

General Terms and Conditions of Innocoating Europe BV



Article 1 - Definitions and scope of application

1. In these general terms and conditions, the following terms are defined as stated below:
 - a. Contractor: the natural person or legal entity whom the activities are assigned to;
 - b. Client: the natural person or legal entity that instructs the contractor to carry out activities within the framework of conducting a profession or business;
 - c. Agreement: all agreements between the client and the contractor in relation to work executed by the contractor.
2. These general terms and conditions, in addition to or in derogation from the Netherlands Civil Code, apply to all agreements concluded between the contractor and the client. The parties have agreed that these terms and conditions qualify as a permanent part of the agreements.

Article 2 - Offers and formation of the agreement

1. All offers from the client are without obligation and can therefore be revoked after having been accepted by the contractor only when revoked immediately.
2. Verbal agreements and stipulations will bind the contractor only after they have been confirmed by the contractor in writing.
3. The provisions in paragraph 2 of this article do not affect the option for both parties to prove the formation of the agreement by other means.
4. If neither party confirms the agreement in writing and the contractor, with the client's consent, proceeds to execute the agreement, the client is deemed to have issued the agreement in accordance with the offer.
5. Once the agreement is signed, an advance payment of 35% of the total contract price is due.

Article 3 - Prices and price changes

1. All prices quoted by the contractor are exclusive of VAT, unless explicitly specified otherwise.
2. The prices referred to in paragraph 1 of this article do not include, unless explicitly mentioned: equipment costs, travel expenses, parking fees and costs for permit applications, aerial platforms, forklift truck and scaffolding.
3. The price is, to the greatest extent, established on the basis of a prearranged hourly rate, or on the basis of a prearranged fixed fee.
4. If the price has not been established upon conclusion of the agreement, or if only a guide price has been determined, the client owes a reasonable price. Upon determination of the price, the prices customarily stipulated by the contractor upon conclusion of the agreement and his expectations based on the probable price are taken into account.
5. If a guide price was determined, this guide price cannot be exceeded by more than 15%, unless the contractor has promptly notified the client of the probability of further transgression, so as to enable the client to reduce or simplify the work as yet. The contractor will cooperate in such a reduction or simplification within the limits of reasonableness.
6. Paragraph 5 applies mutatis mutandis to the contracting of work, the price of which is made dependent on the anticipated time to execute the work under the agreement.

7. The provisions in this article about prices and price changes do not apply to contract extras and provisional sums.
8. If, after conclusion of the agreement, cost-increasing circumstances occur or come to light and these cannot be attributed to the contractor, the contractor will be entitled to fully or partially adjust the agreed price, provided the contractor did not have to take the chances of such circumstances into account when it determined the price.
9. The contractor is also entitled to adjust the price if the cost increase is the result of the client submitting incorrect information required for the price determination, unless the contractor should have discovered the incorrectness of the information before the price was determined.

Article 4 - Execution of the agreement

1. The client ensures that the contractor is promptly given all contract documents, the permissions required for the work (such as permits and exemptions) and other work-related information.
2. The client must ensure that the work to be executed by third parties and which does not form part of the work of the contractor, is executed in such a manner and at such a time that the execution of the work is not delayed by it.
3. The client will arrange for the connections required for the work (gas, water, electricity). The costs thereof and the consumption of these services are payable by the client.
4. The client will invite the contractor to attend construction meetings that directly relate to the latter's activities only and will, if possible, hold meetings using video media (such as Skype), this on account of time and travel distances.

5. The client provides the necessary equipment. Such equipment has to comply with the statutory safety requirements and the safety requirements stipulated by the Labour Inspectorate.
6. The client ensures that supply routes are constructed and maintained in such a way that equipment can be transported in full shipments at all times, within working distance of the work site.
7. The members of staff of the contractor have free access to the toilets and workmen's huts at the work site.
8. The client ensures that the work is set up and executed in such a way that it reduces damage to persons, goods and the environment to a minimum.
9. The client will arrange facilities to collect chemical construction waste.

10. The client ensures the work site is orderly and safe. The client also ensures that the materials to be processed and the equipment it makes available are in a good state of repair.
11. In the event that the client fails to comply with the previous paragraphs in this article, the contractor is entitled to suspend execution of the agreement and to charge the client the costs ensuing from such delay.
12. If so required on the basis of execution of the agreement, the contractor is entitled to outsource certain work to third parties.
13. Upon conclusion or execution of the agreement, the contractor is obliged to notify the client of any inaccuracies in the instruction, insofar as the contractor was aware of these inaccuracies or should reasonably have been aware of them. The same applies in the event of faults or unsuitability of goods that originate from the client, including the surface on which the client has work executed, as well as errors and faults in plans, drawings, calculations, contract documents or work instructions issued by the client.
14. The agreed execution time of the agreement is not a final deadline. When the execution time is exceeded, the client must enable the contractor to comply within a reasonable term.
15. If, during execution, the contractor anticipates that the execution time will be exceeded, he will notify the client, stating the probable reason.

Article 5 - Contract extras

1. In the event the client requires additions or changes to the agreed work, the contractor can only demand an increase of the price if it has promptly made the client aware of the need to increase the price as a result of that, unless the client should have been aware of that need.
2. This provision cannot be deviated from to the detriment of the client, except in the case of standard terms within the meaning of Section 214, Book 6, of the Netherlands Civil Code.

Article 6 - Premature termination

1. The agreement can be prematurely terminated by means of registered letter, stating the reason of termination, on account of the contractor's attributable failure to comply with the agreement.
2. In the case of premature termination of the agreement by the client, without the contractor having attributable failed to comply with the agreement, and in the case of premature termination by the contractor on account of attributable actions by the client, the client must pay the contractor:
 - a. the price for the entire project, minus savings for the contractor that ensue from the termination, upon delivery of the work already completed by the contractor.
 - b. failing a contract price, 125% of the invoiced work and/or work to be invoiced that had already been completed upon termination.
3. The above provisions do not affect the contractor's right to claim full compensation.

Article 7 - Delivery and remedy of faults

1. If the contractor indicates that the work is ready for completion and the client does not inspect the work within fourteen days and accepts it or rejects it stating the faults, the client is expected to have tacitly accepted the work. After acceptance, the work will be regarded as having been completed.
2. After completion, the work is at the risk of the client. As such, the client still owes the price, regardless of the work being destroyed or deteriorated as a result of an action or omission that cannot be attributed to the contractor.
3. The contractor will be relieved from liability for defects which the client should in all reasonableness have discovered upon completion, but failed to report.
4. If, after completion, the work shows defects for which the contractor is liable, the client must enable the contractor to remedy the defects within a reasonable term, unless the client cannot be expected to do so due to the circumstances, without prejudice to the contractor's liability for damage caused by poor completion.
5. The client may demand that the contractor remedies the defects within a reasonable term, unless the costs of such remedy are, compared to compensation, not in proportion to the client's interest in having the defects remedied.

Article 8 - Liability

1. In the event that certain elements of the agreement are undertaken by third parties, the contractor will not be liable for these elements and the actions of these third parties if and insofar as this is not done under the contractor's supervision.
2. In the event of defects for which the contractor is liable, the client must give the contractor the opportunity to remedy these defects, or to reduce or cancel out damage ensuing from those defects.
3. The contractor is not liable for indirect damage, including consequential damage and loss of profits suffered by the client or third parties.
4. The contractor is not liable for damage that is the result of the intent or gross negligence of its non-supervisory subordinates.
5. The contractor is not liable for damage that is the result of the execution time being exceeded.
6. The client indemnifies the contractor against all successful third-party claims in connection with work undertaken and/or goods supplied by the contractor, which may have caused damage to those third parties, regardless of the cause or time at which the damage has arisen.

7. In the event of liability of the contractor, the contractor is never obliged to pay a sum higher than 25% of the damage suffered, subject to a maximum of the invoice amount (excluding VAT) for the work in question. In the event that the contractor is insured against such damage, its liability is limited to the amount the insurer would pay out in the case in question.
8. If the client has insured any risk in connection with the agreement, the client is obliged to indemnify the contractor against that risk.
9. Every claim for compensation brought by the client lapses if the claim has not been communicated to the contractor in writing within one month after the damage or defect was identified or should reasonably have been identified and if the claim has not been brought before the court within one year of that date.
10. The contractor is not liable for damage due to the contractor acting on incorrect and/or incomplete information submitted by the client.
11. The client bears the risk of damage caused by defects in the materials the client has provided, or that is used at the client's request, unless the contractor has violated its obligation to warn the client within the meaning of Section 7:760 in conjunction with Section 7:754 of the Netherlands Civil Code.
12. The client bears the risk for damage to all materials, components or tools present at the work site.

Article 9 - Force majeure

1. Force majeure is defined as: circumstances that temporarily or permanently hamper fulfilment of the agreement and that cannot be attributed to the contractor. This is also taken to mean: a shortage of staff at the contractor, strikes at other companies, unorganised or organised strikes at the contractor's company, a general lack of required raw materials, unforeseen interruptions at supplies, general transport problems and governmental measures.
2. The contractor is also entitled to invoke force majeure if the circumstance that causes the force majeure arises after the contractor should have fulfilled its obligation.
3. In the event of force majeure, the contractor will be entitled to suspend its obligations. If the non-compliance caused by force majeure continues for more than one month, both parties will be entitled to dissolve the agreement without any obligation to pay compensation.
4. If, when force majeure commences, the contractor has already fulfilled some of its obligations, the contractor is entitled to a proportionate part of the established price by virtue of the work already undertaken and costs already incurred. This does not apply if this part of the agreement has no independent value.

Article 10 - Payment and interest

1. Payment must be made within fourteen days of the invoice date. After these fourteen days have lapsed, the client is in default and all claims of the contractor against the client will be immediately due and payable.
2. The moment the client is in default as set out in paragraph 1, it owes 1.5% of interest per month on the amount due and payable.
3. In the event payment in instalments has been agreed and the client fails to pay an instalment, the contractor, without prejudice to its other rights, is entitled to suspend the work until the client has fulfilled all his due and payable liabilities.
 1. The first instalment is 35% of the full contract price and must be paid when the instruction is signed, unless agreed otherwise in writing.
4. The client must pay the invoice without deductions or set-off against any claim from the client against the contractor, disputed or otherwise.
5. In the event of the client's liquidation, insolvency or moratorium, or if the client otherwise has difficulties paying and/or the client converts its business into a different legal form, transfers its business to a third party or relocates its registered office and/or residence abroad, the client's liabilities will be immediately due and payable.

6. Any payments made will first be applied to settle all interest and costs payable and secondly to settle outstanding invoices that have been payable longest, regardless of whether the client has stated that the payment relates to a later invoice.

Article 11 - Dissolution of the agreement

1. Any claims of the contractor against the client become immediately due and payable in the following cases:
2. If the client fails to (promptly or properly) fulfil any of its obligations ensuing from the agreement;
3. If, after concluding the agreement, the contractor learns of circumstances that give it good reason to believe that the client will not fulfil its obligations;
4. If, upon conclusion of the agreement, the contractor has asked the client for security with regard to fulfilment and this security is not forthcoming or insufficient.
5. In the aforementioned cases, the contractor is entitled to suspend further execution of the agreement, or to dissolve the agreement and demand compensation for costs, damage and interest as well as to claim back the goods that were delivered for the execution of these agreements but have not been paid for yet.

Article 12 - Property rights and copyrights

1. All original versions of drawings, drafts, contract documents, budgets, estimates, reports and other documents created by the contractor during execution of the agreement remain the property of the contractor, regardless of whether they have been made available to the client or third parties.
2. To the exclusion of every other party, the contractor is entitled to create, publish and copy its designs, drafts, photos and all other images of its design within the meaning of the Copyrights Act 1912 or the Uniform Benelux Act on Designs and Models, regardless of whether they have been made available to the client or third parties.
3. The client is not permitted to repeat the production of a design or part thereof without the explicit consent of the contractor.

Article 13 - Retention of title

1. Until all claims ensuing from the agreement, interest and costs included, have been paid in full, the goods delivered by the contractor remain the exclusive property of the contractor.
2. Until full payment is made, the client will not be entitled to pledge or sell the goods to third parties. In the event that third parties wish to attach any rights to the goods delivered, the client will be obliged to notify the contractor as soon as possible. The client is obliged to keep and/or make the goods subject to retention of title identifiable for the contractor and to keep them separated from each other and from other goods kept at the client's.
3. In the event that the client fails to fulfil its obligations or if there is a reasonable fear that it will fail to do so, the contractor will be entitled to (instruct others to) remove the delivered goods from the client or third parties who keep the goods on behalf of the client. To that end, the client must fully cooperate, subject to a penalty of 10% of the total contract price for each day it remains in default.

Article 14 - Applicable law and dispute settlement

1. All agreements between the contractor and the client will be governed by Dutch law, unless the parties explicitly agree otherwise in writing.
2. Disputes will be submitted to the Dutch court, unless explicitly agreed otherwise by the parties in writing.

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