweg 17 in (6004 RM) Weert, registered at the Chamber of Commerce under number 17238114. These General Terms and Conditions are filed with the Chamber of Commerce under number 17238114 and can also be downloaded from the website www.upstairs.com

1. Definitions

1.1 In these General Terms and Conditions the definitions set out below have the following meaning:

Agreement: all agreements between the Buyer and Seller, including all amendments and additions to it with regard to buying and selling Products;

Buyer: the buyer of Products not being a consumer or end-user;

Conditions: these General Terms and Conditions;

Parties: The Buyer and the Seller;

Products: all products and services of the Seller;

Seller: Escada B.V.

All definitions have the same meaning in singular and plural unless explicitly otherwise stipulated.

2. Applicability

2.1 These Conditions are applicable to all quotations and offers by the Seller as well as all Agreements and legal consequences arising from the above unless the parties explicitly agree otherwise.

2.2 The applicability of (purchase) conditions of the Buyer is explicitly excluded.

2.3 If any provision in these Conditions is invalid or is annulled, the remaining provisions of these Conditions will remain fully effective and the Seller and Buyer will consult each other in order to agree new provisions to replace the invalid or annulled provisions, observing as much as possible the purpose and purport of the invalid or annulled provision.

2.4 The Seller is at any time entitled to adjust these Conditions. The most recent version of the Conditions will always be applicable. The most recent version of the Conditions will always be applicable. Such an amendment will become effective fourteen (14) days after the date of despatch of the amended Conditions to the Buyer. If the Buyer objects in writing to the amendment within these fourteen (14) days, the original Conditions will remain effective with regard to him.

3. Offers and orders

3.1 All offers and quotations by the Seller are without any obligation and not binding unless explicitly indicated otherwise.

3.2 All offers and quotations remain valid for 30 days unless explicitly determined otherwise.

3.3 The Buyer guarantees the accuracy and completeness of the information on which the Seller bases its offer or quotation.

3.4 The Seller cannot reasonably be bound by apparent mistakes and/or typing errors in offers, quotations and Agreements. If the price offered by the Seller is inaccurate and differs more than 10% from the intended price, the Seller can dissolve the Agreement after which the amount already paid by the Buyer will be refunded by the Seller. In the event of dissolution of the Agreement pursuant to the above, the Seller will not be liable in any way for damages as a result of the dissolution.

3.5 The Buyer can place his order by means of:
- e-mail (via email address: info@upstairs.com)
- in writing

3.6 An Agreement will only be formed after the Seller has accepted an order in writing or via e-mail.

3.7 The Seller will at any time be entitled to (partly) refuse an order without any explanation and without being in any way liable for any damages for instance if the Seller has an indication or suspects that the Buyer will not abide by his payment obligations and/or the Products are not available.

4. Performance

4.1 The Seller will make efforts to the best of its ability to carry out the Agreement with due care, as the case may be according to the arrangements and procedures determined in writing with the Buyer. All activities of the Seller will be carried out on the basis of an obligation to perform to the best of one's abilities, unless and insofar as the Seller specifically undertook a result in the written order and the respective result has additionally been sufficiently clearly described.

4.2 The Seller reserves at any time the right to deploy third parties for the activities, if this is required for the proper performance of the activities. The applicability of Section 7:404 of the Dutch Civil Code is herein explicitly excluded.

4.3 The Seller will select any third parties with due care and only engage them if this is necessary. The Seller is not liable for any damages caused by the third party.

5. Prices/Payments

5.1 Unless otherwise agreed in writing, the payments must be made without any suspension, discount or setoff for any reason whatsoever within fourteen (14) days after the invoice date, failing which the Buyer will be in default by operation of law and therefore without any further notice of default being required. If the Buyer fails to fulfil his payment obligation the Buyer will be immediately in default and will also owe interest of 1.25% per month on the outstanding amount, without any demand or notice of default to this end being required. The Buyer will then owe the costs, both in and out of court, to the

Seller with regard to the collection of anything that the Buyer owes to the Seller. The extra-judicial collecting costs amount to 15% of the outstanding amount with a minimum of EUR 250 (two hundred and fifty euros).

5.2 The Seller is at all times entitled, regardless of any payment arrangements made previously, to demand full or partial payment or replacement security with regard to the delivery of Products at a moment and in a manner at the full discretion of the Seller, as well as to suspend all its obligations under the Agreement until it has received payment or replacement security, without being liable for any damages.

5.3 All prices of the Products are expressed in euros unless otherwise indicated. Unless otherwise agreed all prices are excluding VAT and other taxes and/or levies and are excluding transport costs, packaging costs, insurance costs as well as export and import duties. These costs and levies are at the expense of the Buyer.

5.4 The Seller reserves at all times the right to adjust the prices of the Products on the basis of the consumer price index figure of Statistics Netherlands. If due to any government measure any cost price increasing taxes, levies or import duties are introduced or amended, or after the Agreement has been formed any government measures are taken pursuant to which the cost price of the services to be provided by the Seller are increased, the Seller will be entitled to pass these costs on to the Buyer even if it has been agreed that the price is to be fixed. The Seller will inform the Buyer of this immediately.

5.5 The Seller is entitled to deduct any payments first from the (extra-judicial) costs and thereafter from the interest due and after this from the principal sum.

6. Delivery and transport

6.1 Unless explicitly otherwise agreed in writing, all delivery dates are only estimates. The Seller will do its utmost to deliver the Products on the agreed date, but is not liable towards the Buyer if the agreed deadline cannot be met owing to causes which are reasonably beyond the Seller's control such as for instance delays due to transport (companies) or delivery times of the supplier of the Products. The Seller will never be liable for damages as a result of the delay.

6.2 If the Seller is unable to deliver the Products within 30 days after the agreed delivery date, the Buyer is entitled, as his only remedy, to cancel the order. In order to be able to cancel an order, the Buyer must send a letter to this end to the Seller. The cancellation will only be valid if the written cancellation has been received by the Seller before the Seller sent the Products.

6.3 The Buyer is obliged to report any defects or shortcomings of the Products to the Seller within 48 hours after having received the Products.

6.4 The Buyer is obliged to receive the Products on normal working days.

6.5 If not all the Products ordered are in stock, the Seller will be entitled to make part deliveries and to charge partial shipping. The Seller will inform the Buyer of this as soon as possible.

6.6 All Products will be delivered ex works (Incoterms 2010).

6.7 If the Buyer does not want to or cannot accept the delivery, the Buyer will immediately be in default. The Seller can then at its own discretion: (i) store the Products at the expense and risk of the Buyer or (ii) sell the Products at the best price reasonably to be obtained (after deduction of the reasonable costs for storage, insurance and sales costs), after which the Buyer will only receive the difference between the price obtained and the amount paid by him to the Seller, or (iii) offer the Products again for delivery whereby the extra costs will be at the expense of the Buyer.

6.8 Upon delivery of the Products the Buyer must sign an acknowledgement of receipt. It is the responsibility of the Buyer himself to check whether the number of Products delivered corresponds with the number on the despatch note. If the number of Products on the despatch note differs from the number to be received or if the Products are damaged, this must be stated on the despatch note. If the Buyer does not mention this on the despatch note, the Seller will not accept any liability for damages and/or the inaccurate number of Products delivered.

7. Retention of title and security rights

7.1 The Products remain in full ownership of the Seller until the Buyer has fully fulfilled his payment obligations.

7.2 The Buyer is not entitled to sell, hire out, dispose of, pledge or encumber in any other way or make available the Products delivered under a retention of title before the full ownership of the Products has passed onto the Buyer.

7.3 Until the moment of the transfer of title the Buyer is obliged to take all measures reasonably possible in order to protect the Products against any damage. If third parties (threaten to) seize items covered by the retention of title or want to establish rights or have rights exercised on them, the Buyer will be obliged to inform the Seller of this immediately.

7.4 In the event that the Seller wants to exercise the ownership rights indicated in this article, the Buyer shall already at this stage allow the Seller or third parties to be indicated by it unconditionally and irrevocably to have access to all the places where the property of the Seller is located and take this property back.

7.5 If the Seller cannot exercise its ownership rights, the Buyer will be liable for the damages suffered by the Seller.

8. Warranty

- 8.1 The Products to be delivered by the Seller must meet the usual requirements and standards which can reasonably be set on them at the time of delivery and for which they are intended in the Netherlands under normal use. The warranty mentioned in this clause is applicable to Products intended for use within the Netherlands.
- 8.2 Since the Products delivered by the Seller are manufactured by third parties, the warranty referred to in the first paragraph of this clause is restricted to (manufacturer's) warranty as provided by the suppliers/providers and manufacturers of the Products.
- 8.3 If the Product shows a design, material or manufacturing fault the Seller will replace or remedy the faulty Product, this at the Seller's discretion, provided the reporting of the defect has been timely according to the provisions in clause 6 and it is also covered by the manufacturer's warranty as meant in the second paragraph of this clause.
- 8.4 The warranty given in this clause is not effective if the damage is a result of normal wear and tear or inaccurate or improper use of the products or use after the best before date. Moreover, any warranty will also lapse if without the explicit written consent of the Seller the Buyer himself has tried to remedy the alleged defect or has tried to have it remedied.
- 8.5 The warranty given in this clause only applies if the Buyer has fulfilled all its obligations to the Seller.
- 8.6 The replacement or rectification of the Products during the warranty period does not result in an extension of this warranty period. The Seller will charge the Buyer for any rectification or replacement including administrative, forwarding and transport costs other than pursuant to the warranty meant in this clause.
9. Liability
- 9.1 The Seller's liability for indirect loss, including consequential loss, lost profits, missed savings, loss of files and/or data, claims on the Buyer by third parties and loss due to business stagnation and idle capacity, is at all times excluded.
- 9.2 The liability of the Seller due to an attributable failure in the performance of the Agreement is limited to compensation of direct loss up to a maximum of the amount of the price paid on the basis of the Agreement, unless the insurance pays a higher amount.
- 9.3 The condition for the existence of any right to compensation is always that the Buyer gives a written notice of default to the Seller and allows the Seller a reasonable period for fulfilment.
- 9.4 The Seller can only be liable if the Buyer informs the Seller in writing of the loss within 30 days after the loss occurred.
10. Force majeure
- 10.1 The Seller is not obliged to fulfil its obligations under the Agreement if it cannot fulfil them as a result of circumstances beyond its control (force majeure).
- 10.2 The term force majeure includes for instance, but is not limited to, non-delivery, incomplete and/or delayed delivery by suppliers, war and threat of war, terrorism, import and export prohibitions, epidemics, traffic disruptions, loss or damage during transportation, fire, theft, disruptions in energy supply.
11. Premature termination
- 11.1 The Seller is entitled to suspend its obligations or (partly) to dissolve the Agreement or prematurely terminate it without any prior notice of default being required and without being liable for any damages or costs and without relinquishing any other right, if:
- a) the Buyer has not fulfilled his (payment) obligations;
 - b) there is a (threat of) bankruptcy of the Buyer;
 - c) the Buyer has applied for a moratorium or intends to apply for it;
 - d) the Buyer can no longer have the free disposal of (liquid) resources for instance due to a seizure;
 - e) the Buyer is being dissolved or intends to be dissolved;
 - f) the ownership of the Buyer is transferred to a third party or the third party has obtained any control;
 - g) circumstances occurred which are of a nature such that fulfilment of the obligations cannot reasonably be required from the Seller.
- 11.2 If the cases meant above occur, the claims of the Seller on the Buyer will become immediately and fully due and payable.
12. Intellectual property rights
- 12.1 All designs, technical drawings, calculations, samples and the like with regard to the Products remain at all times the property of the Seller and cannot be reproduced or transferred or given on loan to any third parties without the explicit prior written consent of the Seller.
- 12.2 The Seller reserves all intellectual property rights on account of the Dutch Copyright Act (*Auteurswet*) or other legislation.
- 12.3 The Buyer guarantees that he will not infringe the intellectual property rights of the Seller or the suppliers of the Seller in relation to the Products.
13. Buyer's details, privacy and secrecy
- 13.1 The Seller will only collect details of the Buyer insofar as this is necessary for the performance of the Agreement. The details will be used, insofar as is allowed by law, for the business operations of the Seller or its affiliated companies or third parties and will not be retained any longer than is necessary for its operations. The Buyer gives the Seller irrevocable consent for the use and retention of his (personal) details.
- 13.2 The Buyer guarantees the accuracy of the (personal) details provided by him and will notify the Seller immediately if there are any changes.
- 13.3 The Seller is entitled to provide third parties with the (personal) details of the Buyer if:
- a) this is necessary in order to fulfil the obligations under the Agreement;
 - b) the Seller is taking (collection) measures through third parties against the Buyer;
 - c) the Seller wants to have a credit report drawn up;
 - d) the Seller is obliged to do so pursuant to legislation or regulations.
- 13.4 The Seller and Buyer undertake to each other to observe secrecy with regard to all information and details they receive from each other in connection with the (performance of) the Agreement during the term of the Agreement and afterwards.
14. Miscellaneous
- 14.1 The Buyer is not entitled without the prior written consent of the Seller to transfer any right arising from the Agreement to any third parties. The Buyer grants in advance the right to the Seller to transfer the rights arising from the Agreement in whole or in part to any third parties.
15. Applicable law and disputes
- 15.1 These Conditions and this Agreement are governed by Dutch law.
- 15.2 Any disputes will be exclusively submitted to the competent court of the district of Oost-Brabant, location 's-Hertogenbosch.
- 15.3 The applicability of the Vienna Sales Convention is explicitly excluded.