



Koperslagerij 15  
4762 AR Zevenbergen  
The Netherlands

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www.able2.nl

General Terms and Conditions of:

Able 2 B.V.  
Koperslagerij 15  
4762 AR Zevenbergen  
The Netherlands

Chamber of Commerce No.: 201063800000

**(AS 133C-16)**

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**Article 1: Applicability, definitions**

1. These General Terms and Conditions apply to any offer and to any contract of sale and purchase of Able 2 B.V., established in Zevenbergen, hereinafter to be referred to as "the User".
2. The buyer is hereinafter referred to as "the Other Party".
3. Various provisions in these General Terms and Conditions refer to a natural person who acts outside his trade, business or profession. In these provisions the Other Party is indicated by the term "the Consumer".
4. "Offer" shall mean: any offer from the User, whether or not in the form of a written quotation.
5. "In writing" shall mean: by letter, e-mail, fax or any other mode of communication that is regarded as equivalent to writing in view of advances in technology and conventional practices.
6. The possible invalidity of (any part of) a provision contained in these General Terms and Conditions shall not affect the validity of the remaining provisions.
7. In the event of a discrepancy or conflict between these General Terms and Conditions and a translation hereof, the Dutch text shall prevail.
8. These General Terms and Conditions shall also apply to repeat or part orders flowing from the agreement.

**Article 2: Offers, prices**

1. Unless a period of validity is stated in/for an offer, this concerns an offer without obligation. The User may withdraw this offer within a period of no more than 2 working days after receipt of the acceptance.
2. The prices stated in offers or price lists are exclusive of BTW (Dutch VAT) and possible costs, such as transport costs, shipping costs, administrative costs, handling fees and expense claims of third parties engaged.
3. A composite offer does not oblige the User to deliver part of the offered items against a corresponding part of the price.
4. If the offer is based on information provided by the Other Party and this information appears to be incorrect or incomplete or should change at a later date, the User may adjust the quoted prices and/or delivery terms.
5. The offer and the prices do not automatically apply to repeat orders.
6. Samples and models that are displayed and/or provided and specifications of colours, dimensions, weights and other descriptions in brochures, promotional material and/or on the User's website shall be as accurate as possible but shall only be intended as a guide. The Other Party may derive no rights from these.
7. The samples and models provided shall remain the property of the User and are returned to the User immediately on the User's request at the expense of the Other Party.

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8. a. If (cost) price increasing circumstances occur at the expense of the User between concluding the agreement and the execution thereof, due to legislation and regulations, government measures, currency fluctuations or price changes of the required materials or raw materials, the User may increase the agreed prices accordingly and charge these to the Other Party.
- b. In the case of price increases within 3 months after the agreement was concluded, the Consumer may terminate the agreement by means of a written statement. Unless the Consumer notifies the User within 14 days after the price change was announced that he wants to use his right of termination, the User may assume that the Consumer agreed to the change

### **Article 3: Establishing agreements**

1. The agreement is established after the Other Party has accepted the offer of the User, also if this acceptance deviates on secondary issues from this offer. However, when the acceptance shall deviate in essential aspects, the agreement shall only be concluded after the User has explicitly agreed with these deviations in writing.
2. The User shall only be bound to:
  - a. an order without prior offer thereto;
  - b. oral agreements;
  - c. additions to or changes of the General Terms and Conditions or agreement; after written confirmation to the Other Party or as soon as the User - without objection of the Other Party - has started the performance of the order or arrangements.

### **Article 4: Engaging third parties**

If the User deems this necessary, it shall have the right to have specific deliveries carried out by third parties.

### **Article 5: Obligations of the Other Party**

1. The Other Party ensures that it shall make all information required for the execution of the agreement available to the User in time and in the manner required by it, and that the information is correct and complete.
2. The Other Party may only sell on items delivered by the User in the original packaging from the User or its supplier. The Other Party may make no changes to the original packaging and shall prevent any damage.
3. If the above obligations are not fulfilled (on time), the User may suspend the execution of the agreement until the Other Party has fulfilled his obligations. The costs and the other consequences arising from this shall be at the expense and risk of the Other Party.
4. If the Other Party does not fulfil his obligations and the User does not require immediate compliance, this will not affect the right of the User to require compliance at a later date.



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#### **Article 6: Delivery, delivery terms**

1. The agreed terms shall never be final deadlines. If the User fails to meet its obligations (on time), the Other Party must give notice of default to him and grant reasonable time to meet these obligations at a later date.
2. An agreed term will take effect at the moment that the User has received all information required for the delivery and the possible agreed (advance) payment of the Other Party. If delay arises from this, the term shall be extended accordingly.
3. The User may deliver in parts and invoice each part delivery separately.
4. The risk of items to be delivered transfers to the Other Party the moment these leave the User's premises, warehouse or shop or the User informed him that the items are ready for collection.
5. Dispatch or transport of the items shall take place at the expense and risk of the Other Party in a manner to be decided by the User. The User is not liable for any damage of whatever nature that is related to the dispatch or the transport.
6. Unless parties agree on another term, deliveries to the Consumer will be carried out within a period of up to 30 days after concluding the agreement. In this case the risk will transfer to the Consumer the moment the items are physically available to him/a third party appointed by him (not being the transporter). If the Consumer appoints the transporter himself (not being a transporter suggested by the User), the risk transfers to him on receipt of the goods by this transporter. Dispatch or transport is at the expense of the Consumer.
7. If it appears impossible, due to a cause within the risk area of the Other Party, to deliver the items ordered (in the agreed manner) to the Other Party, or if these are not collected, the User may store the items at the expense and risk of the Other Party. The Other Party will give the User the opportunity to deliver the items or collect these within a reasonable period set by the User.
8. If the Other Party still fails to meet its purchase obligation after the aforementioned reasonable period, it shall be immediately in default. The User may then, either fully or partially, terminate the agreement with immediate effect by means of a written statement and sell the items to third parties without being obliged to pay compensation for damages, costs or interest. This does not affect the obligation of the Other Party to compensate for any (storage) costs, damage or loss of profits of the User and/or the right of the User to demand compliance at a later date.

#### **Article 7: Packaging**

1. Packaging that is designated to be used several times shall remain the property of the User and may not be used by the Other Party for any purpose other than for which it is designated.
2. The User determines whether the Other Party must return packaging or whether he will collect this himself and at whose expense the latter is carried out.
3. The User may charge a returnable deposit for this packaging to the Other Party. If the packaging is returned by the Other Party for free within the term agreed, the User shall take back the packaging. The returnable deposit will be paid back to the Other Party or set off against returnable deposits for the packaging of subsequent deliveries. The User may deduct 10% handling costs on the amount to be paid back or set off.
4. If the packaging is damaged, incomplete or has been destructed, the Other Party shall be liable for the damage and its entitlement to a repayment of the returnable deposit shall lapse. If this damage is higher than the returnable deposit charged, the User shall not have to take back the packaging. He may then charge it to the Other Party at cost price, less the returnable deposit paid by the Other Party.
5. Packaging for single use may be left at the Other Party's. Possible costs for removal shall be at the expense of the Other Party.

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#### **Article 8: Complaints and returns**

1. The Other Party shall check the delivered items immediately on receipt and state any visible failures, defects, damage and/or anomalies in numbers on the consignment note or accompanying note or, in their absence, reports these to the User in writing within 2 working days. If such complaints are not reported in a timely manner, the items are deemed to have been received in good order and to conform with the agreement.
2. Other complaints are reported to the User by the Other Party in writing immediately after discovery, but no later than within the agreed guarantee period. The Other Party shall bear all risks of failing to report directly. If no guarantee period has been agreed, the period of one year following delivery shall apply.
3. If a complaint is not reported in a timely manner, it is not possible to make a claim under the agreed guarantee.
4. If the ordered items can only be delivered in (wholesale) packaging the User has in stock or in minimum quantities or numbers, the items may show slight anomalies that are acceptable in the industry, as regards stated weights, quantities, colours and sizes. These anomalies are not classed as shortcomings on the part of the User and claims under the guarantee regarding these shall not be possible.
5. Complaints shall not suspend the Other Party's payment obligations.
6. The previous paragraph does not apply to the consumer.
7. The Other Party shall give the User the opportunity to investigate the complaint and provide all relevant information. If it is necessary for the items to be returned for investigation, this will be at the expense of the Other Party, unless the complaint proves to be justified. The transport risk will always be borne by the Other Party.
8. Returning the items shall take place in a manner to be determined by the User and in the original packaging or deposit packaging.
9. No complaints can be lodged about:
  - a. imperfections in or characteristics of items produced from natural materials, if these imperfections or characteristics are inherent to the nature of the materials;
  - b. discolourations and small colour deviations;
  - c. items that have been changed in nature and/or composition or that have been fully or partially treated or processed after receipt.

#### **Article 9: Guarantees**

1. The User shall execute the deliveries in a proper manner and in accordance with standards applicable in the industry, but shall never provide a more extensive guarantee than has been agreed.
2. The User shall be responsible during the guarantee period for the usual quality and reliability of the items delivered.
3. If the manufacturer or supplier provides a warranty for the items delivered by the User, this warranty applies in the same manner between the parties. The User shall inform the Other Party in this regard.
4. If the purpose for which the Other Party wishes to treat, process or use the items differs from the customary use of these items, the User shall only guarantee that the items are suitable for this if it has confirmed so in writing to the Other Party.
5. No claim can be made under the guarantee until the Other Party has paid the price agreed for the items.
6. The previous paragraph does not apply to the Consumer.

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7. In the case of a justified claim under the guarantee the User will arrange - at his discretion - for a repair or replacement of the items free of charge or a repayment or discount on the agreed price. If there is any additional damage, the provisions set out in the Liability Article shall apply.
8. The Consumer may always opt for repair or replacement of items free of charge, unless this may, in all reasonableness, not be demanded from the User. In the latter case the Consumer may terminate the agreement by means of a written statement or demand a discount on the agreed price.

#### **Article 10: Liability**

1. The User shall accept no liability other than the guarantees explicitly agreed or given by the User.
2. The User is only liable for direct damage. Any liability for consequential damage such as trading losses, loss of earnings and/or losses sustained, damage caused by delay and/or personal or bodily injury shall be expressly excluded.
3. The Other Party takes all measures needed to prevent or limit the damage.
4. If the User is liable, the liability for compensation shall at all times be restricted to the maximum amount paid by the insurer where appropriate. If the insurer does not pay or if the damage is not covered by the insurance taken out by the User, the liability for compensation shall be limited to the invoice amount of the delivered items.
5. The Other Party must sue the User for any damage suffered by him within 6 months after he became or could have become aware of it.
6. Contrary to the previous paragraph, a period of 1 year applies to the Consumer.
7. The User is not liable - and the Other Party cannot make a claim under the applicable guarantee - if the damage has arisen due to:
  - a. improper use, use contrary to the purpose for which the items delivered were intended or use contrary to the directions, advice, operating instructions, leaflets, etc. provided by or on behalf of the User;
  - b. incompetent safekeeping (storage) or maintenance of the items;
  - c. errors or incompleteness in the information provided to the User by or on behalf of the Other Party;
  - d. instructions or directions from/on behalf of the Other Party;
  - e. or due to a choice of the Other Party, which deviates from the User's advice and/or what is customary;
  - f. or due to the fact that the Other Party or third parties on his behalf carried out (repair) work or adjustments to the delivered items, without the User's explicit prior permission.
8. The Other Party is fully liable for all damage arising from this in all cases listed in the previous paragraph, and indemnifies the User against any claims from third parties.
9. The limitations of the liability stated in this article shall not apply if the damage is due to intent and/or willful recklessness by the User or its supervisory staff on a management level or if mandatory legal provisions oppose this. Only in these cases shall the User indemnify the Other Party against any third party claims.

#### **Article 11: Payment**

1. The User may require (partial) advance payment or other security for payment at all times. The required advance payment for the Consumer is a maximum of 50% of the agreed price.
2. Payment must take place within an expiry period of 30 days after the invoice date, unless parties have agreed a different payment term in writing. The invoice shall be considered correct if no objections have been made within the payment term.

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3. If an invoice is not fully paid after expiry of the term referred to in the previous paragraph or if it was not possible to pay the amount by direct debit, the Other Party is due to the User a default interest of 2% per month, to be calculated cumulatively over the principal sum. Parts of a month are computed as a full month.
4. In the aforementioned situation a default interest of 6% on an annual basis applies to the Consumer, unless the statutory interest is higher. In this case the statutory interest applies.
5. If payment is not forthcoming after notice was given, the User may charge the extrajudicial collection costs to the Other Party at 15% of the invoice amount with a minimum of € 40.00.
6. In the above-mentioned notice, the User shall give the Consumer a term of at least 15 days to make a payment. If payment is again not forthcoming, the extrajudicial collection costs for the Consumer will be:
  - a. fifteen percent of the amount of the principal sum for the first € 2,500.00 of the demand (with a minimum of € 40,00);
  - b. ten percent of the amount of the principal sum over the next € 2,500.00 of the demand;
  - c. five percent of the amount of the principal sum over the next € 5,000.00 of the demand;
  - d. one percent of the amount of the principal sum over the next € 190,000.00 of the demand;
  - e. half a percent of the surplus of the principal sum.All this with an absolute maximum of € 6,775.00.
7. For the calculation of the extrajudicial collections costs the User may, after 1 year, increase the principal amount by the default interest accrued in that year.
8. In the absence of full payment, the User may terminate the agreement without further notice of default by a written statement or to suspend its obligations under the agreement until payment is received or provided appropriate security. The User shall also have the aforementioned right of suspension if it has legitimate grounds to doubt the Other Party's/the Consumer creditworthiness even before the Other Party/the Consumer enters into default regarding payment.
9. The User will initially deduct payments received from all interest and costs due and subsequently from invoices which have been due and payable the longest, unless the payment is accompanied by a written statement that it refers to a later invoice.
10. The Other Party may not deduct any claims of the User from any reclamations that it has on the User. The aforesaid also applies if the Other Party applies for a (temporary) suspension of payment or is declared bankrupt.
11. The previous paragraph does not apply to the consumer.

#### **Article 12: Retention of title**

1. All items supplied/to be supplied under the Agreement shall remain the property of the User until the Other Party has met all its payments obligations.
2. These payment obligations consist of payment of the purchase price of the items, increased by claims relating to work performed in connection with that delivery and claims due to shortcomings attributable to the Other Party, including payment of damages, extrajudicial collection costs, interest and possible penalties.
3. On the delivery of identical, non-individualized items, the consignment relating to the oldest invoice shall be considered to have been sold first. Therefore, retention of title always remains with the items delivered that are still in stock, in the shop and/or form a part of the inventory and equipment of the Other Party on invoking retention of title.
4. The Other Party may resell the items during his normal business operations, provided he stipulates that his customers recognize an identical retention of title on these items.

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5. As long as the title is retained in the items, the Other Party may not pledge the items in any manner or bring items under the actual control of a financier.
6. The Other Party informs the User immediately in writing if third parties claim to have ownership or other rights to the items.
7. As long as the Other Party holds the items, it shall carefully store them as identifiable property of the User.
8. The Other Party arranges a business interruption or home contents insurance to ensure that the items delivered which are subject to retention of title are included in the policy. Immediately on the User's request he will give access to the insurance policy and any included proof of premium payments.
9. If the Other Party contravenes this article or if the User claims retention of title, the User and his employees may enter the Other Party's site and take possession of the items. This does not affect the User's right to compensation of damage, lost profit and interest and the right to terminate the agreement without any notice of default by a written statement.

**Article 13: Bankruptcy, loss of power to dispose of property, etc.**

1. The User may terminate the agreement without any notice of default by a written statement to the Other Party, at the time when the Other Party:
  - a. is declared bankrupt or files for bankruptcy;
  - b. applies for (temporary) suspension of payment;
  - c. is affected by enforceable seizure;
  - d. is placed under guardianship or judicial supervision;
  - e. otherwise loses the power to dispose of its property or loses legal capacity regarding (parts of) its assets.
2. The Other Party shall always inform the guardian or administrator of the (contents of the) agreement and these General Terms and Conditions.

**Article 14: Force majeure**

1. In the event of force majeure of the Other Party or the User, the latter may terminate the agreement by means of a written statement to the Other Party or suspend compliance with his obligations towards the Other Party for a reasonable term without being obliged to pay any compensation.
2. Force majeure with respect to the User shall include: a non-culpable shortcoming by the User, a non-culpable shortcoming of third parties or suppliers engaged by the User or other serious grounds on his part.
3. In any case force majeure applies to the User in the following circumstances: war, revolt, mobilization, riots at home and abroad, government measures, strikes within the company of the User or a threat of these and other circumstances, disruption of existing exchange rates at the time the agreement was concluded, operational failures due to fire, burglary, sabotage, power failure, internet or telephone failures, natural phenomena, (natural) disasters and suchlike, as well as transport problems and delivery problems arisen from weather conditions, roadblocks, accidents, and import and export hindering measures.
4. If force majeure occurs when only part of the agreement has been executed, the Other Party shall be obliged to fulfill its obligations towards the User until that moment.



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**Article 15: Cancellation, suspension**

1. If the Other Party wishes to cancel the agreement prior to or during the execution thereof, the User may require fixed damages from the Other Party to cover all expenses incurred and damage suffered due to termination, including any lost profit. At the option of the User and dependent on all deliveries made, these damages shall amount to 20 to 100% of the agreed price.
2. The Other Party shall indemnify the User against any third-party claims resulting from the cancellation.
3. The User may set off the damages due against all amounts already paid by the Other Party and possible counterclaims from the Other Party.
4. Should the execution of deliveries be suspended at the request of the Other Party, the costs incurred for the deliveries that are carried out, shall be immediately due and payable and the User will have the right to charge these to the Other Party. This also applies to all costs incurred or costs resulting from the suspension.
5. Costs the User incurs as a result of resumed deliveries, are at the expense of the Other Party. If the execution of the agreement cannot be resumed after the suspension, the User may terminate the agreement by means of a written statement to the Other Party.

**Article 16: Applicable law, jurisdiction**

1. The agreement concluded between the Parties is exclusively governed by Dutch law.
2. The applicability of the Vienna Sales Convention (CISG) is explicitly excluded.
3. Any disputes will be submitted to the competent court in the place where the User is established, although the User shall always retain the right to submit a dispute to the competent court in the place where the Other Party is established.
4. Irrespective of the choice of the User, the Consumer will always retain the right to submit the dispute before the legally competent court. The Consumer must notify his choice to the User within a month after receipt of the summons.
5. If the Other Party is established outside the Netherlands, the User shall have the option to submit the dispute to the competent court in the country or the state where the Other Party is established.