

**GENERAL TERMS AND CONDITIONS OF SALE OF NV A. C. D.**  
(public limited company)

**1) GENERAL**

**1.1** In the absence of any written agreement to the contrary, the present general terms and conditions apply to all offers and quotations made by nv ALU CONSTRUCTION DEVELTERE (Zwaaikomstraat 22, 8800 Roeselare, 0432.637.222 – hereinafter called "ACD"), to any agreement concluded between ACD and its customer ("Customer"), and to all invoices issued by ACD, irrespective of whether the Customer's domicile or registered office is established in Belgium or abroad, and irrespective of whether the delivery is to be made in Belgium or abroad. In case of conflict between the present general terms and conditions of sale and any separate written agreement concluded between ACD and the Customer, the stipulations of the separate written agreement shall prevail. The placing of an order implies that the Customer accepts these general terms and conditions of sale. With respect to Customers-businesses the acceptance of these general terms and conditions of sale also implies that the Customer waives the application of his own general terms (of purchase). The Customer's general terms (of purchase) apply only if they were explicitly accepted in writing by ACD.

The non-application by ACD of one or more stipulations of these general terms and conditions of sale can never be considered as a waiver of these general terms and conditions of sale.

**1.2** Quotations remain valid for 60 days counting from the day on which they were made, unless explicitly stated otherwise. The quotation may be deviated from if certain factual data supplied by the Customer, which served as a basis for setting the price, appear not to be in accordance with the truth.

**1.3** In the event of cancellation of the order by the Customer, the latter shall be liable to pay, by way of fixed compensation, an amount equalling 25% of the agreed price, without prejudice to the right of ACD to claim higher damages if it can be proved that the actual damage exceeds the above-mentioned amount.

**1.4** The order is invoiced at the prices and conditions stated in the order confirmation. In the absence of any written agreement to the contrary, all possible taxes or levies shall be borne exclusively by the Customer.

**1.5** In case of repairs, adaptations and the renewal of parts of certain delivered goods, ACD shall not be liable for the unforeseeable costs caused by those works. In the event of works on a cost-plus basis, the hours actually worked and indicated by the installers of ACD on the work order signed by the Customer shall be charged. Additional work or extra materials used on the day of installation shall be indicated on the work order and signed by the Customer for approval.

**1.6** All invoices are payable at the registered office of ACD within the term indicated on the invoice. In the absence of any contestation by registered letter, all invoices shall be deemed to have been accepted within 8 days following receipt. Payments must be made in Euros, unless otherwise agreed in writing. Invoices must be paid net. Representatives of ACD are not authorized to take money. Discounts for immediate payment can only be deducted if this was agreed between the parties in advance and in writing. All payment costs shall be borne by the Customer.

**1.7** In case of complete or partial non-payment of an invoice on the due date, the Customer shall be liable to pay, by operation of law and without prior notice of default, overdue interests of 1% per month, for every month already started. Moreover, in case of complete or partial non-payment of a debt on the due date without valid reason, and following a notice of default that remained without effect, the outstanding debt shall be increased by a fixed compensation of 10% of the invoiced amount, with a minimum of 125 EUROS and a maximum of 2,500 EUROS, even in the event that terms of respite were granted and without prejudice to the right of ACD to claim higher damages if it can be proved that the actual damage exceeds the above-mentioned amount. In case of non-payment of one single invoice on the due date (i) ACD shall have the right, without prior notice of default or compensation, to suspend the Customer's other orders until full payment of the invoice, and (ii) all other claims on the Customer which are not yet due shall become immediately payable by operation of law and without prior notice. The drawing and/or acceptance of bills of exchange or other negotiable instruments, or the payment by bank transfer or in any other way does not imply any

novation nor any deviation from the present general terms and conditions of sale. If ACD's faith in the Customer's creditworthiness is shocked due to court decisions and/or other demonstrable events that make the proper performance of the Customer's contractual obligations questionable and/or impossible, ACD reserves the right to suspend the entire order or part thereof and to demand appropriate guarantees, even if all or part of the goods have already been dispatched. If the Customer refuses to provide such guarantees, ACD reserves the right to cancel the order either entirely or partly without the Customer being entitled to any compensation, and without prejudice to the right of ACD to claim damages.

Every payment received shall be set first against any interests and/or costs payable but unpaid, and subsequently against the oldest outstanding invoice, irrespective of any explicit indication to the contrary at the time of payment.

**1.8** The agreed terms of delivery are indicative, unless otherwise agreed in writing. Modifications to an order already placed - and accepted by ACD - automatically imply an extension of the proposed term of delivery. The goods delivered to the Customer by ACD remain the property of ACD until full payment by the Customer of all sums due, including interests and costs. Nevertheless, the entire risk of loss or damage to the goods shall pass to the Customer from the moment of delivery of the sold good. The Customer is obliged to take good care of the goods with respect to which ACD invokes a retention of title. He must store and keep the goods in perfect condition in an appropriate and clean location. Until the moment of full payment, the Customer is expressly forbidden to use the delivered goods as a means of payment or to create security interests in the goods. Should he do so anyway, the Customer unconditionally and irrevocably transfers to ACD - who accepts - all claims he may have on third parties due to the sale of the goods, property of ACD. At the latest at the time of conclusion of the agreement, ACD shall make the delivery conditions as well as tips for self-installation available to the Customer in writing.

**1.9** At the time of delivery or assembly the Customer must check whether the delivered goods have visible damages or defects. Visible damages or defects must be specifically and accurately described by the Customer. ACD must be notified thereof by registered letter or fax at the latest within 72 hours following the delivery or assembly and before the goods are put into use. Late complaints will not be taken into account.

**1.10** At the latest at the time of conclusion of the agreement between ACD and the Customer, ACD shall provide the Customer with all written information relating to the guarantee scheme for the new goods delivered and/or installed by ACD. The goods come with a 2-year guarantee, counting from the date of delivery. This guarantee includes all parts, working hours and travel expenses of ACD. If repairs are made after the expiry of this period, the working hours and travel expenses shall be borne by the Customer. This guarantee can be invoked only after full payment of the invoice by the Customer. The goods delivered and/or installed by ACD come with the manufacturer's warranty as communicated by ACD to the Customer at the latest at the time of conclusion of the agreement between ACD and the Customer. Any resulting damages (damage to other materials or to third parties) are not covered by this guarantee. The ACD guarantee does not apply if at the time of repair ACD finds that (i) the instructions for use and maintenance were not complied with, (ii) the goods were misused or used improperly, they were connected wrongly by a third party or they were not maintained properly (not in accordance with the manufacturer's instructions), (iii) repairs or modifications to the goods were made by third parties and (iv) damage was caused by third parties/acts of vandalism or (v) damage was caused by exposure of the goods to an aggressive environment (corrosion, discoloration,...).

**1.11** At the latest at the time of conclusion of the agreement between ACD and the Customer, ACD shall provide the Customer with all specifications and points of particular interest relating to the maintenance of the new goods delivered and/or installed by ACD.

**1.12** Installations never take place when the weather conditions constitute a risk for the installers of ACD.

**1.13** Insofar as ACD depends on the collaboration, services and deliveries by third parties for the fulfilment of its obligations, ACD cannot be held liable for any damage resulting from faults committed by these third parties, including fraud, deceit, grave and/or intentional

fault.

The Customer expressly accepts that ACD shall not be liable and that the Customer does not have the right to demand the cancellation of the agreement, to refuse delivery and/or payment of the goods and to obtain any form of compensation or indemnification in case of (i) slight differences in colour or in the dimensions of the goods, insofar as these are unavoidable from a technical point of view, are generally accepted or are inherent to the materials used, (ii) incorrect measurements taken by the Customer, (iii) inaccuracies in the works ordered by the Customer, (iv) inaccuracies in the constructions and working methods requested by the Customer, (v) defects in the (im)movable goods where the installation takes place, (vi) defects in the materials or equipment made available by the Customer and (vii) inaccuracies in the data provided by or on behalf of the Customer. It is the Customer's responsibility to see to it that all the necessary permits are obtained in time. The risk of not obtaining these permits is borne by the Customer. The Customer sees to it that ACD can carry out the works undisturbed and at the time agreed upon, and that during the execution of the works the required services are at ACD's disposal, for instance, water, electricity and a lockable, dry storage space. The Customer is liable for any damage resulting from the loss, theft, burning or damaging of equipment, materials and other goods of ACD at the place where the works are carried out.

**1.14** ACD's liability cannot be invoked when the complete or partial non-fulfilment of its obligations, whether or not of a temporary nature, is due to cases of force majeure, even if this circumstance was already foreseeable at the time of conclusion of the agreement, such as war, extreme weather conditions, riots, general or partial strikes, general or partial lock-out, contagious diseases, operational accidents, fire, machinery breakdown, bankruptcy of suppliers, lack of raw materials, depletion of stocks, delayed deliveries or absence of deliveries by ACD's suppliers, floods, high level of absenteeism due to illness, electronic problems, IT problems, internet or telecommunication failure, governmental decisions or interventions (including the refusal or the cancellation of a permit or licence), fuel shortage, etc. ACD is not obliged to prove the non-imputable and unforeseeable nature of the circumstance constituting a case of force majeure.

**1.15** All agreements between ACD and the Customer form part of one major contractual relation. If the Customer fails to fulfil his obligations under a particular agreement, ACD has the right to suspend the further execution of the agreement in question and of any running agreements.

**1.16** Without prejudice to any written agreement to the contrary, all intellectual property rights relating to drawings, designs, calculations, etc., made by ACD for the Customer's account and handed to the Customer, remain the property of ACD and are under no circumstance transferred to the Customer.

**1.17** Should any (part of a) stipulation of these general terms and conditions of sale be invalid or unenforceable, then the validity and enforceability of the remaining clauses shall not be affected by this.

**1.18** All agreements to which the present general terms and conditions of sale apply as well as all other agreements resulting therefrom are exclusively governed by Belgian law. At ACD's discretion either the competent courts of Kortrijk or the competent courts of the place where the Customer has his domicile shall have exclusive jurisdiction in any dispute between the Customer and ACD.

## **2) WITH RESPECT TO CONSUMERS**

**2.1** An agreement between ACD and the Customer is not concluded until the agreement is confirmed in writing by ACD. After this written confirmation it remains valid for one month, unless stated otherwise.

**2.2** If a term was agreed upon for the delivery and/or the assembly of the goods ordered, the Customer shall have to give written notice of default to ACD in the event that this term is exceeded. Following receipt of this notice of default, ACD must be given a term of 2 months to execute the agreement between the Customer and ACD. If ACD fails to deliver and/or assemble the goods ordered within the above-mentioned term of 2 months, the Customer shall have the right to terminate the agreement with the Customer with immediate effect, without judicial authorization, without prior notice of default and without being liable to pay any compensation. In case of dissolution of the agreement, ACD shall be liable to pay a fixed compensation to the

amount of 1% of the value of the goods ordered, without prejudice to the Customer's right to claim higher damages if it can be proved that the actual damage exceeds the above-mentioned amount.

**2.3** The Customer is obliged to take delivery of the goods delivered by ACD at the agreed time. The delivery cost is included in the price for orders with a minimum value of 250 EUR. If the use of particular materials is required for the delivery, the services of a specialized firm will be used. These costs are to be paid by the Customer. When taking delivery of the goods, the Customer signs the delivery note on which he must write his name and the words "for receipt of the goods". If, for any reason whatsoever, the Customer did not take delivery of the goods on the delivery date, ACD shall store the goods for a limited time at the Customer's risk and expense. This protective measure does not suspend the Customer's payment obligation. ACD can suspend the delivery as long as the Customer still has to meet an obligation vis-à-vis ACD.

**2.4** Complaints relating to any non-conformity established at the time of delivery or assembly of the goods and manifesting itself within a period of 2 years counting from the afore-mentioned delivery or completion must be made by registered letter sent to ACD at the latest within 2 months after the defect was discovered. This letter must contain a detailed description of the defect. Late complaints will not be taken into account.

In the event of a sustainable and justified complaint relating to defective goods (visible defects or non-conformity), the Customer can either request the replacement or repair of the delivered goods, or he can demand an appropriate price reduction or the dissolution of the agreement. ACD is at liberty to propose a different indemnification to the Customer.

**2.5** ACD (including the latter's agents, representatives and/or employees) shall be liable only for damages caused by the non-fulfilment of ACD's contractual obligations if and insofar as those damages were caused by (i) fraud, deceit, intentional or grave faults on the part of ACD or (ii) ACD's liability by virtue of article 1792 of the Civil Code and article 2270 of the Civil Code (ten-year liability). ACD shall not be liable for any other faults, in the event that ACD is held liable for any damage, then ACD's liability shall always be limited to maximum the invoice value of the Customer's order, at least to the part of the order to which the liability relates. If the damage is covered by an insurance, then ACD's liability shall in any case be limited to the amount actually paid by its insurer. ACD shall never be liable for indirect damage, including but not limited to consequential damage, lost profit, missed savings, production restrictions, administrative or personnel costs, an increase in overhead costs, loss of clientele, claims by third parties or damage to third parties. Solely the Customer is liable for the use made of the goods.

**2.6** ACD has the right to terminate the agreement with the Customer at all times, with immediate effect, without judicial authorization, without prior notice of default and without being liable to pay any compensation, in the following cases: (i) if the Customer fails to meet (in due time) one or more obligations resulting from the agreement despite a written notice of default within a period of at least 8 working days, or (ii) in case of seizure of (part of) the Customer's assets. In case of dissolution, all claims ACD has on the Customer become immediately payable, and the Customer shall be liable to pay to ACD a fixed compensation to the amount of 10% of the value of the goods ordered, without prejudice to the right of ACD to claim higher damages if it can be proved that the actual damage exceeds the above-mentioned amount.

## **3) WITH RESPECT TO BUSINESSES**

**3.1** Offers, quotations and contract propositions by ACD are free of engagement and do not bind ACD in any way. Orders from the Customer do not bind ACD either.

**3.2** An agreement between ACD and the Customer is not concluded until the agreement is confirmed in writing by ACD or by an authorized representative of ACD. After this written confirmation it remains valid for one month, unless stated otherwise.

**3.3** Unless agreed otherwise, the prices are exclusive of VAT, transportation, packaging and insurance costs. In the event of a price rise of certain costs affecting the agreed price due to circumstances beyond the control of ACD, even if it occurs as a result of foreseeable

circumstances such as a rise in duties and excise duties on the goods to be delivered, increases in freight rates, energy prices, prices of basic products or raw materials, increases in wages as a result of statutory provisions or national or sectoral collective bargaining agreements, exchange rate modifications, etc., ACD has the right to charge a proportional price rise subject to a simple notification. Any works to be carried out and services to be rendered by ACD as a supplement or by way of modification and at the Customer's request, will be charged to the Customer at the usual rates.

**3.4** The contestation of an invoice does not suspend the Customer's payment obligation. All collection and contestation costs, be it of accepted bills of exchange or non-accepted bills of exchange, or bank and discount costs, shall be borne by the Customer. If an invoice remains (partly) unpaid on the due date, ACD shall be entitled, in addition to the fixed compensation to be paid by the Customer to ACD (as determined in article 1.7), to a reimbursement of the court costs, and to a reasonable compensation by the Customer of all relevant collection charges caused by the non-payment. A possible set-off by the Customer is explicitly excluded.

**3.5** A possible exceeding of the delivery term can never give rise to any liability on the part of ACD, to the dissolution of the agreement or to any form of compensation. Subject to a written agreement to the contrary, the goods are delivered EX WORKS (Incoterms® 2010 – registered office of ACD). The Customer is obliged to collect the goods at the proposed delivery dates. When taking delivery of the goods, the Customer must sign the delivery note on which he writes his name and the words "for receipt of the goods". The Customer may have himself represented by a third party. If, for any reason whatsoever, the goods are not collected by the Customer on the delivery date, ACD shall store the goods for a limited time at the Customer's risk and expense. This protective measure does not suspend the Customer's payment obligation. ACD can suspend the delivery as long as the Customer still has to meet an obligation vis-à-vis ACD. If it was explicitly agreed that ACD will take care of the transport of the sold goods, the way of transport, dispatch, packaging, etc. will be determined by ACD, if no specific instructions were provided by the Customer. In that case the Customer bears the risk of storage, loading, transport and unloading, and ACD cannot be held liable on that account. Any advance payments made by the Customer remain acquired as compensation for possible losses on resale.

**3.6** Any complaint relating to hidden defects must be made by registered letter to be sent to ACD at the latest within 4 months following delivery or completion of the goods. This letter must contain a detailed description of the defect. Late complaints will not be taken into account. Moreover, complaints relating to visible and hidden defects do not suspend the Customer's payment obligation. In the event of a sustainable and justified complaint relating to defective goods, ACD will replace the delivered goods. ACD can never be liable to pay any other compensation, nor can any other sanction be imposed on ACD.

**3.7** ACD (including the latter's agents, representatives and/or employees) shall be liable only for damages caused by the non-fulfilment of ACD's contractual obligations if and insofar as those damages were caused by (i) fraud, deceit or intentional faults on the part of ACD or (ii) ACD's liability by virtue of article 1792 of the Civil Code and article 2270 of the Civil Code (ten-year liability). ACD shall not be liable for any other faults (including grave faults). In the event that ACD is held liable for any damage, then ACD's liability shall always be limited to maximum the invoice value of the Customer's order, at least to the part of the order to which the liability relates. If the damage is covered by an insurance, then ACD's liability shall in any case be limited to the amount actually paid by its insurer. ACD shall never be liable for indirect damage, including but not limited to consequential damage, lost profit, missed savings, production restrictions, administrative or personnel costs, an increase in overhead costs, loss of clientele, claims by third parties or damage to third parties. Solely the Customer is liable for the use made of the goods.

**3.8** The Customer shall never have the right to cancel the agreement or to claim compensation due to force majeure. Since the Customer's obligations vis-à-vis ACD essentially constitute a payment obligation, force majeure on the part of the Customer is explicitly excluded.

**3.9** In the event that the execution of the agreement imposes an unreasonable or disproportionate burden on ACD, the parties shall enter into consultation with each other to agree on a modification of the agreement.

**3.10** Any claim for compensation by the Customer against ACD lapses by operation of law if this claim was not introduced before the competent Court within a period of 3 years after the facts on which the claim is based became known to the Customer or reasonably should have become known.

**3.11** ACD has the right to terminate the agreement with the Customer at all times, with immediate effect, without judicial authorization, without prior notice of default and without being liable to pay any compensation, in the following cases: (i) if the Customer fails to meet (in due time) one or more obligations resulting from the agreement; (ii) in the event of suspension of payment or (filing of) bankruptcy or a reorganization by the Customer, by virtue of the Act of 31 January 2009 concerning the continuity of enterprises; (iii) in the event of liquidation or discontinuation of activities by the Customer; or (iv) in the event of seizure of (part of) the Customer's assets. In case of dissolution, all claims ACD has on the Customer become immediately payable, and the Customer shall be liable to pay to ACD a fixed compensation to the amount of 10% of the value of the goods ordered, without prejudice to the right of the creditor to claim higher damages if it can be proved that the actual damage exceeds the above-mentioned amount.

---

Texte français sur • English text on • Deutscher Text auf :  
[www.acd.eu](http://www.acd.eu)