

## Article 1 – Definitions and applicable terms and conditions

1.1. The following definitions are applicable to these General Terms and Conditions:

- Airworks:** The private company with limited liability Airworks Inflatabes B.V., with its registered office and principal place of business at Flevolaan 7, (1382 JX) Weesp, registered in the Trade Register of the Chamber of Commerce in Amsterdam under number 34170530;
- Buyer:** the natural person or legal entity with whom or in the name of whom one or more Agreement(s) is/are concluded with Airworks;
- Agreement:** the contract under which – unless agreed otherwise in writing – Airworks, as the seller, undertakes towards the Buyer, as the Buyer, to transfer ownership and to supply Items and under which the Buyer undertakes towards Airworks to deliver a counter performance, consisting of payment of the agreed purchase price;
- Parties:** Airworks and Buyer; and
- Item:** 'inflatables', including (but not limited to) inflatable items, product blow-ups and (theatre) decors to be sold by Airworks to the Buyer.

1.2. These Terms and Conditions are applicable to all Contracts between Airworks and its Buyer(s). Unless the parties agree explicitly otherwise in writing, the applicability of any general purchasing, supply and/or other terms and conditions used by the Buyer are explicitly excluded. If agreements are made between Airworks and its Buyer(s) that deviate from these Terms and Conditions such agreements shall have to be recorded in writing.

1.3. Unless agreed otherwise in writing, these Terms and Conditions are also applicable, in the same way as described in Article 1.2, to any additional and/or follow-on orders.

1.4. These Terms and Conditions are also applicable to Contracts between Airworks and its Buyer(s) for the performance of which Airworks is required to engage third parties. Insofar as elements of the Contracts concluded between Airworks and the Buyer partly represent a hire relationship then that/those element(s) of the Agreement shall (also) be subject to the General Terms and Conditions of Hire of Airworks B.V..

1.5. If one or more of the provisions in these Terms and Conditions is/are at any moment null and void or may be declared null and void in full or in part, the remaining provisions of these Terms and Conditions shall remain fully applicable. In that case the statutory regulations shall be applicable to the subjects regulated by the null and void and/or set aside provisions.

1.6. If there is any ambiguity regarding the interpretation of one or more of the provisions of these Terms and Conditions then that/those provision(s) shall be interpreted 'in the spirit' of the provision(s), with due regard for the background of the intention of the parties.

## Article 2 – Quotes, offers & formation of Agreement

2.1 For the purpose of forming Agreements between Airworks and its Buyer, Airworks issues quotes. The Agreement between Airworks and its Buyer is formed on acceptance by the Buyer of the offer(s) made in the quote. Acceptance is undertaken by written confirmation to Airworks, by return of the quote, signed to indicate acceptance,

2.2. All quotes and offers from Airworks are without obligation and do not bind Airworks until such time that the Agreement has been formed. A quote or offer shall be cancelled if the Item(s) to which the offer relates, is/are in the meantime no longer available.

2.3. Airworks cannot be bound to its quotes or offers if it can be reasonably understood by the Buyer that the quotes or offers, or one or more elements thereof, contain an obvious error or mistake.

2.4. Unless stated otherwise, the prices quoted in the quote or offer exclude VAT and other government duties and costs that maybe incurred within the framework of the Agreement, including travel and accommodation costs and shipping and administration costs.

2.5. Airworks has the right to charge the Buyer or offset with the Buyer price changes that occur after the quote was issued, including after the Agreement has been formed following acceptance. If unavoidable deviations in relation to the quote arise during the performance of the Agreement Airworks shall notify the Buyer of these at the earliest possible stage. Exceeding the quotes by up to 10% is deemed acceptable by Parties as a budgetary risk, and is accepted after Buyer has been notified by Airworks.

2.6. If the acceptance, deviates from the proposal contained in the quote or offer, Airworks shall not be bound by this. The Agreement shall then not be formed in deviation of article 6:225 sub 2 DCC if the acceptance deviates in minor points.

2.7. Component pricing does not oblige Airworks to perform only part of the order at a corresponding element of the quoted price. Offers or quotes are not automatically applicable to future orders.

## Article 3 – Retention of title

3.1. The goods supplied shall remain the exclusive property of Airworks for as long as the Buyer has not met its payment obligations in full.

3.2. Prior to the transfer of title, the Buyer is not authorized to sell, supply or otherwise dispose, pledge and/or encumber the Item unless this is with the written permission of Airworks and in accordance with further terms and conditions to be specified, and in a way that is not in accordance with the Buyer's normal operations and the normal purpose of the goods.

3.3. Prior to the transfer of title the Buyer is liable towards Airworks to act as a good (property) gestor for the Items and other additional goods supplied, and must therefore keep the goods in the same good and unaltered condition in which they have been supplied and keep them in accordance with the description on the Agreement up to the moment of valid transfer of title.

3.4. For Items supplied under retention of title the Buyer undertakes to insure and to maintain such insurance against fire, explosion and water damage as well as against theft, and the policy for this insurance must be provided to Airworks for inspection on first request. In the event of any insurance pay-out Airworks shall be entitled to these payments. Insofar as is necessary, the Buyer herewith undertakes towards Airworks that it shall provide its assistance in respect of everything that is (or may apparently be) required or desirable within this context.

3.5. The Buyer must always do all that may be reasonably expected of him to safeguard the Airworks' property rights. If third parties place an attachment order on Item(s) delivered under retention of title or if they wish to attach a right or have rights applied on these goods the Buyer is obliged to notify Airworks of this immediately.

3.6. At all times prior to the transfer of title, Airworks shall have access to the goods that it owns, wherever these may be located.

3.7. As soon as a Buyer fails to comply with one or more of its obligations towards Airworks or if Airworks assumes from a notification by and/or conduct on the part of the Buyer that the Buyer shall fail to meet an obligation all claims against the Buyer shall be claimable immediately and in full and Airworks shall be authorized, without any further notification of default or legal intervention, to enforce its rights under its (retention of) title, including the immediate reclaiming on first request of all that has been bought. If in such an event the Buyer retains the goods sold, irrespective of whether this is or is not unlawful, then Airworks can claim compensation for the time during which it does not have possession of the goods that are to be returned, such compensation being equal to the reasonable hire charge, without prejudice, if its damage amounts to more than this compensation, to its right to this additional amount. In any event, Airworks has at all times the authority to offset the amount owing by the Buyer against (potential) amounts to be refunded, irrespective of that which is stipulated in Article 6:217 DCC up and until 6:141 DCC.

3.8. In the event that Airworks wishes to exercise its property rights specified in this Article, the Buyer herewith gives its unconditional and irrevocable permission to Airworks and to third parties designated by Airworks to enter all locations in which the Item(s) of Airworks is/are located and to remove the said property.

#### **Article 4 – Inspection and complaints**

4.1. The Buyer is assumed to have received the Item and other goods in a good and undamaged condition, unless evidence to the contrary is provided by the Buyer.

4.2. Immediately after delivery / on receipt the Buyer must inspect the Item and other goods. Complaints regarding visible defects and/or missing goods must be reported to Airworks immediately after inspection. Defects which cannot be reasonably expected to be detected immediately after inspection must be notified to Airworks immediately in writing as soon as they are detected, though no later than 12 hours after delivery/receipt. In the event of a timely and valid complaint Airworks is not obliged to do more than replace or repair the relevant Item at its own expense, or – insofar as the defect cannot be repaired and the Item cannot be replaced – immediately terminate the Agreement without having to observe a notice period and in that case issue a credit note for invoices sent and refund the Buyer with amounts already paid.

4.3. A possible deviation regarding minor points in respect of the Item compared to images, drawings, specifications and other documentation on the website forms no grounds for complaints. If a complaint only relates to a part of the Agreement this cannot result in cancellation/termination of the entire Agreement, unless the Agreement has to be deemed to be unfit as a whole.

#### **Article 5 – Delivery times**

5.1 The stated delivery times are applicable as a guide and in such cases only as an approximation. Airworks will strive to deliver the Item within the agreed delivery time, but Airworks provides no guarantee whatsoever in respect of the agreed delivery times. Unless agreed specifically otherwise in writing. A non-timely delivery shall provide the Buyer with (i) no right to compensation, (ii) no right to dissolve the Agreement or (iii) right to fail to meet any obligation towards Airworks.

5.2 The delivery times stated by Airworks are only applicable to deliveries from stock and are approximate delivery times. The delivery time is based on the working conditions applicable at the time the Agreement is entered into and on the timely delivery of products to the Buyer. If delays arise as a result of a change in the working conditions referred to or because products ordered in a timely manner from third parties are not delivered in a timely manner the delivery time shall be extended insofar as reasonable by the duration of the delay.

#### **Article 6 – Risk transfer & Buyer liability**

6.1. The risk of loss of or damage to the delivered Items shall transfer to the Buyer at the moment at which they have been legally and/or actually delivered to the Buyer and have thus come under the control of the Buyer or third parties designated by the Buyer.

6.2. The Buyer is liable for all damage to the Items and the other goods that arises through the failure of the Buyer to comply with one or more of his obligations under the Agreement, in any event up to the moment at which title has formally transferred to the Buyer in accordance with that which is stipulated in Article 3 of these Terms and Conditions. All damage is assumed to have arisen as a result of that.

#### **Article 7 – Force majeure**

7.1. Airworks is not liable for the observance of any obligations if it is prevented from doing so as a result of a circumstance for which it is not to blame, and for which circumstance Airworks is not responsible according to law, a legal act or generally accepted beliefs (force majeure). If there is a non-attributable failure then Airworks shall immediately notify the Buyer of this in writing and provide the required evidence.

7.2. In addition to article 6:75 DCC in these Terms and Conditions force majeure also means, all external causes, foreseen and unforeseen, over which Airworks is unable to exercise any influence, though as a result of which Airworks is unable to observe the obligations. In any event, (damage as a result of) force majeure includes – yet is not limited to – damage as the consequences of fire, strikes, business interruptions and network faults, and the use of Items in the open air, either at Airworks or at its suppliers.

7.3. If Airworks invokes force majeure then this shall not deprive the Buyer from the right to terminate the Agreement if the force majeure results in delivery later than 30 days.

7.4. During the period of force majeure, the parties can suspend the obligations under the Agreement without the parties being held mutually liable for any form of compensation in relation to the Agreement. If this period lasts longer than two months each of the parties shall be entitled to terminate the Agreement without legal intervention with immediate effect by means of registered letter and without any obligation to pay compensation to the Buyer.

7.5. Insofar as Airworks has partly fulfilled or will be able to partly fulfil its obligations under the Agreement at the point when force majeure comes into effect, and the element that has been observed or that can be observed has an independent value, Airworks is entitled to charge the Buyer separately for the already observed element. The Buyer is obliged to pay that amount charged as if it were under a separate Agreement.

## Article 8 – Airworks liability

8.1. Airworks is not liable for damage of any kind whatsoever that arises as a result of a failure by the Buyer to observe one or more obligations under the Agreement, or because Airworks has assumed information issued by or on behalf of the Buyer that is incorrect and/or incomplete.

8.2. Insofar as Airworks can be held liable for any type of damage the liability on the part of Airworks shall be limited to a maximum of 1 x the value of the invoice for the instruction and/or order, at any rate to that element of the instruction / order to which the liability relates. The liability of Airworks is, in any event, always limited to the amount paid out by its insurer in the relevant case, irrespective of whether the invoice value for the instruction/order exceeds this amount.

8.3. Airworks is only liable for direct damage, which only means the reasonable costs to establish the cause and the extent of the damage, insofar as this determination relates to damage in the sense of these Terms and Conditions, any reasonable costs incurred to respond to any failure in Agreement performance on the part of Airworks - only insofar as this potential failure in performance is attributable by virtue of guilt, legal action or generally accepted principles – as well as the reasonable costs to prevent or limit the damage, insofar as the Buyer is able to demonstrate that these costs are related to limiting the direct damage as set out here.

8.4. Airworks excludes liability for indirect damage, including but not limited to consequential loss, loss of profit, lost savings and loss caused by business stoppage.

## Article 9 - Intellectual property

9.1. By issuing instruction to publicize or duplicate objects protected by the Copyright Act or any other statutory regulation relating to intellectual property that are made available directly by or on behalf of the Buyer, the Buyer declares that there is no infringement of statutory regulations or infringement of the protected rights of third parties and the Buyer indemnifies Airworks against claims relating to these from third parties and/or the direct and indirect consequences of this, both financial and otherwise arising from the publication or duplication.

9.2. After all of that which the Buyer owes to Airworks has been paid, including the buying of development costs and intellectual property rights, the intellectual property rights arising from the works shall, insofar as they belong to Airworks and are capable of transfer, be transferred to the Buyer at the moment that the relevant relationship between the Buyer and Airworks ends. Partly considering the costs associated with these, insofar as the intellectual property rights of third parties are involved Airworks shall, prior to engaging these third parties and on the request of the Buyer, consult with them about whether full transfer is required or is possible.

## Article 10 – Prepayments and payment terms

10.1. The agreed purchase price must be credited to the Airworks bank account in full at least one day prior to the delivery date, unless agreed otherwise in writing between Airworks and the Buyer. The term for payment of an invoice (send subsequently) is 7 days, unless stated otherwise on the invoice. This period is a strict deadline.

10.2. The Buyer is not entitled to offset the payment for the purchase price owing against any counterclaim, nor is the Buyer entitled to suspend payment of the purchase price.

10.3. If the Buyer fails to meet its payment obligations on time then it shall be in default – without the need for notice of default – and shall owe interest at 5% per month, whereby a part of a month shall count as a full month.

10.4. In the event of default the Buyer shall also owe extrajudicial costs of 15% of the principal sum, subject to a minimum of € 250, such being without prejudice of Airworks' right to claim the actual costs.

## Article 11 - Termination

11.1. Airworks is entitled to terminate the Agreement without notice of default and without legal intervention in, amongst others, the following cases:

- a. attributable failure on the part of the Buyer to meet its obligations;
- b. the death of the Buyer or the Buyer going into receivership;
- c. application by the Buyer for suspension of payments, bankruptcy or approval under Netherlands Debt Rescheduling (Natural Persons) Act.

11.2. Airworks is entitled to damages in the event of termination as referred to in paragraph 1 sub a of this Article.

## Article 12 – Delivery address

12.1. If Airworks undertakes the erection of the purchased Item the Buyer shall, in principle, determine the location at which the Item is to be erected. The Buyer is responsible for the correct marking of the location where the Item is to be erected. Furthermore, the Buyer is to be present on commencement of the works in order to indicate the marking. If the Buyer is not present on commencement of the works the erection shall be deemed to have been undertaken in accordance with the order and evidence to the contrary shall not be permitted.

12.2. The Buyer guarantees that the purchased Item can be erected at the location in a safe manner and without the risk of damage to other people's property and/or infringement of other people's rights. The Buyer is obliged to notify Airworks about the presence of wires, cables, pipes and other work on or in the ground.

12.3. The site on which the purchased Item is to be erected must be easily accessible and capable of being driven on. Airworks can demand that the Buyer allocates a different location if the location designated by the Buyer is deemed unsuitable and/or unsafe and/or is not without risk of damage. The Buyer cannot appeal to the seller if Airworks does not invoke this authority.

12.4. The Buyer guarantees that on the day that is agreed for delivery and/or erection of the purchased Item by Airworks, all agreed power points, cabling, suspension points, truss scaffolding and cherry picker, etc. shall be ready. Facilities that may be required for these are to be provided by the Buyer and shall be entirely at the expense of the Buyer.

12.5. Damage to the site and/or buildings, lines, pipes or other objects on or in the ground that is caused by erecting and keeping erect the purchased Item shall be /remain at the expense of the Buyer.

12.6. The Buyer is responsible for the (costs of) power supply and power consumption. The Airworks prices are based on the fact that the purchased goods can be delivered to easily accessible locations at ground level. The costs for work stoppage as a result of this shall be at the expense of the Buyer. Airworks is authorized to charge the Buyer for extra costs incurred in relation to the delivery and recovery. If, in the opinion of the seller, there are unsafe and unworkable conditions, including weather conditions or the weather forecast, the seller is entitled to suspend or stop the assembly / disassembly work, without the Buyer being entitled to claim any compensation in respect of this.

### **Article 13 - Other**

13.1. In the event that one or more provisions of this Agreement are null and void the other provisions shall remain in full force.

13.2. Unless the Buyer has notified in writing of changes to its address the Buyer shall be deemed to be domiciled at the address notified by the Buyer when entering into the Agreement.

13.3. In the event of translation of these General Terms and Conditions the Dutch text of these Terms and Conditions shall prevail.

13.4. Any claims by the Buyer shall lapse after one year has passed after the end of the Agreement.

### **Article 14 – Applicable law and competent court**

14.1. The relationship between Airworks and its Other Parties is governed exclusively by Dutch law, even if an obligation is undertaken abroad in part or in full or if the party involved in the legal relationship is domiciled abroad. The applicability of the Vienna Sales Convention is excluded.

14.2. All disputes arising from or relating to concluded Agreements shall be decided exclusively by the competent court in the district in which Airworks is established. Airworks, however, has the right to bring the dispute before the competent court specified in law.