

# General Terms and Conditions of Sale

## Article 1. Definitions

- Ameco: Ameco Playgrounds BVBA;
- Buyer: the party that enters into a contract with Ameco for the purchase-sale of a Structure or maintenance of goods;
- Purchase Price: the price paid by the Buyer to Ameco for the Structure and all related goods and services;
- Structure: every structure delivered, installed and/or maintained by Ameco;
- Agreement: the purchase and sales agreement or the maintenance agreement in respect of a Structure, entered into between Ameco and the Buyer.

## Article 2. Scope

§1. These General Terms and Conditions of Sale govern the Agreement between the parties and all consequences arising from the Agreement. This includes all acts, direct and indirect, committed by the parties within the scope of the Agreement. The Buyer acknowledges the application of these General Terms and Conditions and the mutual rights and obligations arising therefrom.

§2. Under no circumstances will the Buyer's general terms and conditions apply, even if Ameco has not expressly objected to this.

§3. In case of a special agreement between the parties, these General Terms and Conditions supplement the special conditions and form an integral part of each agreement between the parties.

## Article 3. Offer

§1. Offers are made subject to the characteristics of the Structure and the services offered, as well as the variable factors that form part of the offer: price, quantity, delivery period, terms of delivery, and other relevant factors. Offers do not involve any binding obligations for Ameco.

§2. Unless it has been replaced during its period of validity by a more recent version, every offer shall be valid for a period of 30 days.

## Article 4. Terms of Payment

§1. Contracts shall always be payable net on the due date. Except in case of express written agreement on other terms of payment, the statutory interest shall be due by operation of law and without notice of default if payment has not been made in full on the due date. Any month commencing with arrears of payment shall be deemed to have expired in respect of the interest due.

§2. Payment of the Purchase Price and other amounts due must always be made by bank transfer, unless Ameco gives its express consent for other terms of payment. Under no circumstances may the Purchaser transfer any amount due to the persons responsible for the delivery and/or erection of the Structure.

§3. Total or partial non-performance of the Agreement by the Buyer shall give rise to damages for Ameco amounting to 15 per cent of the Purchase Price. This compensation shall be increased by all direct and indirect costs incurred arising from the Agreement and/or its performance, whether forced or not.

§4. Total or partial non-performance of the Agreement by the Buyer shall entitle Ameco to dissolve the Agreement and to recover the goods delivered, with a maximum of the amount

that the Buyer owes Ameco. Under no circumstances shall Ameco be obliged to take back the goods in order to set off any outstanding claims.

§5. All bank charges and any foreign exchange risk shall always be borne by the Buyer.

§6. All goods delivered and yet to be delivered shall remain the property of Ameco until all invoices and claims on the Buyer have been paid in full. The amount owed that serves as the object of this retention of title shall also include any interest, extrajudicial and legal costs incurred in the performance of the Agreement. If the delivered goods or Structure are processed by the Buyer or his agent, the retention of title shall extend to the new item.

## **Article 5. Terms of Delivery**

§1. The Purchase Price is always Ex Works (EXW) in accordance with the INCOTERMS 2000, where the location is Ameco's warehouse or a location designated by Ameco. Delivery of the goods is deemed to have taken place in Ameco's warehouses, even in the event of carriage-paid delivery to a destination specified by the Buyer.

§2. If the Buyer collects the goods from Ameco's warehouses, the Buyer shall collect these goods no later than 30 days after the notification that they are available for collection.

§3. The delivery period stated is purely indicative and does not create an obligation to achieve a result for Ameco. Late delivery cannot give rise to any right to compensation for the Buyer.

§4. The Buyer must accept the goods delivered, failing which Ameco may demand performance of the Agreement by process of law and shall be entitled to compensation. Compensation amounts to 15 per cent of the Purchase Price plus all direct and indirect costs arising from the Agreement and/or its performance, whether forced or not.

§5. Goods delivered may only be taken back with the prior written consent of an authorised representative of Ameco.

§6. All repairs, new works and interventions are subject to the provisions of these General Terms and Conditions.

## **Article 6. Other mutual rights and obligations**

§1. If the Buyer's creditworthiness is compromised or if the Buyer's compromised creditworthiness is demonstrated due to late or inadequate payment, Ameco may require the Buyer to furnish guarantees that ensure the proper performance of its obligations. In the event of insufficient guarantees, Ameco may terminate the Agreement in whole or in part, without waiving the right to damages as stated in these General Terms and Conditions. Under no circumstances is Ameco bound by an obligation to deliver in the event of default by the Buyer.

This provision does not affect the rights pertaining to civil law Ameco is entitled to under this provision.

§2. Complaints regarding the invoice, the delivery or the delivered products must be made in writing by registered mail within 14 days after the invoice date or the delivery date, whichever date comes first. Complaints made after this deadline will not be considered.

§3. All goods belonging to the Buyer that are in Ameco's possession for the performance of the Agreement shall be stored at the Buyer's risk. Wear and tear, theft, damage or destruction cannot be attributed to Ameco, except in the case of intentional or unintentional fault on the part of Ameco.

§4. If Ameco is prevented from performing the Agreement due to force majeure, Ameco shall be entitled to postpone performance under the Agreement without indemnification of the Buyer. Such impediment shall include the following: accidents, strikes, delays at suppliers, inadequate transport possibilities and cooperation, necessary or otherwise, of the Buyer.

§5. The Buyer shall provide Ameco in good time with all pre-contractual and contractual information necessary or useful for the performance of the Agreement. In the absence of timely notification, Ameco shall be entitled to suspend the performance and/or charge the costs arising from this suspension and/or the inadequate information.

§6. These General Terms and Conditions are without prejudice to Ameco's other legal and contractual rights.

## **Article 7. Warranty**

§1. The warranty on the Structure is exclusively the warranty provided by the manufacturer of the components of the Structure. In the absence thereof, a warranty will only be provided if this is apparent from a written agreement.

§2. Under no circumstances will Ameco be liable for the following:

- the defects that were not already present at the time of delivery;
- damage caused by an accident, careless use, intervention by an unauthorised third party, any use other than the designated use of the goods, and inadequate maintenance;
- required interventions that are a normal part of maintenance activities;
- non-contractual errors or damage;
- defects that could not have been known at the time of delivery.

§3. In the event of a warranty claim, the part will be repaired/replaced free of charge. Nevertheless, transport is always charged, unless expressly agreed otherwise.

## **Article 8. Validity and dissolution of the Agreement**

§1. The Agreement, other agreements and arrangements are only valid if they have been confirmed in writing by an authorised representative of Ameco.

§2. The signatory of an agreement with Ameco shall be jointly liable with the person on whose behalf she/he acts.

§3. Any cancellation of the Agreement requested by the Buyer must be sent to Ameco by registered mail. It is only valid with the explicit acceptance by Ameco. In the event the cancellation is accepted by Ameco, the Buyer shall owe compensation equal to the performances already completed, plus a fixed compensation of 15% of the Purchase Price, unless Ameco demonstrates a higher loss.

§4. The parties agree that the Buyer has no right to terminate the Agreement unilaterally, except for mandatory rules of law.

§5. The possible nullity of one or more provisions of the Agreement or these General Terms and Conditions shall not affect the validity and application of the other provisions.

## **Article 9. Intellectual property**

§1. All rights are vested in Ameco Playgrounds BVBA. These rights include the copyrights and intellectual property rights relating to the drawings, designs, structures, distinguishing features, and trademarks of Ameco Playgrounds BVBA.

§2. The Buyer is not permitted to use the intellectual property of Ameco. Any use thereof, including communication, advertising and use directly or indirectly linked to the exploitation, is prohibited except with the express written agreement of Ameco.

#### **Article 10. Processing of Personal Data**

§1. Ameco shall treat the Buyer's personal data in accordance with the statutory privacy regulations. Personal data provided by the Buyer will only be collected and processed for the purpose of drawing up and performing the Agreement.

§2. Ameco will not transfer the personal data processed to third parties, unless this is necessary for the performance of the Agreement or the Buyer gives its consent to do so. Under no circumstances will personal data be used for direct marketing purposes, except with the explicit consent of the Buyer. The Buyer can view Ameco's privacy policy at [www.ameco-playgrounds.com](http://www.ameco-playgrounds.com).

#### **Article 11. Disputes**

§1. Belgian law shall apply to all disputes arising or likely to arise from this Agreement, and the courts of Antwerp shall have exclusive jurisdiction.

Colours and models: Unless expressly agreed otherwise in writing, all images and colours are for indicative purposes only and without any obligation on our part.

#### **Ameco Playgrounds sales and warranty conditions with respect to the parts delivered**

The warranty applies to the different parts and works of the contract according to its applicability in the following hierarchical order. The client shall maintain the good with due care and diligence. Any damage resulting from improper use, vandalism, normal wear and tear or lack of maintenance and technical or other supervision by the customer is expressly excluded from warranty. Also excluded from warranty are all materials and working hours deemed to be part of normal maintenance and supervision of a technical or other nature, as provided by law or social practice, such as, for example, but not limited to, inspection, repair, and replacement of fasteners, non-load-bearing or not essential for the stability of construction, electrical wiring, lamps, etc.

1. **BASIC STRUCTURES:** Steel support structures: 1800 days.
2. **RIGID STRUCTURAL ELEMENTS:** steel, wooden, polyethylene or polyester elements with an essential structural load-bearing function: 720 days.
3. **FLEXIBLE STRUCTURAL ELEMENTS:** rope or strap elements with an essential structural load-bearing function: 360 days.
4. Other soft play components, play elements and obstacles permanently attached to or in the structure: 360 days.
5. Other soft play components, play elements and obstacles not attached to or in the structure: 180 days.

6. All electronic, electrical and mechanical parts of known and identifiable manufacturers, other than Ameco, covered by an original warranty from the manufacturer: manufacturer's warranty.
7. All other electronic, electrical and mechanical components: 360 days.
8. Inflatable structures and bouncy castles (except motor for this purpose) of known and identifiable manufacturers, other than Ameco, covered by an original warranty from the manufacturer: manufacturer's warranty.
9. Springs and surfaces of trampolines that are jumped on: 180 days.
10. Balls for the ball pool: no warranty!
11. Large balls and other inflatable shapes, decorations: 180 days.
12. Nets, ropes and cords: 720 days.
13. Chain: 360 days on the material.
14. Buoys type « Mega Ring »: 360 days.
15. Vehicle type « Plasma Car » and other pedal vehicles: covered by the original manufacturer's warranty.
16. Plastic toboggans for the piste: 180 days on material defects, excluding transportation costs.
17. Toboggans and foam material for the piste: 180 days on material defects.
18. Buoys for the snow bob: 180 days, excluding transportation costs.
19. Elastic tower: Elastics: 360 days. Structure and finish (incl. labour costs):720 days
20. Compressed air cannons: 720 days, provided that minor maintenance was carried out after 360 days of operation.
21. Compressor for compressed air cannons: covered by the original manufacturer's warranty.
22. Cable-lift: 5 years on the metal rail, 360 days on the trolley. The customer is obliged to regularly check the trolley during operation and to have it replaced if necessary. Experience shows that the trolleys can be worn out after 1 year, depending on the intensity of use.
23. Carousel: The bearing elements of the carousel are to be checked regularly (at least once a year) and replaced if necessary. Experience shows that these must be replaced after 3 to 5 years of use.

## **CONTRACT TERMS**

### **1. Applicable documents**

The works must be carried out in accordance with the description in the annex, drawn up by the contractor. The following documents form part of the current offer. In the event of a dispute or disagreement, only the following hierarchical order of the documents relating to the contract shall apply:

Offer, Contract Terms, General Terms and Conditions, descriptions, plans. However, the works contract takes precedence over all other existing documents and any contradictory clauses. Both parties acknowledge that the order is limited to the works stated in this contract. All costs related to the design and preparation of the construction site are borne by the client. By signing this agreement, both parties also acknowledge that they have received a copy of all the documents stated above.

### **2. Obligations of the contractor.**

The contractor will carry out the works using skilled personnel and experienced subcontractors where possible. The client shall at all times be entitled to inspect the works and to refuse to accept non-compliant materials or designs. The contractor shall take all necessary measures to ensure safety on the construction site. The contractor will not be liable for damage resulting from the mere application of art. 544 of the Civil Code. The contractor shall be liable for: the visible defects found at provisional acceptance, the hidden defects that manifest themselves during the warranty period between provisional and final acceptance and which do not compromise the stability of the playground. The period during which the claim must be initiated is three months after the client has established the hidden defect. After final acceptance, the contractor will therefore only be liable for serious construction defects, to the exclusion of any other liability for any defects, both visible and hidden.

### **3. Obligations of the client.**

All calculations and specifications have been drawn up for designs and working under normal circumstances with respect to implementation period, work site, material, installation, foundations, employment, weather conditions, etc. The client will provide the contractor with the correct and necessary information for the proper installation of the playground. The latter must approve these before commencement of the construction works. In the absence of this, commencement of the construction works shall be regarded as approval of the installation by the client. The client bears all responsibility, at least in matters pertaining to civil law, for incorrect information regarding the existence and correct location of all utilities. The burden of proof for exemption from the client's liability rests with the client. The works may only commence if the client ensures that the space in which the playground is to be placed is windproof, all previous works in the space in which the playground is to be placed are finished, and the floor in the space in which the playground is to be placed is free, even, and dry, there is a separation of the construction site from the rest of the building in order to keep dust and noise pollution at a minimum. On the other hand, the contractor will also try to keep noise and dust pollution at a minimum, but will have to be able to continue its work at all times. During the execution of the works, the client will ensure uninterrupted electricity, i.e. at least 2 power points of 16 amps. The temperature in the space where the playground is to be placed shall not be lower than 12 degrees Celsius. Easy access to the building between 06:00 and 22:00 hours, both for workers and for the supply of materials. Adequate lighting in the space where the playground is to be placed. Adapted sanitary facilities for the contractor's workers. A lockable room where tools and materials can be stored at night. He will provide the contractor with the requested approvals of plans and materials within the shortest possible time, otherwise the implementation period may be extended proportionately. The client waives the right of recourse against the contractor for any damage to the building, its contents and immaterial damage until the moment of final acceptance. The parties agree that supervision of the works will be carried out by the contractor.

### **4. Price and price review.**

Price review shall not normally apply to this Agreement. The price review formula below only applies if the work can only start 6 months after signing this Agreement due to circumstances. All prices shall be adjusted in accordance with the following review formula applied by the Ministry of Public Works:  $P = P ( a s/S + b i/I + c )$ ; where: P = the revised price, s and S index based on the average wage of a qualified zone 1 worker, where s is the index of the month in which the works are carried out and S the index applicable 10 days before the date of the current contract. i and I index of building materials, where i is the index for the month of implementation and I is applicable in the month preceding the current contract. A = wages parameter, B = materials parameter, C = price parameter for that part of the price which is not subject to review. All additional work specified in the course of the work will be deemed to have been

stated on the day of this agreement.  
The same review will apply as described above.

#### **5. Terms of Payment.**

Please refer to the General Terms and Conditions of Sale, without prejudice to the contractor's right to stop the works and/or to invoke a proportionate extension of the implementation period. The client may not alienate the buildings, or encumber them in any way, nor take them into use as long as all amounts due (contract price, review, additional or less work, any interest, etc.) have not been paid.

In the event of default of payment on the due date or late payment, the invoice amount will automatically and without notice of default be increased with a fixed compensation equal to 15% of the amount due, with a minimum of 100 euros plus 185 euros collection costs for Belgian customers or 500 euros for foreign customers.

#### **6. Implementation period**

The period of workable days available to the contractor to carry out the works will be counted from the formally agreed starting date between the parties, provided that the building permit has been obtained and a copy has been provided to the contractor, and that the site and access to it is at the disposal of the contractor. If these conditions are not met on the formally agreed commencement date, the parties shall agree on a new formal commencement date. The fact that the contractor carries out certain works before the formal commencement date shall not affect the principle that the period is calculated from the formally agreed commencement date. Moreover, the implementation period may be extended and/or set backwards by the duration of the additional work and/or changes ordered, in accordance with the provisions of article 9. Bad weather conditions and cases of force majeure (strike, disputes with the authorities, neighbours, utility companies, impossibility of supplying certain raw materials, etc.) are reasons for suspension and proportionate extension of the implementation period, by operation of law. The contractor reserves the right to extend the implementation period and/or move it to a later date subject to overdue payments by the client. These arrears give rise to an extension of the implementation period to the benefit of the contractor, without prior notice of default being required.

#### **7. Contract variations, modification of materials.**

All unanticipated additional work will be the subject of separate agreements between the parties, both in terms of the price and possible extension of the period. If the client decides not to carry out part of the work assigned to the contractor or if it wishes to assign it to a third party without the contractor's agreement, it undertakes to compensate the contractor for its loss of profit and general expenses incurred. This clause shall only apply if the total of the contract reductions is more than 20% of the total contract value. In cases of force majeure such as bankruptcy of the supplier, a too long delivery period, taking certain material out of production, etc., the contractor shall be permitted to propose other materials to the client provided they are of equal quality. The following costs may be charged for all contract variations; Hourly wage costs for a worker: 30 euros, Hourly wage costs for a site manager: 40 euros, Travel expenses to and from the site: 40 euros per hour and per person, Accommodation expenses abroad: on a cost-plus basis, at the customer's expense. The travel expenses will be charged per hour, not per kilometre, taking into account normal journey times, to be calculated from the departure from the contractor's until the time of arrival back at the contractor's. The above prices shall be reviewed in accordance with the provisions of article 6 of this agreement.

#### **8. Changes in the solvency of the parties.**

If serious facts arise during the execution of the works, which indicate a poor or deteriorated

financial situation of the contractor, the client may either demand additional guarantees or suspend the works or cancel the contract. These facts include arrears of payment with the National Social Security Office, major arrears of payment of past due invoices, suspension of payments, protested bills of exchange, attachment of bank accounts or assets, refusal of credit insurance and suchlike. On the other hand, the contractor shall also be entitled to implement similar measures and require additional securities from the client if facts similar to those stated above show that the solvency of the client has been adversely affected.

## **9. Provisional and final delivery.**

During construction, the contractor will install a construction site poster that summarises the responsibilities and liability of the client, at eye level, at the place where the entrance for the children to the playground will be made later, without prejudice to this Agreement. The client expressly and unconditionally undertakes not to remove, cover or in any other way conceal this poster. The client shall ensure that the said poster is not removed, covered or even partially hidden from view.

Should this happen, this will be regarded as acceptance and putting into operation of the construction site and immediately ends the contractor's liability. Provisional acceptance is requested by the contractor upon completion of the construction works, the date of which is determined by mutual agreement. Any performance of works by secondary contractors for the provisional acceptance is permitted, if necessary subject to a preliminary inventory of fixtures. Taking possession of the playground by the builder will be considered provisional acceptance and will also relieve the contractor from the obligation to pay damages for delay in completion. Provisional acceptance shall consist of establishing the completion of the works and their approval. The provisional acceptance report will be signed by both parties and shall state the works, finishings and repairs yet to be carried out. Final acceptance shall take place 12 months after provisional acceptance. If the client does not comply with the contractor's repeated request for provisional or final acceptance of the works, these shall be deemed to have been accepted by the contractor.

## **10. Disputes.**

Disputes with neighbours, inevitable damage or nuisance, as well as disputes with the government, fire brigade and utility companies shall be settled by the client directly with the aforementioned bodies, without the intervention of the contractor.

## **11. Completion.**

If certain works cannot be carried out due to excessive humidity, the contractor cannot be held liable for non-completion upon provisional acceptance. Installation and use of heating or other drying systems, necessary for the early completion, are the responsibility of the client.

## **12. Greenery.**

If greenery (lawn, trees, shrubs) is provided for in the order, the work will be carried out in consultation with the client. Upon completion of the greenery, it will be immediately accepted by the client and maintenance will be at the client's expense. Any construction of greenery outside the implementation period of the construction works shall not prevent acceptance of the construction works.

## **13. Safety.**

The contractor undertakes to take all possible care and attention in the design and implementation of the playground's safety. The contractor accepts no responsibility whatsoever for any accidents arising directly or indirectly from or caused by installations supplied by the contractor, other than those provided for by law and for which the contractor



has effected insurance. The client undertakes to effect the necessary insurance policies in order to regulate liability, thus indemnifying the contractor, before putting the playground into use.

#### **14. Warranty.**

Please refer to the annexed warranty terms and conditions. Any damage resulting from improper use, vandalism or normal wear and tear is expressly excluded from the warranty. The client shall maintain the good with due care and diligence.

#### **15. Inspections and maintenance.**

Upon provisional acceptance, the contractor will hand over an original and dated maintenance book to the client. The client undertakes to record any remarks and defects in this maintenance book. The client shall ensure this book is available at all times during the operation of the playground so that this can be presented in the event of an accident. The client undertakes to have an annual inspection carried out by the contractor. This inspection will be carried out at the then applicable hourly rate, the travel expenses to and from the client will also be charged at this hourly rate. The contractor will carry out minor maintenance work in the remaining time, if any. The materials required for this minor and/or necessary work must be reimbursed separately according to an offer to be drawn up. Refusal to carry out the preventive inspection, or the work recommended or necessary on the basis of this inspection, shall immediately and without notice of default, release the contractor from any possible liability that might result from the continued use of the installations. The contractor will record the repair work and inspections carried out by the contractor in the maintenance book.

#### **16. Management and supervision.**

The client undertakes to manage the installations supplied with due care and to carry out regular supervision and inspections. Any signs that safety may be compromised must immediately be reported in writing to the contractor, who will then propose any recommendations and/or interventions to the client. These recommendations are for information purposes only, the client shall at all times remain liable for the use and/or making available of the supplied installations to and/or by third parties. The above interventions will always be the subject of additional compensation to the contractor subject to the hourly rates and travel expenses stated in this agreement.

#### **17. Affixing a poster.**

The client undertakes to display a "welcome" poster, provided by the contractor, stating, among other things, the name, address and telephone number of the contractor, clearly visible at eye level at the main entrance for the children of the playground, for the entire duration of the installation. The client undertakes not to remove or even partially cover this sign, and to notify Ameco if the condition of this sign requires replacement. On the other hand, the client authorises the contractor to replace or renew this sign if the contractor so wishes, even without apparent reason.

#### **18. Working on materials owned by the customer.**

We are not liable for damage in the event of placement or repair by ourselves or our employees of or to equipment or materials owned or delivered by the customer.

#### **19. Unfair recruitment.**

The customer undertakes not to employ our staff either directly or indirectly during the term of the agreement, nor during the period of 6 months after termination of the agreement. Any breach of this agreed obligation constitutes an act of unfair recruitment which shall incur a

fine of 2,500 euros per person, for damages and interest, as an irrevocable penalty clause.

**20. Special conditions 1:**

Under no circumstances shall the nullity of one or more provisions of the aforementioned documents result in the nullity of the entire agreement. The other provisions shall continue to apply in full.

**21. Special conditions 2:**

It is expressly agreed that all works not explicitly stated, including the ones below, shall not be covered by the contract and will be carried out by the client: Cleaning the playground, including before completion. The contractor only provides for the disposal of the waste material from the playground and the very superficial cleaning of the playground.