I. GENERAL PART

Article 1. Contract and Terms and Conditions

1.1 These Terms and Conditions apply to all contracts to be concluded by Alphenberg B.V., hereinafter: ‘Alphenberg’, as well as to its tenders/offers.

1.2 These Terms and Conditions consist of three parts, a general part and two special parts. The general part is applicable at all times. The two special parts relate respectively to delivery of goods without assembly and to delivery of goods with assembly.

1.3 ‘Client’ means: the addressee(s) of an offer from Alphenberg, the contracting party of Alphenberg or the party with which Alphenberg has a different legal relationship.

1.4 Unless agreed otherwise in writing, departures from these Terms and Conditions will apply only to the contract to which they relate. The applicability of any terms and conditions of purchase or other terms and conditions of the client is expressly rejected.

1.5 If a stipulation of the contract or these terms and conditions is null and void or is nullified, the other stipulations will remain fully in force and Alphenberg and the client will consult to replace the nullified stipulation by a stipulation that follows the purpose and tenor of the stipulation to be replaced as far as possible.

1.6 Alphenberg cannot be considered to have consented by way of any action, by way of a statement or by way of a commitment or representation not authorised to effect or considered to have tacitly consented to terms and conditions used by the client or to a change to these terms and conditions or the contract which has not been agreed in writing.

1.7 Unless Alphenberg has explicitly notified the client otherwise in writing, after a contract has been concluded once on the basis of the foregoing, the parties will also be governed by these Terms and Conditions, also in the event that the contract is concluded afterwards by telephone, fax or e-mail.

1.8 If more than one natural and/or legal person acts as the client or behaves as such, all shall be jointly and severally liable to Alphenberg.

1.9 Alphenberg will be entitled to transfer its rights and obligations under the relevant contract, as well as the title to the relevant goods, to third parties. Without written permission from Alphenberg, the client may not transfer its rights and obligations with respect to Alphenberg to third parties.

II. SPECIAL PART I Delivery of goods

Article 2. Offers and documentation

2.1 Offers (written or verbally, documentation, drawings and calculations) provided by or on behalf of Alphenberg are free of obligation and issued to the best of our ability, without the client being able to derive any rights from this.

2.2 The offers made by Alphenberg are free of obligation and valid for 30 days, counting from the date of the offer, unless indicated otherwise.

2.3 If in relation to an offer and at the client’s request, Alphenberg has performed drawing and calculation work and no contract is concluded afterwards, the client will have to pay a reasonable fee to Alphenberg for drawing and calculation work performed, which in any case will consist of an hourly fee for work performed.

2.4 Offers are always based on information provided by the client. If certain information from the client no longer proves to be correct, this can have consequences for the offer or the contract concluded on its basis. The client will bear the risk of those consequences.

Article 3. Contract

3.1 If the offer from Alphenberg is accepted, the contract will be concluded only at the time Alphenberg other contracts such as acceptance of a reasonable time or starts to perform the contract. This also means the making of a payment or advance payment by the client.

3.2 Alphenberg cannot be required to start performing the contract before all information necessary to do so, including a contract confirmation signed for approval by the client, is in its possession and it has received any agreed payment or instalment.

Article 4. Delivery, retention of title and risk

4.1 The indication of the delivery time will be made at all times but will be a deadline, unless explicitly agreed otherwise in writing. Exceeding any delivery period will not give the client a right to compensation in whatever form with respect to whomever.

4.2 Unless explicitly agreed otherwise in writing, the warehouses of Alphenberg (in Waalwijk) will count as the place of delivery. If it has been agreed that delivery will be made to a location to be indicated by the client, the following terms and conditions will then apply.

- Alphenberg will have fulfilled its delivery obligation by presenting the goods once to the client.
- An offer to deliver will be equalled with delivery.
- In the event of refusal to take delivery, Alphenberg will not be required to deliver the goods before the client has paid the agreed price, including the costs incurred by Alphenberg as a result of the refusal to take delivery.

- Alphenberg will be allowed to deliver purchased goods in parts. In that case Alphenberg will be entitled to invoice each part separately.

4.3 The client is required to prepare the place of delivery and shall in any case ensure that the place is in a condition to receive the goods at the time of delivery.

4.4 Should the client fail to take delivery of the goods at the agreed time, Alphenberg will be entitled to charge the client the costs necessary to store the goods until delivery. If, after the expiry of the agreed delivery period, the client neither takes delivery nor provides an indication of when it will take delivery or makes it known to that effect, the goods are considered to be delivered to the client and the client will be required to pay for the goods and transport as from the day of delivery.

4.5 Alphenberg’s obligations for the goods are extinguished once the client has paid the invoice, plus the amounts to which Alphenberg is entitled for any setoff or suspension. If the client remains in default of payment of what it owes to Alphenberg under the contract, he will owe Alphenberg’s claims against the client shall be immediately due and payable.

Article 5. Packaging materials

5.1 Alphenberg shall properly package the goods to be delivered (unless the nature of the goods precludes this), and protect them in such a way that, if transported normally, they reach their destination in good condition.

5.2 Whenever Alphenberg makes loading ramps, packing boxes, crates, containers etc. available for packaging and transport, or has them made available by a third party – whether or not for payment of a deposit or security deposit (unless non-returnable packaging is concerned) the client must send those loading ramps etc. back to the address indicated by Alphenberg, failing which the client must compensate Alphenberg for the loss it has incurred.
guarantee its quality standards. The client acknowledges that it cannot rely on a failure to perform the contract if one or more circumstances enumerated in Article 12.5 occurred. Nor may the client suspend its obligations, cancel or terminate the contract by relying on one or more circumstances as referred to in this article.

Article 13. Force majeure and Liability

13.1 Failure to deliver or to deliver in a timely manner and/or improper delivery as well as improper functioning of the goods delivered, will not give the client the right to compensation and/or termination, in so far as there has been force majeure on the part of Alphenberg.

13.2 Without prejudice to the further rights to which it is entitled, if it is prevented from performing the contract or from performing it in time by force majeure, Alphenberg will have the right to suspend performance of the contract, or to terminate it wholly or in part, at Alphenberg’s discretion, without Alphenberg being liable for any compensation or otherwise otherwise liable.

13.3 Force majeure on the part of Alphenberg exists, inter alia, if after concluding the contract, Alphenberg is prevented from complying with the contract as a result of war, threat of war, civil war, rioting, acts of war, fire, centering defamatory influence, strike, sit-down strike, exclusion, import and export barriers, government measures, deficits in machinery, failures in the supply of energy, all this in the factory of Alphenberg as well as at third parties from which Alphenberg must obtain all or some of the necessary materials or raw materials, as well as during storage or transport, whether or not under its own management and, furthermore, due to all causes which occur through no fault of its own or outside the risk management of Alphenberg.

13.4 Liability of Alphenberg for indirect loss, including consequential loss, loss of profits, missed savings and loss due to business interruption, shall be excluded. The total liability and breach of contract with the client shall be limited to the invoice amount, or at any rate to that part of the job to which the liability relates, with a maximum of €5,000, or at any rate limited to the amount for which Alphenberg is insolvently insured.

13.5 The liability of Alphenberg for breach of contract will arise only if the client puts Alphenberg in default in writing without delay and properly, also setting a reasonable period in which to cure the breach, and Alphenberg has failed to effect the obligations after that period. The notice of default must contain the most detailed possible description of the failure, so that Alphenberg will be able to respond adequately.

13.6 The client hereby indemnifies Alphenberg for all claims of third parties relating to the goods delivered by Alphenberg.

Article 14. Termination

14.1 Without prejudice to the rights Alphenberg has to compensation of costs, losses and/or interest, Alphenberg will be entitled to terminate the contract fully or partially, without notice of default or judicial intervention, with immediate effect when:

a) The client has been granted suspension of payment;

b) The insolvency of the client is applied for;

c) The client dies or is placed under guardianship;

d) The client proceeds to discontinue, liquidate or transfer its company, or proceedings to change the administrative forum, with immediate effect when:

- The client wants to inspect, correct or delete his or her personal or business information, including faults and exemptions) and the information to be provided to it for the work available in a timely manner.

- The client must provide in a timely manner for the connection possibilities for the power needed for the work and the work itself, the costs of the necessary power will be payable by the client.

- The client must see to it that the work to be performed by third parties (such as structural work) and/or deliveries that are not part of Alphenberg’s work, is performed in such a way and so promptly that this will not cause a delay in the work. If a delay as referred to in this article occurs nevertheless, the client must inform Alphenberg of this forthwith.

- If it has been agreed that Alphenberg will place (leather) tiles on a mantle of a fireplace or on another subsurface that is connected with the presence of a fireplace or heater, and which subsurface becomes hot, the client undertakes to Alphenberg to install heat-proof requirements such that the quality standards Alphenberg sets for them. If the (leather) tiles to be placed by Alphenberg separate from the subsurface because of the presence of a fireplace/ heater and the heat emitted by this, Alphenberg cannot be held liable for this and the client must indemnify Alphenberg for any damage this causes to third parties.

- If the start and progress of the work are delayed by circumstances for which the client is responsible, the client must compensate Alphenberg for the resulting loss.

- The client must follow the instructions given by Alphenberg, subject to the lapse of any claim under a warranty.

- The client will bear the risk of damage to and loss of materials, parts or tools that have been brought to the work, if and in so far as he or she is responsible for guarding them.

- The client will bear the risk of losses due to defects in or unsuitable goods coming from or prescribed by him or obtained from a prescribed supplier and for the failure to deliver or late delivery of said goods.

- The client will bear the risk of damage due to errors or defects in the drawings, calculations, structures, specifications, instructions or other documents provided by him.

- The client will bear the risk of faulty performance of the contract for which the auxiliary persons prescribed by him or their unauthorized actions of its resellers of Alphenberg products, on whatever basis, and more particularly based on product liability.
20.1 Settlement of contract variations will take place:
- In case of a change to the job or the terms and conditions of performance when Alphenberg has drawn the client's attention to the need for the price increase arising from this, unless the client has understood that need;
- If cost-increasing circumstances occur or come to light after the contract has been concluded without this being attributable to Alphenberg;
- In case of difference in the amounts of the provisional sums and estimated quantities;
- In the cases in which settlement as contract variations is prescribed in the contract.

20.2 If the total of less work exceeds that of additional work, Alphenberg will be entitled to an amount equal to 15% of the difference in the totals.

20.3 If no written agreement exists for contract variations, this will be presumed to have been agreed, without prejudice to the parties' right to refute that presumption.