

## Sales and Delivery Terms and Conditions AstroTurf Europe B.V. version April, 2018

### Preamble

These Sales and Delivery Terms and Conditions have been drawn up in order to clarify the rights and obligations of the parties regarding the sales and services to be provided, resulting from the Contract relating to AstroTurf Europe and/or affiliated legal entities, hereinafter referred to as 'AstroTurf Europe B.V.'.

### Definitions

- a. "AstroTurf Europe" is AstroTurf Europe B.V. established in Zwolle the Netherlands and registered at the Chamber of Commerce under number 70447063 and/or affiliated companies;
- b. "Terms and Conditions" are these Sales and Delivery Terms and Conditions of AstroTurf Europe B.V., version April, 2018;
- c. "Client" is the opposite party of AstroTurf Europe, and /or the affiliated companies of Client;
- d. "Contract" is the agreement between Client and AstroTurf Europe;
- e. Where in these Terms and Conditions the terms 'we' or 'us' or 'our' are used, it will mean AstroTurf Europe, Mutatis Mutandis.

### Article 1. Relevance

- a. To all contracts closed and services regarding any kind of sales and or delivery rendered by AstroTurf Europe and/or affiliated companies the Sales and Delivery Terms and Conditions AstroTurf Europe B.V. version April, 2018 are applicable, with the explicit replacement of any general terms and conditions used by any other party, including the client. You can download the Sales and Delivery Terms and Conditions AstroTurf Europe B.V. at [www.AstroTurf-eu.com/TermsAndConditions](http://www.AstroTurf-eu.com/TermsAndConditions). A free copy of the terms will be sent to you on request.
- b. In the event of any conflict between the terms and conditions as established in the Contract and these Terms and Conditions, the terms and conditions as established in the Contract shall prevail. Any other deviations from these Term and Conditions are only valid if and in so far as explicitly confirmed in writing by AstroTurf Europe in advance.
- c. The term "delivery or delivery of goods" in these Terms and Conditions refers to the performance of services and labour of any nature.
- d. If these Terms and Conditions are partially not binding or invalid, both parties remain bound for the remaining part of these Terms and Conditions. AstroTurf Europe will, in that case, be entitled to replace the invalid or non-binding part with clauses that are valid and binding and which, regarding the content and the extent of these Terms and Conditions, will be as similar as possible to those of the invalid or not binding part.
- e. If one or more clauses in these Terms and Conditions are rendered null and void or have been removed, the other clauses of these Terms and Conditions remain valid.

### Article 2. Offers and contracts

- a. All offers are made free of engagement, unless the offer includes terms of engagement.
- b. Unless expressly agreed otherwise in writing, all prices and fees are in Euros and exclusive of VAT.
- c. Should Client provide AstroTurf Europe with information and data such as, but not limited to, designs, drawings, models, descriptions, images etc., Client guarantees their correctness and AstroTurf Europe will base its offer thereon.
- d. Offers made orally by AstroTurf Europe or its subordinates are free of engagement unless confirmed in writing by AstroTurf Europe.
- e. A contract is first concluded, when AstroTurf Europe accepts an order given in writing. A Contract is deemed to have been concluded the moment the order confirmation is sent.
- f. Any additional Contracts and/or promises made and/or concluded by our employees or made on our behalf and/or made by other persons acting as representatives, are only binding if these Contracts and/or promises

have been confirmed in writing by an authorized manager of AstroTurf Europe.

- g. If an individual concludes a contract for or for the account of another individual, he will state that he is authorised to do so. This person is, just like the other individual, jointly and severally liable for all the obligations resulting from the Contract.

### **Article 3. Intellectual property**

- a. Unless agreed otherwise in writing, AstroTurf Europe is entitled to retain all copyright and all rights pertaining to industrial property in its offers and all other materials provided such as, but not limited to, supplied designs, images, drawings, (test) models, and software.
- b. The rights reserved in paragraph 1 of this article regarding the mentioned data will remain the property of AstroTurf Europe, irrespective of whether AstroTurf Europe has charged the Client for the production costs or not. These data may not, without prior explicit permission in writing from AstroTurf Europe be copied, used or shown to third parties, or used for any other commercial purposes other than those for which they were provided. Client is likewise forbidden to sell the data provided by AstroTurf Europe referred to under 3.a to, through or by means of third parties in any form whatsoever, unless AstroTurf Europe has expressly agreed in writing.
- c. Quotes consist of – in particular in reference to that stated above – designs, drawings, models, samples, descriptions, images etc., as well as any appendices and documentation related to AstroTurf Europe's quotes. The abovementioned and all the tools required remain AstroTurf Europe's property and must be returned to AstroTurf Europe on first request.

### **Article 4. Prices**

- a. All our prices are stated excluding VAT, legal- and regulatory levies, and costs for export, handling, freight, administration and packaging, unless otherwise explicitly agreed upon in writing.
- b. The prices included in the quotes, contracts and order confirmations are based on the current cost factors, such as exchange rates, manufacturer's prices, raw materials and materials prices, wages and transport costs, insurance premiums, taxes, import duties and other levies from the government at the time the contract was concluded.
- c. AstroTurf Europe retains the right to recharge any increase of one or more of these cost factors to the Client, should these costs have increased after the date the contract was concluded, but before the date of supply. AstroTurf Europe is also entitled to cancel the contract in whole or in part in such a case, without any legal intervention being required. This last entitlement is also given to the Client, however only if AstroTurf Europe has concluded that the changes will result in an increase of the price stated on the order confirmation within a period of 3 months after concluding the contract. Should the Client utilise this right, the Client must send AstroTurf Europe a letter by registered mail for the cancellation of the contract, within a period of 5 days after receipt of the notification in question.

### **Article 5. Delivery and supply periods**

- a. The prices and tariffs mentioned in the offer are based on FCA at location to be defined in the contract, in conformity with Incoterms 2010, unless parties agree otherwise in writing.
- b. The supply periods commence on the date the contract was concluded, provided we possess all the information needed for the execution of the order. The supply periods will never be considered a final date, but only an indication of the supply period, unless otherwise explicitly agreed upon in an individual Contract. We therefore must be declared in default, in writing, should the delivery not be within the period stated. If – in deviation of the abovementioned – the individual contract explicitly states a penalty fee that has been agreed for exceeding the delivery time, this is not payable if this delay was due to force majeure as meant in article 11 of these Terms and Conditions.
- c. If the delivery is done in parts, AstroTurf Europe is entitled to consider each delivery as a separate transaction.
- d. The Client must collect the purchased goods within the time specified. If items are not collected after the final delivery moment has passed, they remain at the disposition of Client. Uncollected items will be stored at the expense and risk of the Client. AstroTurf Europe may always exercise the power provided by Article 6:90 of the Dutch Civil Code.
- e. If the delivery is made by the seller, the Client is obliged to ensure that the seller has easy access to the delivery

address. Should circumstances occur, causing the delivery address to be inaccessible on the planned date, the Client must inform the seller thereof well in time before the delivery. The seller retains the right to postpone or delay the deliveries if it becomes apparent that the delivery address is not easily accessible. Any additional costs made by the seller for these special circumstances are payable by the Client.

- f. If the agreed completion time and/or realization period is exceeded, Client is not entitled to receive compensate for this, unless such compensation has been agreed in writing.

#### **Article 6. Advice, designs and materials**

- a. The Client cannot derive any rights from advice and information received from AstroTurf Europe when these do not directly relate to the order.
- b. The Client is responsible for the drawings, calculations and designs made by or on behalf of the Client and also for the suitability of the materials stipulated by or on behalf of the Client.
- c. The Client will indemnify AstroTurf Europe against any claims of third parties regarding the use of drawings, calculations, designs, materials, samples, models and such supplied by or on behalf of the Client.

#### **Article 7. Right of complaint**

- a. The Client answers for and is responsible for the correctness and completeness of the data it supplies to AstroTurf Europe. The Client must take into account the usual margin of error and minor adjustments of the goods supplied by us stated in the order, or the documentation pertaining to it, pursuant to article 3 section c in respect of the data provided by AstroTurf Europe, such as, but not limited to: measurements, colour retention etc. In particular, the deviations apply to the quantity stated in the contract; the Client must also take into account the usual margins here. The goods supplied by us may deviate from the description stated in the order if and insofar as it concerns minor size differences, differences in quantity and minor adjustments and improvements.
- b. Complaints of the Client, concerning matters where the fault is clearly visible, must be brought to our attention by the Client within 5 days after delivery or within 5 days after the date of the invoice if the goods could not be delivered to the Client. This must be done by registered letter in which a clear and precise description is given of the nature of the complaint and the invoice number relating to the goods in question. The Client must perform a careful, complete and timely inspection.
- c. Faults that were not clearly visible at the date of delivery, nor become visible after a careful and timely inspection, must be reported by the Client within 5 days after these faults were determined, in the manner stated above in section b.
- d. Any right the Client may have to claims against AstroTurf Europe in respect of the faults of the goods supplied by AstroTurf Europe become null and void if:
  - AstroTurf Europe was not notified within the period stated in section b and section c above and/or was not notified in the manner indicated by us;
  - the Client provides no/insufficient cooperation in the investigation into the validity of the complaints;
  - the Client did not place, treat, use, store or maintain the goods correctly or has used them under circumstances or for purposes other than the purpose stated by AstroTurf Europe;
  - the goods continue to be used in the manner that led to the complaint of the Client;
  - the warranty period stated in the AstroTurf Europe Warranty Specification has lapsed or, if such a period is lacking, AstroTurf Europe is informed of the complaints after more than 1 months have passed since the date of delivery.
- e. Any disputes concerning the quality of the goods supplied by AstroTurf Europe will be settled legally by a reputable firm.
- f. If the abovementioned is objected to within the period specified, the Client remains obligated to collect and pay for the purchased goods. If the Client wishes to return the faulty goods, this must be done by first obtaining the written permission of AstroTurf Europe and then sending the goods, at the expense of AstroTurf Europe, in their original packaging in the manner indicated by AstroTurf Europe.
- g. Making objections must always be done before the goods are processed or cut. If the goods have already been, partially or completely, processed, modified or cut, the right to object is cancelled and the goods are deemed to be accepted.

## Article 8. Liability

- a. Unless guarantee obligations are carried out by third parties, such as manufacturers, is the Client entitled to file a claim. The Liability of AstroTurf Europe is limited to damages as a consequence of manufacturing faults and as stipulated in the AstroTurf Europe Warranty Specification.
- b. If a claim related to the quality is substantiated and the liability as referred to in section a. exists, then this will only lead to one of the following compensations – in whole or in part – at our discretion:
  - (free) repair of the faults;
  - supply of replacement goods or parts, after receipt of the faulty and or missing goods or parts;
  - repayment of the received purchase price/credit invoice for the invoice sent to the Client with a cancellation of the contract without legal intervention, everything in relation to the purchase price, the invoice and the Contract relating to the faulty goods supplied.
- c. If repairs, modifications, or adjustments to the goods has been performed without first obtaining, in writing, the express permission of AstroTurf Europe, all warranty obligations become null and void.
- d. With the exception of obligations related to section b of this article, AstroTurf Europe is never liable to pay any damages to the Client or other parties, unless it concerns gross negligence or wilful misconduct on our part (to be legally proven by the person holding AstroTurf Europe liable).
- e. AstroTurf Europe is never liable for a party's indirect, immaterial or consequential damage, such as but not limited to loss of profits, business interruption, reputational damage and missed orders unless these matters are caused by intentional act or gross negligence of AstroTurf Europe. The Client is not entitled to return the goods for which no rightful reclamation has been provided. However, should this still be done, then all costs in respect of the returning of the goods are payable by the Client. AstroTurf Europe is, in such an event, free to store the goods at the account and risk of the Client.
- f. Client is responsible for, and shall hold harmless AstroTurf Europe from, protect and compensate and indemnify AstroTurf Europe against, all claims for compensation, loss, damage, expenses (including legal expenses), outlay and other obligations of third parties insofar as and to the extent that the loss or damage referred to is the result of an act or omission, including negligence of Client or its affiliated companies.
- g. Client will indemnify AstroTurf Europe against any claims of third parties regarding product liability due to a fault in and/ or the nature and properties of a product which the Client has supplied to a third party and which consists (also) of products and/or materials supplied by AstroTurf Europe.
- h. If and to the extent that any liability should rest on AstroTurf Europe, at all times and for whatever reason, the liability is limited to a maximum of EUR 2,500,000 per event or series of events arising from the same proximate cause.

## Article 9. Reservation of title and right of lien

- a. AstroTurf Europe shall retain all right, title and interest to all items supplied and AstroTurf Europe retain sole property of all items supplied, until the Client has fulfilled entirely all obligations -in particular that Client has paid all payments- ensuing from all concluded agreements with AstroTurf Europe.
- b. The Client is neither entitled to pledge any item of which the tile vests in AstroTurf Europe nor to encumber it in any other way.
- c. Should third parties seize any item of which the tile vests in AstroTurf Europe or wish to establish or obtain rights thereon, the Client is obliged to inform AstroTurf Europe as soon as is reasonably possible.
- d. Should AstroTurf Europe wishes to exercise its rights of ownership provided in this article, the Client herewith grants AstroTurf Europe or third parties appointed by AstroTurf Europe unconditional and irrevocable permission to enter all those localities where the properties of AstroTurf Europe are present and to recover them.
- e. If AstroTurf Europe cannot exercise its rights of ownership because the supplied item is mixed, deformed or incorporated, the Client is obliged to surrender the right of lien on the newly formed item to AstroTurf Europe.

## Article 10. Payment

- a. Unless specifically otherwise agreed in writing, invoices must be duly paid immediately after delivery of the goods supplied, but no later than 14 days after the date of the invoice, to the bank account indicated by AstroTurf Europe and in the currency mentioned in the invoice. When payment is made by bank or giro

transfer, the date of crediting as stated on our bank statement is considered the date of payment.

- b. If the Client does not make the (full) payment in time, it is declared in default without requiring a proof of default. As such, AstroTurf Europe is entitled, if and for as far as a sufficient nexus exists with the default of the Client, to postpone all contracts with the Client, notwithstanding our rights arising from common law.
- c. AstroTurf Europe is also entitled to request payment in cash or to request a guarantee for the timely payment of the goods that are still to be supplied. AstroTurf Europe is also entitled to cancel the contract without legal intervention, whereby the Client is still obligated to return the goods supplied, or to cancel the obligation of our performance in any other way, notwithstanding AstroTurf Europe's right to claim damages. If the Client remains in default of a timely payment, he will pay AstroTurf Europe or the credit insurer of the seller, without any further notification on our part, a monthly legal interest of 2% as of the final date up to the date the full payment has been received, calculated over the unpaid amount, whereby the interest is immediately payable without requiring further proof of default.
- d. All the costs incurred for the collection of the invoiced amounts, including the non-judicial collection costs are payable by the Client (debtor). The non-judicial collection costs are at least 15% of the main sum with a minimum of € 250.00 all excluding VAT. Moreover, all the negative consequences of exchange rate loss or other losses resulting from the late payment or non-payment are payable by the Client, even if the Client had met its payment obligations in time as stated in the legislation of the country of the Client, but circumstances and measures beyond its control caused the transfer to be made in such a way that it had negative consequences for us.
- e. Payments will, pursuant to Article 6:44 of the Dutch Civil Code, first be deducted from the costs as meant in section c, then from the interest and finally deducted from the main sum and the current interest.
- f. If the financial position of the Client significantly deteriorates after the contract has been concluded, but before the supply of the goods, AstroTurf Europe is entitled to the full or partial cancellation of further execution of the contract, or to order an amendment of the payment terms and conditions.
- g. The seller can transfer its claims resulting from all transactions to a credit insurer of its choice.

#### **Article 11. Force majeure**

- a. Force majeure is any circumstance beyond AstroTurf Europe's control being of such a nature that upholding the contract cannot reasonably be expected of AstroTurf Europe, i.e. non-attributable shortcomings in upholding the contract. Force majeure includes: war, riots and any type of hostility, blockade, boycott, natural disasters, epidemics, shortages or lack of raw materials, delays or the lack of means of transportation, disturbances in our company and/or our suppliers, import and export limitations or embargoes, limitations caused by measures, legislation or decrees by the government at the international, national or regional level.
- b. If, due to force majeure, AstroTurf Europe cannot provide a sufficient or timely full or partial delivery of the goods, AstroTurf Europe is entitled to consider the part of the contract that has not been executed at that time, to be cancelled, or to postpone the order for a definite or indefinite period of time. In the event of force majeure, the Client will not claim damages from AstroTurf Europe.

#### **Article 12: Execution of the work**

- a. If there is a delivery, combined with installation by employees of AstroTurf Europe without prejudice to other provisions in these Terms and Conditions, the provisions of this Article apply with respect to liability.
- b. Client guarantees that:
  - all permits, licences, exemptions and other documents necessary to execute the work are obtained in time;
  - at the commencement of the work all necessary health and safety precautions are taken and are maintained during the duration of the work. The Client must create safe and healthy working conditions for the staff of AstroTurf Europe such as demanded according to the Working Conditions Act and/or any other national or international regulation from the employer and/or working place;
  - for the protection of the staff and equipment of AstroTurf Europe such measurements are provided in the same manner the Client would provide for its own staff;
  - the situation on-site of the indicated location is such that the equipment of AstroTurf Europe can be effectively and safely assembled and/or disassembled, supplied, removed and erected;

- the access roads to the location or where the equipment and/or material has to be delivered, are suitable for the vehicles of AstroTurf Europe;
  - the equipment and/or materials to be supplied by the Client are indeed present and will be made available to AstroTurf Europe in the direct vicinity where on that moment the work is being executed;
  - there are utility connections available for water, light and electricity with sufficient power;
  - there are sufficient lockable and dry storage spaces present for machine parts and/or equipment;
  - there are appropriate residence and other facilities available such as toilets and washrooms for the staff of AstroTurf Europe and all other possibly personnel selected by AstroTurf Europe for the Work;
  - before the commencement of the Work the position of cables, conduits, wiring, pipes etc. is communicated to AstroTurf Europe timely in writing. It is expressly pointed out that the exact locations of these cables, conduits etc. must be clearly indicated on the site and also by means of drawings.
- c. If AstroTurf Europe, notwithstanding the provisions made in paragraph b of this Article regarding precautionary measures, is charged with contravening the rules, then it is a case of gross negligence on the part of Client and Client is obliged to indemnify AstroTurf Europe against any ensuing costs, especially those costs ensuing from possible sanctions and/or instructions for instance those issued by the Labour Inspectorate.
- d. Should unworkable conditions occur, which includes unworkable weather, the completion time and/or realization period will be extended with the period of stagnation. Unworkable conditions refer to, among others, all circumstances, including unworkable weather (such as rain, wind and frost), which are the cause of an (unsafe) unworkable situation arising. Days during which one cannot work refer to full and half working days respectively on which by means of circumstances outside the control of AstroTurf Europe during at least five respectively two hours the larger majority of the employed staff or machines could not work.
- e. AstroTurf Europe does not accept responsibility for e.g. amenities, resources, materials, auxiliary materials, machines, lifting and hoisting tools which are provided by the Client. The Client is responsible for ensuring that these comply with the national health and safety regulations and will indemnify AstroTurf Europe against any claims of third parties regarding damages ensuing from the use of the aforementioned items.
- f. The Client is responsible for all damages which may occur due to loss, theft, fire or damaging of tools, equipment and other properties of AstroTurf Europe being present on the location where the work is carried out or, when it concerns a different location, where these are stored whether or not temporarily.
- g. When the Client is in default regarding his obligations mentioned in the previous paragraphs, the works will be suspended until the Client is fulfilling his obligations. The works will be executed as soon as the planning of AstroTurf Europe allows. Moreover, the Client is responsible for all ensuing damages sustained by AstroTurf Europe.

#### **Article 13 Completion of the work**

- a. The work will be considered completed when:
- the Client has approved the work in whole or in part;
  - the work is in use by the Client. Should the Client take in use a part of the work then that part will be considered as being completed;
  - AstroTurf Europe has informed the Client in writing that the work is completed and the Client refrains within 5 days of receipt to notify AstroTurf Europe in writing whether or not the work is approved;
  - the Client did not approve the work due to small defects or missing parts which can be repaired or delivered within a reasonable period and which do not hinder the commissioning of the work;
- b. Should the Client not approve of the work, then he is obliged to inform AstroTurf Europe in writing accompanied with a statement of reason according to the AstroTurf Europe Warranty Specifications.
- c. Should the Client not approve of the work then he will allow AstroTurf Europe to replace the rejected parts of the work. The provisions of this article will then re-apply as well as the AstroTurf Europe Warranty Specifications.

#### **Article 14. Applicable law and jurisdiction**

- a. All contractual obligations between AstroTurf Europe and Client shall be governed by and construed in accordance with the laws of the Netherlands, without regard to provisions of conflicts of law. The Vienna Sales Convention 1980 is excluded, as well as any other international convention which may be excluded.

- b. Any lawsuit arising from or related to the Contract shall be brought exclusively before the competent court in the place where AstroTurf Europe is registered office.
- c. Unless agreed otherwise by both parties, the proceedings shall be conducted in English.