

General Terms and Conditions of the Sector Organization for Metal Treatment Businesses (OnderhoudNL Industrieel) of the Royal Dutch Association of Painters and Decorators, Koninklijke OnderhoudNL

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Article 1. DEFINITIONS

- 1.1 In these General Terms and Conditions, the following terms are defined as stated below:
- 1.1.1 **SVMB:** the Sector Organization for Metal Treatment Businesses (*SectorVereniging Metaalconserverings Bedrijven*), having its legal address in Waddinxveen, a member of the Royal Association of Painters and Decorators FOSAG;
- 1.1.2 **Client:** the person(s) or business(es) to whom/which a member of the SVMB submits an offer and/or with whom/which the latter concludes a contract for services and/or a contract for purchase and sale;
- 1.1.3 **Contractor:** the person or business that submits an offer to the Client and/or concludes a contract for services and/or a contract for purchase and sale or any other contract and that is a member of the SVMB;
- 1.1.4 **Work:** work that is related directly to the purpose of the contract for services, but excluding preparatory work, such as fitting out the workplace or the construction of samples;
- 1.1.5 **Unworkable Days:** days on which there are atmospheric conditions for a total of at least four (4) working hours of such a nature that the quality of the Work to be carried out cannot be guaranteed or the safety of the personnel may be in danger, such at the sole discretion of the Contractor;
- 1.1.6 **Force Majeure:** any circumstances as a result of which the performance of the contract cannot reasonably be required by the Client, including war, war risk, civil war and riots, strikes, lock-outs, transport difficulties, fire and other interruptions that cannot reasonably be imputed to the Contractor.

Article 2. SCOPE OF APPLICATION

- 2.1 These General Terms and Conditions are applicable to all offers and contracts between the Contractor and the Client relating to the Work, contracting for services, deliveries and payments, barring amendments expressly agreed upon in writing by both parties.
- 2.2 The Contractor does not accept any general reference by the Client to his, her or its terms and conditions, except where the Contractor expressly confirms this reference in writing.
- 2.3 Only members of the SVMB may refer to these General Terms and Conditions or use them in any other way.

Article 3. OFFERS AND FORMATION OF CONTRACTS

- 3.1 Every offer is made without obligation. The Contractor is bound only after the contract for services has been accepted in writing or after the performance of the Work has commenced in the event that the contract for services is confirmed other than in writing.
- 3.2 If the Client wants to make any changes to the contract for services for any reason after the date of receipt of the written confirmation of the contract for services or after the performance of the Work has commenced, the Contractor is bound to the change only after the latter has agreed to this change in writing.
- 3.3 In that case, the Contractor is at all times entitled to pass on all losses arising from the change, including lost profits and costs, to be taken in the broadest sense possible and calculated according to the criteria of reasonableness and fairness, to the Client.
- 3.4 To determine the surface area or the Work, the Client must make all documents necessary for this purpose available to the Contractor.
- 3.5 If, after the offer has been submitted, the applicant needs more detailed advice, possibly with drawings, samples and other documents relating to the offer, the Contractor may charge the relevant costs in respect thereof to the Client if the offer does not result in a contract for services being awarded to the Contractor.
- 3.6 The offers and the accompanying documents remain the property of the Contractor; the Client agrees not to copy these or make them available to third parties or allow third parties to inspect them, unless the Contractor has granted its express approval.

Article 4. REQUIREMENTS RELATING TO THE PERFORMANCE OF THE WORK

- 4.1 The Contractor's offers are subject to the following provisions:
- 4.2 The Client shall issue an irrevocable bank guarantee without any restrictions to the Contractor if the latter considers this necessary:
- 4.2.1 either for an amount that equals the agreed or budgeted price of the Work inclusive of VAT;
- 4.2.2 or, if the Work takes more than two (2) months to complete, for an amount that equals two (2) times the price inclusive of VAT for the first instalment to be invoiced in accordance with Article 22.6 on the basis of the scope of the Work envisaged by the Contractor.

Article 5. OBLIGATIONS OF THE CLIENT

- 5.1 If necessary, the Client shall make a site suitable for the execution of the Work as well as water, electricity, means of transport and scaffolding available to the Contractor at no expense to the latter.
- 5.2 The objects and materials to be processed are of the same kind and quality as those presented to the Contractor at the time of the offer.
- 5.3 The objects to be processed satisfy these reasonable requirements for the purposes of the application of the protective treatment required.
- 5.4 It is possible to prepare the surfaces before the application of the layers with ordinary efforts.
- 5.5 It must be possible to carry out the Work in the most economical manner and without any interruptions.
- 5.6 The Contractor reserves the right to designate certain days as unworkable days.

Article 6. SUBCONTRACTING

- 6.1 The Contractor may subcontract all or part of the Work contracted out by the Client to third parties/suppliers. At the Client's express request, the Contractor shall inform the Client about whether and the extent to which the Work has been subcontracted to third parties/suppliers.
- 6.2 With respect to products made and/or services rendered by third parties/suppliers, the Contractor is to be regarded only as an intermediary vis-à-vis the Client and is therefore not required to assume any liability vis-à-vis the Client greater than the liability assumed by the subcontracted third party/supplier vis-à-vis the Contractor.
- 6.3 In the event of any damage claim, the Contractor agrees to act as an intermediary between the third party/supplier and the Client without being liable to pay any compensation itself.

Article 7. ADDITIONAL WORK

- 7.1 Unless otherwise agreed upon in writing, the Work is carried out in ordinary 5-day working weeks. If, after accepting the offer, the Client requires Work to be performed outside ordinary working weeks, the extra costs relating thereto are charged as 'additional work'.

Article 8. PRICES

- 8.1 Prices are calculated at net present value before treatment at the place and subject to the circumstances agreed with the Client in writing (fixed price).
- 8.2 Work that is not mentioned in the offer or the contract for services is designated as 'additional work' and is charged separately.
- 8.3 If the offer has not been accepted before the end of the month after the month in which it is submitted, the Contractor may adjust the prices to reflect the increase in costs if this amounts to more than 5%.
- 8.4 Unless the contrary is shown, the prices quoted by the Contractor are exclusive of VAT.

Article 9. OBLIGATIONS OF THE CONTRACTOR

- 9.1 Without prejudice to the obligations of the Contractor specified elsewhere in these Terms and Conditions, the Contractor is at all times obliged to fulfil its obligations under the contract concluded to the best of its ability.

Article 10. DELIVERY PERIODS

- 10.1 The delivery periods agreed between the parties are laid down in a written contract signed by the parties. If no delivery periods have been agreed, the delivery period that is or would be customary for similar contracts for services is applicable.
- 10.2 The delivery period commences after the Contractor has accepted the contract for services and received the objects to be processed or after the latter has been given the opportunity to start the Work on the objects processed on site, and, further, after all formalities necessary for the commencement of the Work have been satisfied and all the necessary documents have been placed at the disposal of the Contractor and, in addition, after the Client has made the information required for the performance of the Work available to the Contractor by common accord with the latter, and the irrevocable bank guarantee as referred to in Article 4 has been provided, if the Contractor has asked for this.
- 10.3 For the purposes of the delivery period, the Work is deemed to have been completed when the Contractor has informed the Client that the Work is finished or that the objects processed are ready to be dispatched (completion).
- 10.4 If, through any cause, the Contractor fails to meet the delivery deadline, the Client never has any right to claim compensation, rescission of the contract or the non-performance of any obligation arising under this contract or any contract relating thereto.

Article 11. TAKING DELIVERY OF THE OBJECTS TREATED

- 11.1 The Client shall take delivery of the objects and/or items processed no later than 5 business days after the Contractor has sent the Client the information letter relating to the completion. If the Client fails to respond to the Contractor within this period, the treatment is deemed accepted by implication. If the contract for services comprises more than one treatment and/or more than one object, the Client is required to comply with the Contractor's request to take delivery of every treatment and/or object.
- 11.2 If, however, the Client cannot accept the Work or specific objects for certain reasons, the Client must notify the Contractor thereof and state the relevant reasons in writing within the period specified in paragraph 1 of this Article.
- 11.3 If it has not made any request for taking delivery, the Contractor may also deem the Work accepted if the Client has failed to respond within 30 days after the Work has been completed or has not submitted any reasoned complaint in writing to the Contractor within eight (8) days of the date of the last invoice, whichever event occurs first.
- 11.4 If the items processed have been delivered within the meaning of this Article and these items cannot be dispatched in a timely fashion because the Client has not issued sufficient instructions, such as at the discretion of the Contractor or if the Client requests the Contractor to store these items, the Contractor is entitled to charge the costs in respect thereof to the Client.

Article 12. PACKAGING

- 12.1 Only if this is agreed in advance will the Contractor return the items in the packaging in which they were sent to the Contractor. In the cases where the Contractor has to use new packaging upon delivery, the relevant costs are charged to the Client.
- 12.2 The packaging of the items is tailored to the requirements of the Client, the surface treatment applied and the mode of transport as well as possible.
- 12.3 The Contractor does not accept any liability for this to the Client or to third parties, unless the Client or the relevant third party is able to prove intent or gross negligence on the part of the Contractor or its managerial staff.

Article 13. DISPATCH AND TRANSPORT

- 13.1 The transport of all items by third parties is effected on the instructions, under the responsibility and at the expense and risk of the Client. The Contractor itself never gives instructions for the transport of items and nor will the Contractor transport any items by using its own means of transport. In the case of contracts of purchase and sale, the Contractor's deliveries are executed on an EXW basis.
- 13.2 Transport will have been completed as soon as the items have been loaded on the means of transport or as soon as the items have been unloaded from the means of transport. The Contractor is responsible for loading and unloading items at the Contractor's site on the instructions of the carrier. The relevant costs are included in the price in all cases where this loading and unloading takes place during the Contractor's normal working hours. In all other cases, the Contractor has the right to charge the extra costs in respect thereof.
- 13.3 Any freight charges paid by the Contractor are charged to the Client. The Contractor is not responsible for any delays in transport. Any extra costs arising from such delay are borne by the Client.

Article 14. RISK

- 14.1 After a period of 48 hours after the items are deemed to have been delivered within the meaning of Article 10(3), the Client bears the risk of all direct and indirect damage caused to or by these items that the Client or third parties may sustain, without prejudice to the provision of Article 13(1).

Article 15. QUALITY

- 15.1 The Contractor shall ensure that the Work is carried out in a competent manner and fully satisfies the conditions set out in the offer.
- 15.2 As far as measurable features are concerned, this requirement is satisfied if 90% of a sufficient number of measurements evenly distributed across the entire surface is equal to or better than the stated value.
- 15.3 As far as non-measurable features are concerned, this requirement is satisfied if the finished layer visually corresponds with a surface sample applied beforehand.
- 15.4 The Contractor administers this surface sample in the manner described in its offer on a substrate identical to the substrate on which the Work is to be carried out.
- 15.5 Before the commencement of the Work, this surface sample, along with a substrate sample – i.e. a sample of the untreated substrate – is presented to the Client for approval.
- 15.6 By accepting the surface sample and the substrate sample, the Client grants approval to the Contractor or the third party engaged in accordance with Article 6(1) in respect of the quality and Work can commence.
- 15.7 If the Client does not accept the samples, the Contractor is entitled to cancel the contract for services without being liable for any costs, damage, loss, or interest.
- 15.8 The correct position of the samples is defined in a protocol suitable for this purpose that is signed by both parties.
- 15.9 If it turns out during the execution of the Work that a finished surface differs from the sample in a negative sense, even though the same treatment and products have been applied and if it is possible to achieve the same quality on the sample substrate with this treatment and these products, this is regarded as proof of a changed condition of the substrate.
- 15.10 Any costs of whatever kind arising from the foregoing must be borne by the Client.
- 15.11 The quality commitment does not apply to defects detected according to inspection methods and/or authorities not agreed with the Contractor in advance or to minor differences deemed normal according to technical standards.

Article 16. WARRANTY

- 16.1 The Contractor's warranty relates only to the soundness of the Work it executed if the defects cannot be established before the Client takes delivery as meant in Article 11. This warranty does not cover the quality of the protective materials used, such as paints and bituminous or synthetic coatings.
- 16.2 The warranty is valid only if a written claim is filed within eight (8) days after the defect reasonably could have been discovered.
- 16.3 If the items or objects undergo further treatment, assembly or build-in operations during the warranty period or leave the mainland of Europe of the EU Member States, the warranty lapses if the (un)soundness within the meaning of paragraph 1 can no longer be established.
- 16.4 The Contractor's decision to consider complaints does not mean that it recognises that the claim is justified or has been filed in a timely fashion.
- 16.5 If, during the warranty period agreed in writing, there are any defects in the preservation system that exceed the standard that has also been agreed and if these defects can be proved to be attributable to incompetent treatment by the Contractor, according to general standards recognised in this sector, the Contractor shall remedy these defects to the extent that the costs in respect thereof do not exceed the contract price originally agreed between the parties.
- 16.6 The warranty period agreed in writing commences on the date on which the Contractor informs the Client that the Work is finished or that the items processed are ready to be dispatched. The Contractor has the right to determine the date of the repair work itself. The expiry date of the warranty period as initially agreed between the parties is not changed as a result of claims and repairs.
- 16.7 The Contractor's warranty does not extend to Work carried out on Unworkable Days where the Client has insisted that Work should be continued on these days. Unless otherwise agreed in writing, the Contractor's warranty obligation is limited to remedying defects that arose on workable days. In particular, the Contractor is not required to pay compensation of any kind. The Client shall indemnify the Contractor against any claims by third parties.
- 16.8 In doubtful cases, the Contractor is entitled to engage an independent expert to be appointed by both parties to conduct an assessment at the expense of the party found to be at fault. The conclusion drawn by this expert will be binding on both parties. Another possibility is to file an application for intermediary services with the Secretariat of the SVMB.
- 16.9 The alleged failure to perform any warranty obligation by the Contractor does not release the Client from his, her or its obligations under this or any other contract concluded with the Contractor.

Article 17. DISCOLORATION, TURNING, STEEL BLEEDING, LAPS AND OTHER ROLLING DEFECTS, ETC.

- 17.1 Where, during an inspection by or on behalf of the Client or by the Contractor's own personnel authorized for this purpose by the latter, it is established that:
- 17.1.1 the transported products have penetrated the base material as a result of which these products or their chemical compounds are perceptible on the steel surface after blasting in the form of discolorations, the Contractor cannot be held liable for that;
- 17.1.2 as a result of porosity of the base material in the zone beneath the tank coating or layer of rust still present, inclusions may be removed only by extra intensive blasting, the Contractor cannot be held liable for that;
- 17.1.3 steel bleeding occurs, the Contractor cannot be held liable for that;
- 17.1.4 if before, during or after blasting, laps or other rolling defects are perceptible, the Contractor cannot be held liable for that either.

Article 18. LIABILITY

- 18.1 The Contractor cannot be held liable in any manner for the consequences of damage or loss of whatever name or nature caused by or in connection with its Work, except where there is intent or gross negligence by the Contractor or its managerial staff. The Client agrees to indemnify the Contractor against all claims made by third parties that the Contractor does not have to assert under the provision of the preceding sentence.
- 18.2 Any items owned by the Client or third parties present on the Contractor's premises are not insured against any risk. In no case does the Contractor bear any liability, not even in the event of theft, embezzlement, destruction or otherwise, except where there is intent or gross negligence by the Contractor or its managerial staff.
- 18.3 If items owned by the Client or others have become unusable as a result of any normal machining process executed by the Contractor or at the Client's express request, the risk in respect thereof must be fully borne by the Client. Where items and/or objects are damaged or rendered unusable as a result of gross negligence by the Contractor or its managerial staff, the Contractor's liability never exceeds the value of the process carried out or to be carried out by the Contractor on the items and/or objects concerned.
- 18.4 If, during the machining process on the items, the Contractor finds – at the Contractor's discretion – that any of the requirements described above are not satisfied, the latter may opt either to rescind the contract – without any notice of default being required – by issuing a statement to that effect, after which the Client is obligated to compensate any damage or loss arising from the foregoing, in particular loss of profits, or to perform the contract, in which latter case, the Contractor is entitled to make the items suitable for the process to be executed under the contract at the Client's expense, subject to extension of the delivery period agreed on by the period required for the execution of this Work, without any further notice of default being required.

Article 19. LIMITATION AND EXCLUSION OF LIABILITY

19.1 If the Contractor is liable to pay any compensation under these Terms and Conditions, such compensation may never exceed the contract price agreed on.

Article 20. FORFEITURE AND PRESCRIPTION PERIODS

20.1 The legal claims against the Contractor arising from a contract subject to these Terms and Conditions are prescribed after one year. They lapse after two years.

20.2 The prescription and forfeiture periods commence on the first day after the expiry of one calendar month after the conclusion of the relevant contract concerned.

Article 21. SETTLEMENT

21.1 The settlement is effected in accordance with the terms and conditions set out in the offer/contract for services. If the settlement requires measurements and/or counts, the Client must cooperate in this procedure within two (2) business days after a written request by the Contractor and, if required, for full days without any interruptions. If the Client fails to cooperate in this procedure within the above-mentioned period through whatever cause, the Client accepts the measurements and/or counts by the Contractor unconditionally. The Contractor's measurements forms are used for recording measures and numbers. The Client shall sign for every page that includes measurements. If the settlement requires hours registration, this must be done per day and per employee on the hourly wage lists of the application firm. The Client undertakes to sign these forms after approval on a daily basis.

21.2 The Contractor will charge the Work that it has carried out as follows: Work at lump-sum price and/or at unit price: all of it after the Client has taken delivery, unless the period required for completing the Work exceeds two (2) months. In the latter case, the Contractor will charge 90% of the Work it has carried out at that point of time and of the materials to be processed that are stored at the relevant site every 25th day of each month, less the amounts charged over the previous months. The monthly determination of the Work carried out is effected on the 25th day of the month concerned, based on an estimate by both parties. If the Client fails to make an estimate at the fixed date, the Contractor will regard such failure as an approval of the estimates made by the Contractor.

21.3 The Contractor considers its invoice accepted if the Client fails to lodge a written objection with it before the 10th business day following the invoice date.

Article 22. PAYMENTS

22.1 All payments must be made within 30 days of the invoice date without any deduction or set-off. The Contractor accepts payments by draft only if this does not involve any costs for the Contractor, if the drafts are transferred by a reputable bank without any restrictions, or if such bank has accepted these and the Contractor has expressly agreed to payments by such drafts. Invoice amount discounts are not permitted.

22.2 If the invoice is not paid within 30 days of the invoice date, the Client is in default without any further late payment notice being required. As from that time, the Client owes interest on the invoice amount at a rate equal to the applicable promissory note discount rate plus 2% per year to be charged on a pro rata basis, for which purpose, parts of a month are considered a full month.

22.3 If the Contractor engages a debt-collection agency for the purpose of collecting a claim, the Client owes an amount of 15% of the net invoice amount for extrajudicial collection costs in any case, whilst if legal proceedings are subsequently required, the Client is also liable to pay compensation for all judicial costs, expressly including costs in excess of the scale of costs customarily used by the Dutch courts, costs relating to the bankruptcy petition, and handling costs, such as municipal charges, Chamber of Commerce costs, etc. The percentage in respect of extrajudicial costs mentioned in the preceding sentence is a fixed percentage agreed between the parties, and therefore the Contractor is expressly not bound to prove that the extrajudicial collection costs it has charged to the Client have actually amounted to this percentage. Further, the Contractor is at all times entitled, however, to charge the Client the actual extrajudicial costs, if these exceed the fixed percentage.

22.4 The Client's obligation to pay the costs referred to in the above paragraph cannot be invoked if a court has rendered an unappealable decision rejecting the Contractor's claim relating to any obligation to pay on the part of the Client.

22.5 The arrangement in respect of judicial and extrajudicial costs included in this Article also applies if the Contractor has had to defend itself against the Client in a legal action, unless a court has rendered an unappealable decision in which the Contractor is found to be at fault.

22.6 If the Contractor permits the Client to retain part of the final settlement amount in connection with defects discovered at the time of acceptance, this will be subject to the express condition that the Contractor may at all times redeem the amount retained by means of a bank guarantee of equal value, whereby the bank guarantee period is limited to the duration of the warranty period agreed upon.

22.7 Payments are first used to cover any costs and interest incurred and are applied only thereafter to cover the Work carried out, on the understanding that these payments are first set off against the oldest invoices due. If the Client fails to pay a debt or an instalment in a timely fashion for whatever reason, all other debts or instalments become immediately due and payable.

Article 23. RETENTION OF TITLE

23.1 All items and materials supplied by the Contractor remain the full property of the Contractor until the Client has fully paid the consideration and/or purchase price arising from the contract resulting in the delivery of the items concerned or from other contracts concluded with the Client with respect to the delivery of items and Work carried out in connection with such delivery, as well as with respect to claims on account of any failure on the Client's part to perform the contracts referred to above.

By awarding the contract for services, the Client accepts the obligation to hold the items and materials as referred to in this Article, insofar as these are stored on the latter's site, for the Contractor. The Client is never empowered to dispose of these items and materials in whatever manner. The Client is required to surrender these items and materials to the Contractor on the latter's first demand. The Contractor may charge any costs relating to the removal of the items and materials referred to in this Article fully to the Client.

Article 24. RESCISSION

24.1 Without prejudice to any of the Contractor's further rights, it is entitled, if prevented from performing the contract by force majeure, either to suspend the performance of the contract without recourse to the courts or to rescind the agreement in whole or in part by a written statement to that effect, at its discretion, without being liable for any compensation or warranty.

24.2 The Client expressly waives all rights to rescind the contract under Articles 265 et seq. of Book 6 of the Dutch Civil Code.

24.3 If the Client fails to meet any obligation arising from this or any other contract concluded with the Contractor or fails to do so properly or in due time, and in the case of a bankruptcy, suspension of payments, business stoppage or liquidation of the Client's company, the Client is deemed to be in default by operation of law and the Contractor is then entitled either to suspend the performance of the contract without any court intervention or to rescind the contract in whole or in part by a written statement to that effect, at its discretion, without being liable for any compensation or warranty, but without prejudice to any of the Contractor's further rights. In these cases, every claim the Contractor has or may acquire against the Client is immediately due and payable. In that case, Work is discontinued immediately and the material and the tools owned by the Contractor are carried to the Contractor's storehouse and all Work executed up to and including the day of the events mentioned in this article is charged to the Client, which amount is also due and payable.

24.4 If the Contractor rescinds the contract in part or in whole pursuant to paragraph (1) or (2) of this article, it is entitled to require the Contractor to take possession of the items and/or objects being processed on paying for the processes which have been executed until the date of rescission, as included in the price, failing which the Contractor may, at its discretion, store the items and/or objects at the Client's risk and expense or sell them privately, and in case this situation occurs, the Client hereby grants irrevocable authorization to the Contractor to effect this private sale.

Article 25. TOOLS

25.1 If the Contractor has to produce special tools for contracts for services the costs of which are included in the price, these tools remain the property of the Contractor after the contract for services has been completed.

Article 26. JURISDICTION AND GOVERNING LAW

26.1 All disputes that may arise between the parties, including disputes regarded as such by only one party, are submitted to the competent court in the place of residence or the place of business of the Contractor, with the exclusion of all other courts or tribunals, unless mandatory Dutch law prescribes otherwise. Further, the Contractor is at all times empowered to refer the dispute to the competent Dutch court in the place of residence or the place of business of the Client.

26.2 The parties agree that this contract and any contracts that may arise thereunder are governed by and construed in accordance with Dutch law, as applicable to the Kingdom in Europe, and the United Nations Convention on Contracts for the International Sale of Goods (CISG), which took effect in the Netherlands on 1 January 1992, is expressly excluded. If the Work is executed outside the Netherlands by a SVMB member with its legal address outside the Netherlands, the parties may agree to refer the dispute to the competent court of the relevant country.

