



## General terms and conditions Guardian B.V.

### Article 1. Definitions:

The following definitions apply to these general terms and conditions:

**Affiliate:** a group company. Group companies are the current and future legal persons and/or partnerships which are united in a group. A group is an economic unit in which legal persons and partnerships are united in one organization, as defined in article 2:24b of the Dutch Civil Code;

**Client:** each party, typically not a consumer, to which the Company makes any Offer or with which the Company enters into a Contract to deliver Products;

**Company:** Guardian B.V or any of its Affiliates, which issues commercial Offers and supplies services and/or Products;

**Confidential information:** all and any non-public information which is provided by the Company in electronically stored documents or in any other tangible or intangible form, including but not limited to any information relating to the Products, know-how, expertise, business process, marketing process, (potential) clients, customer information, commercial goodwill, trade secrets, and all other aspects of the Company's business in the broadest sense of the word.

**Contract:** any agreement, irrespective whether in writing or not, between the Parties;

**Offer:** any (price) offer, quotation or other proposal by the Company for the delivery of Products and/or services;

**Order:** any order from the Client to the Company for the performance of services and/or delivery of Products;

**Parties:** the Company and the Client jointly; and

**Products:** roofing, gladding and installation products and systems, in the broadest sense, and/or products/systems to be processed for that purpose.

### Article 2. Application

1. These general terms and conditions are applicable to all Offers, deliveries, confirmations of instruction, Contracts, other (advice) services or work performed or invoices from the Company and any Contract.
2. The Parties undertake to comply with all trading customs and practices within the Company's trading sector, unless explicitly agreed otherwise by Contract and/or set out in these general terms and conditions.
3. Any provisions deviating from these general terms and conditions shall only be binding on the Company following written approval from the Company and solely for the Contract to which the said approval is applicable. The other provisions of these general terms and conditions shall remain in full force and effect.
4. Reference of the Client to the applicability of its own general terms and conditions is hereby explicitly rejected by the Company, unless such - on a case by case basis - has been expressly agreed in writing.
5. In the event of a conflict between the text of the general terms and conditions and the Contract, the provisions of the Contract shall prevail.
6. If the Company concludes Contracts with the Client more than once, the present general terms and conditions shall apply to all subsequent Contracts, irrespective of whether they have (again) been explicitly declared applicable and/or de Company has (again) complied with its duty of disclosure.

### Article 3. Offer

1. All Offers are free of engagement. The Company has the right to withdraw any Offer at any time, even if a fixed term for acceptance is specified in such Offer, unless the Offer, in addition to a fixed term for acceptance, explicitly states that it is irrevocable. When the Offer does not provide for a specific term for acceptance, the Company may deem it expired, without being required to give further notice, in the event the Client does not accept such Offer within two weeks of the date of the Offer.
2. If an Order is placed without a request for a quotation, the Order will be carried out upon acceptance by the Company at the Company's standard commercial rates, irrespective of any Offer made by the Company in the past.
3. The Company cannot be bound by actions and/or (oral) agreements of unauthorised persons representing it, unless such agreements are confirmed in writing by duly authorised persons on the Company's behalf to the Client, by persons who are authorised to do so.
4. Samples shown or provided serve only as an indication of the Products, and the goods are not required to correspond thereto.

### Article 4. Contracts

1. Contracts become effective by the Client returning a signed Offer to the Company before the Offer expires, unless the Company explicitly states otherwise in the Offer. Unilateral modifications to the Offer by the Client only become part of the Contract upon written acceptance by the Company.
2. Notwithstanding article 4.1, Contracts can also be entered into by the Company when it issues to the Client written confirmation of an Order placed by the Client. The provisions of the Company's confirmation determine the scope of the Contract.
3. Modifications to the Contract must be agreed between the Parties in writing, and the Company's written confirmation determines the content and scope of such modifications and the consequences thereof for the price.

### Article 5. Prices

1. All prices are quoted Ex Works (EXW, Incoterms 2010), or Carriage Paid To (CPT, Incoterms 2010) in accordance with the Offer issued to the Client and subject to the provisions of these terms and conditions.
2. Prices are quoted per unit.
3. If one or more of the cost factors, including raw material costs, changes after the date of the Offer, the Company has the right to make a reasonable adjustment to the agreed price, even if it has issued a binding Offer.

### Article 6. Information

1. The Client is responsible for the correctness, completeness and reliability of the information and data provided by or on behalf of the Client to the Company.



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2. In the event that the necessary information with regard to the performance of the Contract is not made available to the Company, or not provided in time, or not provided in accordance with the Contracts made, the Company shall be entitled to charge the additional costs that are incurred as a result thereof according to its general rates.

#### **Article 7. Delivery dates, delivery and risk**

1. The Company will state the delivery dates agreed by the Parties as accurately as possible. These delivery dates remain indicative and will not be considered deadlines. The Company will make reasonable efforts to perform within the indicated timeframe.

2. The Client has no right to compensation for damages in any form whatsoever in the event the Company exceeds the indicated delivery date unless such is explicitly agreed in the Contract or the late delivery is directly and immediately caused by malicious intent or wilful negligence of the Company.

3. The Client may not cancel or dissolve the Contract, or refuse acceptance and/or payment in full of the Products in case of late delivery.

4. Delivery will take place Ex Works (EXW) or Carriage Paid To (CPT) works in accordance with the Offer issued to the Client and the provisions in the Contract.

5. In the event of EXW delivery, the Products are deemed to have been delivered by the Company and accepted by the Client when loaded in or on the means of transportation designated for transport to the Client.

6. In the event of CPT delivery, the Products are deemed to have been delivered by the Company and accepted by the Client on arrival at the designated location.

7. The Client is liable for the purchase price and any costs or damages of the Company in case the Client fails to perform the actions required to facilitate delivery and acceptance.

8. In the event of EXW delivery, the Company will not be liable for the choice of transport company or means of transportation, nor for the terms and risks relating to such means.

9. In the event of CPT delivery, the Company will enter into transport agreements for delivery of the Products to the agreed or designated location by means of transport and on customary terms reasonably considered appropriate by the Company.

10. In the event of CPT delivery, the Company will not be responsible for arranging transportation of the Products beyond a location appropriately reachable by road or ship at a site properly prepared in the opinion of the Company or an agent engaged by the Company. The Client shall be obliged to accept delivery of the Products at that location.

11. The Company has the right to perform its obligations in tranches.

12. Should the Client not collect the Products in time, the Products are stored at its disposal, and for its expense and risk.

#### **Article 8. Payment**

1. Payment of the (purchase) price inclusive VAT is due within 30 days of the invoice date. Payment must be made in the agreed currency.

2. If the Contract includes the transport of the Products, the Company may dispatch the Products subject to the condition that these or the relevant documents will be handed to the Client against simultaneous payment of the purchase price, even if this is not provided for in the confirmation of the Order or the Contract.

3. If the Company or a third party acting on its behalf engages third parties for collection by legal process or otherwise, the Client shall bear all costs associated therewith, with a minimum of 15% of the amount claimed and an additional minimum of € 500, plus VAT.

4. If the Client fails to timely satisfy its payment obligations, all payment obligations of the Client shall become immediately due and payable, irrespective whether these amounts have been invoiced by the Company, and relevant amount receivables by the Company's from the Client shall become interest-bearing, at the statutory commercial interest rate pursuant to section 6:119a of the Dutch Civil Code, from the first day of the agreed payment term. If the Client is a consumer, the statutory interest rate pursuant to section 6:119 of the Dutch Civil Code shall apply.

5. Payments by or on behalf of the Client shall be applied, in the following order, to settle any out-of-court collection costs due by the Client, legal costs, the costs payable by the Client, the interest due by the Client and then the outstanding principal amounts, in order of age, regardless of other instructions from the Client.

6. All rights of the Client to discounts, set-off or suspension of payment are excluded, unless the Client is a consumer.

7. All the Company's outstanding receivables of the Client shall immediately be due and payable if the Client is in default, or in the event of liquidation, bankruptcy or an application of bankruptcy, the Client's admission to lawful debt restructuring pursuant to the Debt Management Natural Persons Act, the Client's placement under guardianship, attachment or (temporary) moratorium of payments of the Client.

#### **Article 9. Reservation of ownership**

1. The Company retains title to all Products that it delivers to the Client until the (purchase) price for these Products has been paid in full, including out-of-court expenses, interest and penalties. This retention of title also applies in the event the Company has any claims against the Client relating to the Client breaching one or more of its obligations to the Company, or damages that the Company suffers as a result of depreciation of the Products.

2. The Client shall not be allowed to grant any right of pledge over delivered Products or to grant a third party any rights relating thereto as long as title to the Products has not transferred to the Client.

2. In the event that the Products are designated for export, the property law consequences of the retention of title shall be governed by the law of the country of destination provided that the provisions of applicable law concerning the retention of title are more beneficial to the Company than the law of the jurisdiction on which the Products are located on the date of delivery.

3. Without prejudice to this retention of title, the Client is permitted to process or dispose of the Products in accordance with its normal business activities.

4. In the event that the Client defaults on its obligations under any Contract or otherwise, or valid grounds exists that the Client shall not meet its obligations, the Company has the right to (arrange to) reclaim the Products still owned by the Company from the Client, at the site at which they are located, at the Client's expense. The Client will co-operate



with such repossession. To that end, the Client hereby irrevocably grants the Company access to the areas in use at or for the Client.

**Article 10. Inspection and claims**

1. The Client is required to inspect the Products to be delivered for defects, (transport) damage, quantity and quality immediately on arrival at the delivery location, prior to processing. Any transport damage or discrepancies in the agreed volume and/or quality of the Products must be stated on the consignment note and also reported to the Company in writing within three working days of delivery, failure of which forfeits any rights the Client may have to claim damages.
2. The Client shall not have the right to reject any Products in the event of minor discrepancies in size, weight, colour and/or surface structure. In addition to the provisions of article 3.4, the relevant contract provisions of the Company's suppliers apply here in respect of the quality and quality of the Products.
3. The Client is deemed to be familiar with the assembly instructions, as at the contracting date, for deliveries by the Company. The Client shall act in compliance with these instructions.
4. The Client's right to claim that Products do not comply with the Contract shall lapse in respect of defects that are not visible on delivery if the Client fails to notify the Company of these in writing, stating the nature of the defects and the number of products found to be defective within eight days of the date on which the Client has detected or could reasonably have detected such defect.
5. The Client's rights, as referred to in article 10.4, shall in any event lapse after processing of the Product, or at least after the Product are included in the process, unless the defects are covered by an explicit warranty granted by the Company for the Product in writing.
6. The Client must give the Company the opportunity to verify the merits of a claim.
7. Products recognised as fault by the Company, shall, to the sole discretion of the Company, either be repaired or replaced.
8. The Client must notify the Company of any liability in writing within 30 days from the date on which the defect giving rise to such claim against the Company is detected, or could have been detected by a Client acting with due care, in the absence of which the liability of the Company under such warranty or otherwise shall lapse.

**Article 11. Returns**

The Products cannot be returned by the Client (including returns of packaging). In the event that the Parties agree otherwise in writing, the amount to be credited in such cases must be agreed by the Parties in writing. The Client must submit a written request for returning certain Products to the Company. Returns and any applicable crediting are permitted with prior written approval of the Company of such request for a return. The Client remains liable to the Company for the purchase price plus the costs of any return dispatch that has not been accepted by the Company. In no case are returns permitted with regard to products produced specifically for the Client. The Client always remains liable to pay the purchase price for products produced specifically for the Client.

**Article 12. Security**

1. In the extent that the Client does not meet its obligations under any Contract or otherwise, or valid reasons exist to suspect that the Client will not comply with its obligations, the Client is required to provide satisfactory - or, if required, supplement - security for compliance with all its obligations immediately at the Company's first request, in the form required by the Company. Until the Client has done so, the Company has the right to suspend the performance of any of its obligations.
2. In the event that the Client fails to comply with a request within the meaning of article 12.1 within 14 days of receiving a written notice to that effect, all its obligations shall become immediately due and payable.
3. In the event that the Company has already dispatched Products before it becomes aware of circumstances on the basis of which it has reasonable grounds to conclude that the Client will not comply with its obligations, the Company may impede delivery of the Products to the Client, even if the Client already possesses a document entitling it to unconditional delivery by the Company. The Company must notify the Client of such a suspension and will continue compliance with its obligations as and when the Client provides adequate security.

**Article 13. Liability**

1. The aggregate liability of the Company under any Contract, Order, other (advice) services or work performed and any other liability on any other grounds will always be limited to compensation of direct damages only up to the invoice value or redelivery of similar Products, as the Company may decide at its sole discretion.
2. In no case shall the Company be liable for consequential loss or (in)direct damages, stagnation damages, construction delays, loss of orders, loss of profit or revenue, processing costs and the like unless to the extent caused malicious intent or wilful negligence by the Company.
3. In the event the Company delivers products that it has procured from third parties, the Company grants warranties for these products only if and to the extent that it receives the same warranties for these products from its suppliers. In that case, a warranty to the Client shall read the same as that which the Company receives from its suppliers.
4. The Company shall not be liable for any acts and/or omissions of third parties. These general terms and conditions apply not only to the Company, but also to all persons directly or indirectly involved in carrying out the Contract, Order, other (advice) services or works on behalf of the Company, including (former) employees. If the Company is held liable for damages by third parties on the basis of the use of the Products delivered by Client or advice from the Company by any party, Client shall indemnify the Company against such third party claims, except in the event of malicious intent or wilful negligence by the Company.
5. The Company shall not be required to process claims under any warranties if the Client has not satisfied its payment obligations towards the Company.
6. In the event that the Client can file a claim for breach of a warranty against the Company, the Company will decide to what extent and the manner in which repair or replacement shall take place.



7. All legal claims pursuant to the Contract and these general terms and conditions shall lapse after 12 months of the delivery date.

**Article 14. Warranty**

1. A product warranty applies to the Products.
2. Parties can consult the product warranty on the website of the Company: [www.guardian.nl](http://www.guardian.nl)

**Article 15. Recall**

1. In the event that the Company shall be required to recall or withdraw any Product because it might violate any law or regulation or in the event that the Company itself intends to institute such recall, the Company shall be responsible for coordinating that recall and shall inform the Client of the Product subject of the recall. The Client shall cooperate and act in strict compliance with the Company's instructions. The Company shall be responsible for all reasonable costs involved with such recall, except if the recall is caused by Client's negligent acts or omissions or any wilful misconduct, in which case the Client will pay all costs and expenses associated with the recall. Client shall indemnify and hold harmless the Company for all losses, damages, costs.

**Article 16. Termination of Contract**

1. The Company may unilaterally dissolve the Contract without any notice period being required in the event:
  - a. the Client breaches any of its obligations, which includes (but is not limited to) failure to pay any amounts when due or failure to accept the Products in time;
  - b. the Client is declared bankrupt, is granted suspension of payment or the Client filing a request for the refinancing of its debts;
  - c. a request for credit insurance is not approved, or not sufficiently honoured, for the Client; or
  - d. the Client fails to comply with a request from the Company to provide security in accordance with article 12.
2. In the event that non-compliance with the obligations concerning one of the Company's deliveries to the Client provides the Company valid reasons to conclude that a breach will occur with regard to the future deliveries, the Company may, within a reasonable term, declare the Contract dissolved for the future.
3. If the Company dissolves the Contract in accordance with this article 15, any amount receivable by the Company from the Client, on any grounds whatsoever, will become immediately due and payable.
4. The Company may grant the Client written permission to cancel the Contract against payment by the Client of reasonable compensation for the losses suffered by the Company, including its loss of profit.

**Article 17. Force majeure**

1. In the event of force majeure, the Company has the right to cancel the Contract or to suspend the performance of its delivery obligations for the duration of the force majeure.
2. In these general terms and conditions, force majeure has the same meaning as under Dutch law, including (without limitation) weather conditions. Furthermore, force majeure in relation to the Company also includes strikes in the broadest sense, impediments to supply, malfunctions of machinery and/or tools, unavailability of transportation, governmental measures and the Company's suppliers defaulting on their delivery obligations and explicitly also including circumstances resulting in delays in the normal production process and/or deliveries from the suppliers from which the Company procures the Products.
3. In case of a force majeure, the Client is in no case entitled to compensation of damage, costs or interest.

**Article 18. Confidentiality**

1. All Confidential Information is strictly personal and confidential.
2. The Client shall not disclose any aspect of the Confidential Information, without the prior written approval of the Company. In case the Company provides its written approval, the Client is obliged to use the Confidential Information only with a view to the Products.
3. The Client is obliged to take all reasonable precautions to ensure that any employee or representative of the Client complies with this obligation.
4. The obligation to maintain the Confidential Information secret shall survive in any case the expiry or termination of the Contract.
5. The Client is not responsible for the disclosure of Confidential Information which was available to the general public prior to the disclosure by the Company to the Client, or Confidential Information being required to be disclosed by reason of a judicial order or direction emanating from any competent authority, provided that the Client gives the Company prior notice in writing of the judicial order or direction before any such disclosure is made.

**Article 19. Intellectual property rights**

1. All intellectual property rights regarding the Products and the documents provided by the Company, i.e. drawings, sketches, schemes, samples, formats, tools, photos, designs, working methods, presentations, advice, images, prototypes, models, mood boards, printed matters, files, websites, brochures, catalogues, etc. used by the Company shall remain the physical and intellectual property of the Company, also if they have been made available to the Client and irrespective of the contribution made to their realisation by the Client or third parties engaged by the Client.
2. The exercise of the aforesaid intellectual property rights - including publication, transfer, reproduction, distribution of data, everything in the broadest sense of the word - both during and after the performance of the Contract - is explicitly and exclusively reserved for the Company.
3. The Client is not permitted, without the explicit written consent of the Company, to remove, modify or change any labelling or tags applied by the Company and referring to its intellectual property rights, or the conditions, clauses, regulations, manuals, instructions or material safety data sheets or any specification or to repack, modify, change or process the Products.
4. The Company shall be entitled to new intellectual property rights, established by the Contract, or during the Contract period.



**Article 20. Applicable law and competent court**

1. To all Orders from the Company, other (advice) services or work performed and/or Contracts entered into by the Company, including any auxiliary agreements and any disputes relating thereto or otherwise resulting therefrom, exclusively Dutch law shall be applicable.

2. Any disputes with the Company will exclusively be submitted to the competent court in Oost-Brabant, the Netherlands.

**Article 21. Filing**

1. These general terms and conditions have been filed with the Chamber of Commerce and can also be reviewed on [www.afast.nl](http://www.afast.nl).

2. These general terms and conditions can be amended from time to time by the Company. After filing of the amended general terms and conditions and notification to the Client, the so-amended general terms and conditions will also be applicable to all existing Offers and Contracts which have been concluded prior to amendment.

3. These general terms and conditions are prepared in the Dutch and English language. In case of disputes about the content or meaning of these general terms and conditions, the Dutch text will prevail.