



General Terms and Conditions of Delivery and Payment ... of the private company with limited liability, Avancos Technical Services Holding B.V., including its subsidiaries, having its Registered Office and principal place of business in Amersfoort, The Netherlands, filed with the Chamber of Commerce and Industries in Amersfoort, under file number 32164137, on 25 January 2010.

All the previous versions of these General Terms and Conditions are hereby superseded.
We reserve all copyright and copying rights.

Clause 1 – Definitions

1.1

For the purposes of these General Terms and Conditions, “Avancos TS” will mean: Avancos Technical Services Holding BV (The Netherlands) including all its subsidiaries worldwide.

1.2

For the purposes of these General Terms and Conditions, “CEO” will mean: the highest authority in person for Avancos TS; “Business Manager” will mean: the highest authority in person for each subsidiary under Avancos TS. The position of CEO is higher than the one of Business Manager. The position of CEO is also authority in person of the overall Avancos TS organization.

1.3

For the purposes of these General Terms and Conditions, “Customer” will mean: the natural person or legal entity who is bound to, or respectively, negotiating with Avancos TS, in connection with the supply of services and/or products or the performance of any other work by Avancos TS.

1.4

For the purposes of these General Terms and Conditions, the “Parties” will mean: Avancos TS and the Customer.

Clause 2 - General

2.1

All transactions of, by or on behalf of Avancos TS will be exclusively subject to these General Terms and Conditions of Delivery and Payment and will be non-binding, unless expressly specified otherwise.

2.2

Agreed special conditions that deviate from or supplement these terms and conditions will only be binding if they are in writing and signed only by the CEO of the management team, and will only apply to the customer in question.

2.3

The applicability of the Terms and Conditions (of Purchase) employed by the customer is expressly excluded.

2.4

If these terms and conditions are also drawn up in a language other than English (UK), the English text will be regarded as the original and as such, will be decisive.

However, in case these Terms and Conditions have to be used before a Dutch Court under Dutch law (see Clause 15 of these Terms and Conditions), the Dutch translation will be decisive as such.

2.5

The possible invalidity or voidability of the agreement and/or these terms and conditions will not prejudice the validity of the remaining part of the agreement and/or these terms and conditions. In such case, instead of the invalidated or void part, as agreed, provisions will apply that conform to the law and most closely approximate to the provisions that the parties would have made if they had known about the invalidity or voidability of such provisions.

2.6

Avancos TS reserves the right to deviate from these terms and conditions, which only applies per situation, in any form whatsoever. If this situation continues for a longer period of times, Avancos TS will record the relevant deviation in writing.

Clause 3 – Offers

3.1

All offers, quotations, cost estimates, etc, issued by Avancos, whether separately or contained in pricelists, or made verbally or in writing, by telephone, fax, Internet, e-mail, or in any other manner, will be entirely non-binding.

3.2

All the information and/or specifications provided along with an offer, etc, concerning number of units, delivery, handling, etc, are only estimates, and Avancos will only be bound by the same if the CEO or Business Manager of Avancos TS's management team expressly and explicitly confirms the same in writing or by e-mail.

3.3

All Annexes or attachments as per Clause 3.1 and 3.2 will remain Avancos's property at all times, and must be returned to us with free-of-cost delivery, on our first request.

3.4

The provisions of Clause 3.2 will also apply to the models or specimens displayed or provided. The characteristics or quality of the goods or services to be provided may deviate from the model or specimen, unless Avancos expressly and explicitly notifies the customer in writing or by e-mail in advance, that the delivery will be made in exact conformity with the model or specimen.

3.5

If an order is not issued in writing or by e-mail against Avancos TS's offers, etc, and confirmed by Avancos TS, within 30 days or the period otherwise specified, Avancos TS reserves the right to regard the order as lapsed.

Clause 4 – Placing orders

4.1

Avancos TS will only accept written orders duly signed by the customer and accompanied by a purchase reference.

Avancos TS will regard an order from the customer as valid if Avancos TS sends the customer an explicit, duly signed order confirmation. The customer's written acceptance of an offer will also be treated as an order, provided the same is accompanied by a purchase reference by the customer. In any case a purchase order number is missing, the date of the accepted order will be marked as such.

4.2

When the customer places an order with Avancos TS, he automatically accepts the entirety of these General Terms and Conditions of Delivery and Payment.

4.3

If the customer uses purchase order number or cost centre references that have to be mentioned in the invoices, the customer should record these as part of the order when work on the order commences as per Clause 4.1. If the customer does not delivered these on time it does not apply that the customer should have the right to suspend his payment to Avancos TS in any way. If the same is missing, Avancos TS reserves the right to suspend the execution of the order.

4.4

Avancos TS reserves the right to refuse orders without assigning any reason, or to make delivery only after the customer makes pro forma payment.

Clause 5 - Agreements

5.1

An agreement will be formed between the parties when Avancos TS confirms an order from the customer in writing or by e-mail, or when Avancos TS commences execution of an order.

5.2

Agreements with subordinate staff members or representatives or other (intermediary) persons of Avancos TS will not bind Avancos TS unless the CEO or Business Manager of the management team confirms these agreements in writing.

5.3

Avancos TS will not be liable for misunderstandings, delays or inadequate transfer of order information and notifications between Avancos TS and the customer or between Avancos TS and third parties insofar as these relate to the relationship between Avancos TS and the customer, due to the use of the Internet or any other communication medium, unless Avancos TS has caused the same deliberately or through gross negligence.

5.4

If Avancos TS enters into an agreement with two or more persons or legal entities, each of these (legal) persons will be jointly and severally liable for the fulfilment of their obligation(s) toward Avancos TS under the agreement.

5.5

Avancos TS reserves the right to engage third parties for the execution of the agreement entered into with the customer.

Third parties should however never deliver directly to the customer, but only via Avancos TS's office.

Avancos TS reserves the right to declare as invalid any deliveries made by third parties without Avancos TS's prior written consent, duly signed by only the CEO of the management team, and the third party will pay all the costs arising from the same.

Clause 6 - Advance payment, provision of security and termination of contract

6.1

At the time of entering into the agreement, Avancos TS may, prior to or during the execution of the order, demand an advance (down) payment amounting to at least 25% of the probable invoice total, subject to a minimum of 5,000 Euros, exclusive of VAT. Such advance payment will be referred to as a "Retainer" in the invoice and will be settled with the final invoice.

6.2

Avancos TS can always, before making delivery or continuing with the delivery or fulfilment of the agreement, demand adequate security from the customer for the fulfilment of his payment obligations.

6.3

If after an agreement has been formed or an order has been placed as per Clause 4, the Customer wishes to terminate the same, after work on the order has already been commenced, Avancos TS will have the right to charge the customer cancellation charges of 25% of the final compensation determined earlier, whether or not such amount was expected, subject to a minimum of 5,000 Euros, exclusive of VAT, without prejudice to Avancos TS's right to claim full damage compensation, including loss of profit.

6.4

If the customer prematurely terminates an already ongoing order, without prejudice to amounts already invoiced for services provided, Avancos TS will retain full claim over 100% of the order fee.

Clause 7 – Prices

7.1

The agreed prices are based on the cost price-determining factors at the time of making the offer. Avancos TS reserves the right to charge the customer for changes in the cost price-determining factors over which Avancos TS cannot reasonably be expected to have any control, such as the increase in excise duty, social security payments, customs duty or VAT, that occur after the date of the offer or order confirmation.

7.2

The customer will bear the cost of additions and/or changes in the order or agreement.

7.3

The prices apply to ex-office delivery by Avancos TS, and are exclusive of VAT and other levies that may be imposed by the authorities. The price does not include transport costs, despatch costs, insurance costs if any, and all other costs related to the delivery, unless agreed otherwise in writing.

7.4

Costs incurred by Avancos TS for the customer, or for an ongoing contract, or for the customer's publicity, will always be charged to the customer. Avancos TS will charge working hours spent by it at the rate of 100 Euros per hour, per person, while travelling hours including travelling costs will be charged on the basis of 0.65 Euro per km, from the Avancos TS office and back. Avancos TS reserves the right to charge such amounts up to 30 days after the order comes to an end. Such charging will be indicated with the words "Recharge" in the invoice.

7.5

All prices are in Euros or US Dollars. Conversion from/to other currencies will be done in accordance with the foreign exchange rate announced by De Nederlandsche Bank (DNB) or the European Central Bank (ECB). Invoices should always be paid in the currency mentioned on the invoice.

7.6

Cheques are to be considered as payment only after cash in on our bankaccount as mentioned on the invoice. Until such time the invoice will be considered as outstanding and due for payment.

Clause 8 – Delivery and Delivery period

8.1

To the extent possible, the delivery (completion) times are based on the conditions as they are at the time of entering into the agreement.

8.2

Taking into account the nature of its business and its products or the services, Avancos TS is largely dependent on the contractual performances of third parties (such as media statements, third parties as per Clause 5.5, the postal department, Customs and other authorities), and therefore, Avancos TS cannot guarantee that the order placed can be fully delivered in time.

8.3

The delivery (handover) times specified by Avancos TS will always be approximations, and are not binding deadlines. If these delivery (handover) times are exceeded, the customer will have no right to terminate the agreement, unless Avancos TS has been in default for more than 30 days after a notice of default was duly served on it. Avancos TS is never liable to pay damage compensation.

8.4

The customer may not assign his right to delivery under an agreement without the written consent of Avancos TS.

8.5

The risk of the services sold will pass to the customer as soon as the services have been provided, irrespective of whether or not the invoices made as above are paid.

8.6

Avancos TS will determine the method of delivery with all due care, if the customer does not issue any further instructions.

Clause 9 - Resale

9.1

The customer will not, without Avancos TS's prior, express, written consent, use products and/or services supplied by Avancos TS as a free gift that accompanies the sale of other products, or allow such use.

9.2

If the provisions of this Clause are violated, the customer will be liable to pay a penalty of 5,000 Euros net, for each violation, without prejudice to the other rights that Avancos TS may enforce in such case.

Clause 10 – Advertising material

10.1

Avanco TS will retain its copyright ownership rights on advertising material that Avancos TS provides to the customer for a price or free of cost, to support the sale of products or services.

10.2

The customer will, on Avancos TS's first request, return all such advertising material to Avancos TS in an undamaged and unchanged condition with free delivery at the customer's risk, and will suspend the use of the same.

10.3

Avancos TS has exclusive right to use its name, logo and taglines. The use of the same by third parties employed by Avancos TS as per 5.5 may only be made after obtaining Avancos TS's written consent, signed only by the CEO of the management team. On the cessation of the above-mentioned collaboration, the customer's right to use Avancos TS's name, logo and taglines will also lapse, subject to a penalty of 5,000 Euros net, for each violation, without prejudice to the other rights that Avancos may enforce in such case.

Clause 11 – Payment

11.1

The following will apply to each agreement: payment via the invoice. If an invoice is sent, the payment should be made within thirty (30) days of the invoice date. Deviant payment terms will only apply if confirmed in writing or by e-mail by only the CEO of the management team.

11.2

The customer will pay the invoice total in time and in the specified currency.

11.3

The customer will not set-off the invoice total to be paid, unless it is a credit note.

11.4

Payments should be made in the currency specified in the invoice. If payment is made in a different currency, the customer will always bear the foreign currency differences and costs in connection with the exchange.

11.5

All payments should be made into a bank account to be designated by Avancos TS. Cheques are to be considered as payment only after cash in on our bankaccount as mentioned on the invoice. Until such time the invoice will be considered as outstanding and due for payment. The value date mentioned on our bank statements will be decisive and will therefore be regarded as the payment date.

11.6

The payments made by the customer will first be applied toward the late payment interest payable by him, and the (extra-) judicial costs incurred, and then against the oldest outstanding claim, even if the customer states that the payment relates to a later claim or a different account head.

11.7

The customer will be deemed to be in default through the mere expiry of the payment period, without the need to issue a notice of default. If Avancos TS has reasonable grounds to doubt that the customer will fulfilment his obligations in time, Avancos's claims will be immediately payable, irrespective of agreed payment periods or payment terms if any.

11.8

During the period of his default, the customer is liable to pay 7,5% late payment interest per month or part of the month on the outstanding claims. In each case, after the expiry of one year, the interest payable for that year will be added to the amount on which the late payment interest is calculated.

11.9

The customer will pay all the judicial and extra-judicial costs incurred.

The judicial costs include all the actual costs of general legal advice and legal advice during judicial proceedings, which exceed the scale of liquidation charges of the Dutch Bar Association. The extra-judicial collection costs will be at least 15% of the amount payable by the counter-party together with the above-mentioned interest, subject to a minimum of 450 Euros. If legal advice is taken, the counter-party will always bear the statutory interest, in addition to all the costs.

In case of a net claim less than 700 Euros, the customer will be charged 140 Euros, as a compensation for Avancos TS's risk in the process (administration) costs, concerning which the customer will again be notified through a default notice.

Clause 12 – Retention of title

12.1

Avancos TS reserves ownership rights over all the goods and services supplied to the customer, until full payment is received of the invoice total for all the said goods and services, including future ones. If under these contracts, Avancos TS does other work on the customer's account and risk, the retention of title will apply until the customer has made full payment to Avancos TS for such (future) claims as well. Furthermore, the retention of title will also apply to claims that Avancos TS may obtain against the customer due to the customer's shortcomings in fulfilling one or more of his other obligations toward Avancos TS.

The customer may not sell the goods, pledge or grant third parties any other right on the same until the ownership of the goods and services supplied is transferred to the customer.

12.2

The customer will always store the goods and services supplied under retention of title, with all due care, and clearly identifiable as the property of Avancos TS. The customer will insure the goods and services against all conventional risks, for the duration of the retention of title. As further security for Avancos TS's claims against the customer, the customer will pledge all his claims against the insurers of the goods and services under the above-mentioned insurance, with Avancos TS as per Section 3:239 of the Civil Code, on Avancos TS's first notification that it desires the same. If the customer falls short in fulfilling his payment obligations to Avancos TS or Avancos TS has good ground to fear that he may fall short as above, Avancos may take back the goods and services delivered under right of retention of title at any time (or commission the same). After recovering physical possession of the goods, the customer will be credited for the market value (based on the purchase price), which may not in any case exceed the original purchase price, minus the costs incurred for collecting the goods.

Clause 13 – Complaints and Querries

13.1

The customer is bound, immediately after delivery, to check the goods delivered for any deviations from the terms agreed. Complaints and Querries if any must, with a detailed statement of the facts to which these complaints relate, immediately be submitted in writing or by e-mail to Avancos TS and must be received by Avancos TS within three (3) working days after the delivery date, failing which the customer will be deemed to have irrevocably and unconditionally accepted the goods/services.

13.2

All complaint rights will lapse if and insofar as the customer starts processing, working on or modifying the goods, or mixes the same with other goods.

13.3

Avancos TS is only bound to take cognisance of complaints submitted if the customer has fulfilled all his contractual obligations toward Avancos TS under any heading whatsoever. The customer will not suspend the fulfilment of his obligations or set-off the same on the grounds that he has submitted a complaint.

13.4

If the customer's complaint is well-founded, Avancos TS will, subject to the provisions above, and after due consultation with the customer, re-deliver the services within a reasonable period of time.

The customer may only fully or partially terminate the agreement with Avancos TS's cooperation.

13.5

If the customer's complaint is well-founded, also taking into account the provisions above, but a service cannot be re-delivered within a reasonable period of time, Avancos TS will only refund to the customer the (advance) payment for the goods or services to be supplied, if any such payment has been made. In such case, the agreement between the parties will be terminated (wholly or partially, insofar as the same relates to the order for which the refund has been made). Avancos TS is not liable for any damage or any obligation whatsoever that the customer and/or third parties may incur due to the impossibility of redelivery of the product or service, except where this is caused deliberately or through gross negligence.

Clause 14 – Force majeure

14.1

Force majeure for the present purposes shall mean the following: all circumstances that are unforeseeable or beyond the control of the parties, on the grounds of which the Customer can no longer reasonably demand fulfilment of the agreement by Avancos TS.

14.2

Force majeure will always include the following: strikes, extraordinary sick leave of the Avancos TS's personnel, transport difficulties, fire, governmental measures, including in all cases impediments to import and export, interruptions in the operations of Avancos TS, problems with sub-contractors, involuntary disturbances or impediments that render the execution of the agreement becomes more expensive and/or more difficult, such as storm damage and/or other natural disasters, war situations, terrorist actions, as well as contractual default by Avancos TS's suppliers, due to which Avancos cannot (any longer) fulfil its obligations toward the customer.

14.3

The party that claims force majeure must immediately notify the other party of the same.

14.4

If a force majeure situation arises, Avancos TS has the right to suspend the execution of the agreement or to definitively terminate the same; the customer may also do so, but only after Avancos TS has failed to fulfil its obligations even after 60 days have passed after being issued with a notice of default. Avancos TS is not liable to pay any damage compensation.

14.5

Avancos TS will have the right to demand payment for the work carried out for the execution of the relevant agreement, up to the occurrence of the circumstance causing the force majeure.

14.6

Avancos TS can also claim force majeure if the circumstance that causes the force majeure occurs after it should have rendered the performance in question.

Clause 15 – Applicable law and disputes

15.1

All disputes, including disputes that are only regarded as such by one of the parties, arising out of or relating to the agreement to which these terms and conditions apply, or the relevant terms and conditions themselves, and their interpretation or implementation, whether relating to issues of fact or law, will be placed before the competent civil court within whose jurisdiction the Registered Office of Avancos TS is located, unless the Dutch cantonal court has such jurisdiction.

15.2

The entirety of these General Terms and Conditions of Delivery and Payment will be exclusively subject to the law of The Netherlands.