

AECTUAL PRODUCTS

GENERAL TERMS AND CONDITIONS

I. GENERAL TERMS

1. Definitions and applicability

- 1.1. For the purposes hereof Aectual is Aectual B.V., having its seat in Amsterdam and offices at Asterweg 149, 1031 HM Amsterdam and registered with the Chamber of Commerce under number 58864598 and/or any affiliate, contractor, subsidiary or group company of Aectual B.V. that stated that these General Terms and Conditions apply and Purchaser is the person or entity that has entered into an agreement with Aectual for the purchase of an 'Aectual' Floor or for the purchase of other goods or services.
- 1.2. These General Terms and Conditions are applicable to all agreements entered into by Aectual with a Purchaser.
- 1.3. Deviations from and additions to these General Terms and Conditions shall only be valid if agreed upon in writing.
- 1.4. Words and expressions written with a capital and not defined herein shall have the meaning attributed thereto in the Deal Terms and its Appendices.

2. Agreement

- 2.1. The Agreement consist of the Deal Terms, the Floor or other Specifications, if applicable, the Drawing, these General terms and Conditions and, to the extent not deviated therefrom, the Uniforme Administratieve Voorwaarden voor de uitvoering van werken en van technische installatiewerken 2012 (**UAV 2012**) (in English: Uniform Administrative Conditions for the Execution of Works and Technical Installation Works 2012).
- 2.2. Amendments, additions and deletions to the agreement shall be valid only if in writing and signed by both Aectual and the Purchaser.
- 2.3. No rights may be derived from offers, informative materials, brochures, artist's impressions nor any other material submitted by Aectual to Purchaser unless incorporated in the Agreement.
- 2.4. Dates and terms in the Agreement (other than payment dates) are at all times indicative unless expressly stated otherwise.
- 2.5. Any work or goods not included in the Agreement upon signing, shall be considered additional work. Purchaser shall pay such additional work. The remuneration shall be based on the regular prices Aectual charges.

3. Intellectual property

- 3.1. Unless expressly stated otherwise Aectual retains all rights, title and interest in and to any documents, designs, drawings, software made and/ or submitted to Purchaser pursuant to the Agreement.
- 3.2. Purchaser shall not be allowed to make public and/ or reproduce any such documents, designs, drawings, software as referred to in **clause 3.1** unless with the express prior written approval from Aectual.

4. Retention of title

- 4.1. All goods delivered under the Agreement remain the property of Aectual until Purchaser shall have paid all sums due under the Agreement.

5. Subcontracting

- 5.1. Aectual is at all times entitled to subcontract its obligations under the Agreement in whole or in part. The Aectual manufacturing, providing of materials, installation and/or delivery of the Floor or of other goods or services may at all times be carried out by a subcontractor of Aectual.

6. Complaints and claims

- 6.1. All complaints regarding the design, manufacture and delivery of the Floor or other goods or services must be submitted to Aectual within fourteen days of the date the Purchaser discovers or should have reasonably discovered a fault in either of them.

7. Purchaser's Liability

- 7.1. Purchaser is responsible for the prescribed constructions, work methods, prescribed materials and its instructions.
- 7.2. Purchaser is liable for all damages as a consequence of defects, faults, deficiencies and/ or unsuitability of any and all materials made available and/ or prescribed.
- 7.3. The consequences of any change in applicable laws or regulations and/ or any changes in permissions are for the account of Purchaser.

8. Aectual's liability

- 8.1. Aectual shall never be liable for either indirect or consequential damages (in Dutch: indirecte of gevolgschade).
- 8.2. In any event and at all times the liability of Aectual and all of its officers, if any, for any and all damages in connection with the Agreement, whether such liability results from the agreement or is non-contractual, whether resulting from the design, manufacture, delivery and use of the Floor, other goods or services, or any express or implied warranties, is always capped at the higher of (i) any sums paid out under Aectual's applicable insurance policy or

(ii) EUR 10,000 (ten thousand euros).

8.3. No cap will apply if and to the extent that damages result from a willful act or gross negligence of any of Aectual's managing officers.

9. CAR Insurance

9.1. Unless otherwise agreed in the Deal Terms Aectual shall take out a so-called CAR Insurance (Construction All Risks) with a maximum liability of EUR 2,500,000. The Purchaser shall be co-insured and the insurance policy shall be available at the offices of Aectual.

10. Force majeure

10.1. In the event the manufacture or delivery of the Floor or any other goods or services is delayed for reasons of 'force majeure' then the estimated delivery date will be postponed until the 'force majeure' shall have ceased to exist PROVIDED THAT Purchaser may terminate the Agreement in the event the reasons giving rise to 'force majeure' shall continue for a consecutive period in excess of twelve (12) weeks.

11. Payment

11.1. All payments must be made on or before the due date stipulated in the Agreement.

11.2. Interest will accrue in accordance with section 6:119a of the Dutch Civil Code on all late payments from the date payment is due.

11.3. In the event of late payment Aectual shall be entitled without notice to suspend its obligations hereunder until such time as the payment(s) due and the interest accrued thereon shall have been received as well as the full amount of Aectual's damages if any.

12. Setoff

12.1. Purchaser is not entitled to suspend its obligations under the Agreement or to set its payments obligations off against any (purported) claim it may have against Aectual.

13. Suspension and termination

13.1. This agreement may further be terminated by a party by notice in writing without notice period:

- a) if the other party is declared bankrupt;
- b) if the other party has been granted 'surseance van betaling';
- c) if the other party's business is wound up.

13.2. Suspension nor termination as stipulated in clause 13.1 and 13.2 hereinbefore shall give rise to any liability whatsoever from Aectual.

14. Notices

14.1. To the extent any notice is to be given in writing, then such notice may be given by email to the email address stipulated in the Agreement.

15. Severability

15.1. If any provision of these general terms and conditions is null and void or annulled, the other provisions of the terms shall remain in full force.

16. Headings

16.1. The headings in these terms and conditions are for convenience only and do not affect their interpretation.

17. Applicable law and forum

17.1. The agreement is subject to the laws of The Netherlands and Purchaser hereby submits to the exclusive jurisdiction of of the Arbitration board for the building industry ("Raad van Arbitrage voor de Bouw") currently based in Utrecht, the Netherlands, in accordance with its then applicable arbitration rules.

17.2. The UN Convention on Contracts for the International Sale of Goods is not applicable.

II. ADDITIONAL TERMS APPLICABLE TO THE DESIGN OF AN 'AECTUAL' FLOOR

18. Measurements and data provided by Purchaser

18.1. Aectual shall not be liable for (i) checking measurements or other data submitted by Purchaser nor (ii) any costs or damages resulting from the submission of incorrect and/or insufficient data, including, without limitation, incorrect measurements by Purchaser.

19. Design

19.1. In the event the Design is by Aectual, then the Design shall either be at the discretion of Aectual or based upon a 'wish list' or list of parameters by Purchaser.

20. Changes to requested design – if by Aectual, - if based upon 'wish list'

20.1. Once the Design has been presented Purchaser may request changes to the Design provided that the manufacturing process has not yet started. Any costs involved with changing a Design are for the account of Purchaser.

20.2. If a design for a Floor is submitted by Purchaser then Purchaser warrants and guarantees that the design submitted does not infringe any right(s) of a third party.

20.3. If the Design has been provided by Aectual, Aectual warrants either that the Design is wholly original with Aectual or that any rights necessary to make and use the Design have been fully cleared by Aectual for the intended use.

21. Usage rights

- 21.1. Purchaser obtains a non-exclusive license to use the Floor and the Design as per the Deal Terms only. All other rights are at all times expressly reserved.

III. ADDITIONAL TERMS APPLICABLE TO THE DELIVERY AND INSTALLATION OF AN 'AECTUAL' FLOOR

22. Licenses and permits

- 22.1. It is the responsibility of Purchaser to acquire all required licenses and permits for the installation of the Floor at the premises.

23. Delivery

- 23.1. Delivery shall mean:
- 23.1.1. in respect of materials: arrival at the premises;
 - 23.1.2. in respect of the Floor, the installation at the premises. Aectual shall determine whether the delivery of the Floor has taken place.

24. Premises

- 24.1. No later than the delivery date stipulated in the Deal Terms the area in the premises where the Floor is to be installed needs to be fully vacated, cleaned and dust free/ swept clean.
- 24.2. All staff of Purchaser at the Premises shall follow any and all safety instructions issued by or on behalf of Aectual.

25. Delay caused by Purchaser – damages to Aectual

- 25.1. In the event any delay in the delivery of the Floor is caused by reasons due to an act or omission of Purchaser or which are at Purchaser's risk, then Purchaser shall indemnify Aectual for any additional costs and/ or damages caused by such delay.

26. Risk transfer

- 26.1. Immediately upon delivery of the materials and/or the Floor, whether accepted or not, risk in respect of the materials and/or the Floor shall pass to Purchaser.