

General conditions association 'Vereniging ION'

General conditions issued by the association 'Vereniging Industrieel Oppervlaktebehandelend Nederland' (number: 40476749), registered with the Chamber of Commerce under number KvK03/2300562 on 17 March 2021. Publication of Vereniging Industrieel Oppervlaktebehandelend Nederland (for short Vereniging ION), Postbus 2600, 3430 GA Nieuwegein. ©Vereniging ION

Article 1: Applicability

- 1.1. These conditions are applicable to all offers made by a member of Vereniging ION to all agreements, sub-agreements, and to all agreements, flow-through, all matters to the extent the member of Vereniging ION is a provider or supplier.
- 1.2. The member of Vereniging ION issuing these conditions is referred to as contractor. The counterparty is referred to as client.
- 1.3. In case of contradictions between the content of the agreement concluded between client and contractor and these conditions, the provisions from the agreement prevail.
- 1.4. These conditions may exclusively be used by members of Vereniging ION.

Article 2: Offers

- 2.1. All offers are non-committal. Contractor has the right to revoke his offer until two business days after the acceptance has reached him.
- 2.2. If client provides contractor with information, contractor may assume the correctness and completeness hereof and he will base his offer thereon.
- 2.3. The prices mentioned in the offer are listed in Euros, exclusive of sales tax and other levies or taxes imposed by the authorities. The prices additionally are exclusive of travel, accommodation, packaging, storage, and transport costs, as well as costs for loading, unloading, and the rendering of assistance for customs formalities.
- 2.4. The content of folders and other printed material is not a part of the offer and is not binding on contractor, unless it is expressly referred to in the offer.
- 2.5. The price offered by the contractor is only valid in combination with the numbers of products offered.

Article 3: Confidentiality

- 3.1. All information provided by or in name of contractor to client (such as offers, designs, pictures, drawings, and knowhow) of any nature and in any form whatsoever, is confidential and will not be used by client for any other purpose than to implement the agreement.
- 3.2. The information referred to in section 1 of this article will not be disclosed or multiplied by client.
- 3.3. If client violates one of the obligations mentioned in section 1 and 2 of this article, he owes an instantly payable fine of € 25,000 per violation. This fine can be claimed in addition to compensation of damages pursuant to the law. Client must, at the option of contractor, either return or destroy the information mentioned in section 1 of this article upon first request, within a term set by contractor. Upon violation of this provision, client owes contractor an immediately payable fine of € 1,000 per day. This fine can be claimed in addition to compensation of damage pursuant to the law.

Article 4: Packaging and wrapping

- 4.1. Client instructs the contractor to properly package the matters to be processed and to secure them in such a manner that in the event of regular transport they will reach their destination in proper condition.
- 4.2. Contractor will package the processed matters either in their original wrapping or in new wrapping, such as at the discretion of the contractor, in such a manner that the processed matters in case of regular transport can reach their destination in proper condition. The new packaging is billed at price of cost and is not taken back.
- 4.3. If pallets, packaging crates, crates, containers, etc. are provided by contractor for packaging and/or transport - whether or not against payment of a guarantee or deposit - he has had such provided by a third party, client is obligated (unless it regards single-use packaging) to send back these pallets etc. to the address submitted by contractor, failing which client owes contractor full compensation of damages.

Article 5: Advice and information provided

- 5.1. Client cannot derive any rights from advice and information he gets from contractor if these do not regard the order.
- 5.2. If client provides contractor with information, contractor may upon the implementation of the agreement assume the correctness and completeness thereof.
- 5.3. Client safeguards contractor against any third-party claim with regard to the use of advice, drawings, calculations, plans, materials, samples, models and the likes provided by or on behalf of client. Client will compensate all damage to be incurred by contractor, also including the total expenses incurred for defence against such claims.
- 5.4. Contractor never accepts any responsibility for a surface treatment plan developed and/or prescribed by or on behalf of client, nor for any possible advice in connection therewith.
- 5.5. If client wishes to transfer responsibility for the surface treatment plan developed by or on behalf of him to the contractor, then the latter does not have to accept this responsibility. Sufficient time has to be granted to contractor to take a decision regarding this transfer following investigation.
- 5.6. It cannot be demanded from contractor that he conducts the investigation referred to in 5.5 free of charges, unless it has already become expressly apparent from the application for an offer that client wishes to transfer the responsibility to contractor.
- 5.7. Contractor never accepts any responsibility for materials and parts that were provided by client himself.

Article 6: Delivery time/implementation period

- 6.1. A submitted delivery time and/or implementation period is indicative.
- 6.2. The delivery time and/or implementation period only enter into effect when consensus has been reached regarding all commercial and technical details. All information, including definitive and approved drawings and the likes, is in the possession of contractor, the established payment (installment) has been received and all other conditions for the implementation of the order have been met.
- 6.3. In the event of:
 - a. other circumstances than were known to contractor when he submitted the delivery time and/or implementation period, the delivery time and/or implementation period is extended by the time that contractor needs, with due regard for his planning, to carry out the order under these circumstances;
 - b. additional work, the delivery time and/or implementation period are extended by the time that contractor needs, with due regard for his planning, to (let) deliver the materials and parts for it and to carry out the additional work;
 - c. the suspension of obligations by contractor, the delivery time and/or implementation period are extended by the time he needs, with due regard for his planning, to carry out the order, after the reason for suspension has lapsed.Barring proof to the contrary by client, is intended by the duration of the extension of the delivery time or implementation period is the time that is suspected to be required and to be the result of a situation as referred to above under a through c.
- 6.4. Client is bound to settle all costs that contractor incurs or damage that contractor suffers as a result of a delay in the delivery time and/or implementation period as indicated in section 3 of this article.
- 6.5. The overrunning of the delivery time or implementation period under no circumstances grants client the right to compensation of damages or rescission. Client safeguards contractor against any possible third-party claims as a result of the overrunning of the delivery time or implementation period.

Article 7: Delivery and risk transfer

- 7.1. Delivery occurs at the moment that contractor makes available the matter at his business location to client and has announced to client that the matter available for him. From that moment, client bears the risk, e.g., of the matter for storage, loading, transport, and unloading.
- 7.2. Client and contractor can establish that contractor takes care of transport. The risk of storage, loading, transport,

and unloading in such case lies with client. Client can take out insurance against these risks.

- 7.3. In the event of a trade-in and client pending delivery of the matter, the matter has to be traded in under his control, the risk of the matter to be traded in remains with client until the moment that he has brought it to the possession of contractor. If client cannot deliver the matter to be traded in in the condition it was in when the agreement was concluded, contractor can rescind the agreement.

Article 8: Price change

- 8.1. Contractor may pass on an increase of cost-determining factors that has occurred after conclusion of the agreement to client. Client is obligated to settle the price increase upon first request of contractor.

Article 9: Force majeure

- 9.1. A shortcoming in compliance with his obligations cannot be attributed to contractor if this shortcoming is the result of force majeure.
- 9.2. By force majeure is intended, e.g., the circumstance that such as suppliers, sub-contractors, and transporters, or other parties that client depends on, do not or do not timely comply with their obligations, weather conditions, natural disasters, terrorism, cybercrime, outbreaks of infectious diseases (including pandemic such as COVID-19, the disruption of digital infrastructure, fire, power failure, the loss, theft, or the loss of equipment, materials, or information, road blocks, strikes, or work interruptions and import or trade restrictions.
- 9.3. Contractor has the right to suspend compliance with his obligations if he is temporarily prevented from fulfilling his obligations towards client by force majeure. If the situation of force majeure has passed, contractor complies with his obligations as soon as his planning permits.
- 9.4. In the event of force majeure and compliance is or becomes permanently impossible, or the temporary situation of force majeure has lasted for more than six months, contractor is authorised to rescind the agreement completely partially with immediate effect. Client is authorised in those cases to rescind the agreement with immediate effect, but only for that part of the obligations that has not been complied with by contractor.
- 9.5. Parties are not entitled to compensation of the damage incurred or to be incurred as a result of the force majeure, suspension, or rescission in the sense of this article.

Article 10: Scope of the work

- 10.1. Client must make sure that all permits, exemptions, and other rulings that are necessary to carry out the work are timely obtained. Client is obliged upon first request of contractor to send the latter a copy of the documents mentioned in the preceding.
- 10.2. Unless established otherwise in writing, the work does not comprise:
 - a. costs of ground, pile driving, slashing, breaking, foundation, masonry, carpeting, plastering, painting, wallpapering, restoration work or other structural work;
 - b. the costs for the connecting of gas, water, electricity, internet, or other infrastructural facilities;
 - c. the costs to prevent or mitigate damage to or the theft or loss of matters present in or at the workplace;
 - d. disposal of materials, building material, or waste;
 - e. vertical and horizontal transport.

Article 11: Additional work

- 11.1. Changes to the work result in additional work in any event if:
 - a. a change to the design, the specifications, or the planning occurs;
 - b. the information provided by client does not correspond with reality;
 - c. estimated quantities deviate more than 5%.
- 11.2. Additional work is billed on the basis of price-determining factors that are effective at the moment that the additional work is conducted. Client is obligated to settle the price of the additional work upon first request of contractor.

Article 12: Implementation of the work

- 12.1. Client makes sure that contractor can carry out his activities within the agreed established time and that upon the implementation of his activities he will be provided with the facilities required, such as:
 - a. gas, water, and electricity;
 - b. heating;
 - c. closable, dry storage space;
 - d. facilities prescribed by health and safety legislation and regulations ('Arbowet').
- 12.2. Client bears the risk and is liable for damage to and the theft or loss of matters of contractor, client, and third parties, such as tools, materials intended for work, or material used for the work, that are located on or close to the place where the activities are conducted or at another established place.
- 12.3. Without prejudice to what is established in section 2 of this article, client is referred to insure himself adequately against the risks referred to in that section. Client must in addition must procure insurance for the working risk of the material to be used. Client must send contractor upon first request a copy of the relevant insurance(s) and a proof of payment of the insurance fee. In case of damage, client is obligated to report this forthwith to his insurer for further handling and settlement.
- 12.4. The equipment or tools manufactured by the contractor that are necessary for the implementation of the agreement remain the property of the contractor, even if he has billed a fee for them.

Article 13: Delivery of the work

- 13.1. The work is deemed delivered in the following cases:
 - a. if client has approved the work;
 - b. if the work has been commissioned by client. If client commissions a part of the work, then that part is considered delivered;
 - c. if contractor has announced to client in writing that the work has been completed and client has not notified in writing within 8 days after the announcement whether or not the work has been approved;
 - d. if client does not approve the work on grounds of minor defects or missing parts that can be restored or back-delivered within 30 days and that do not oppose the commissioning of the work;
 - e. if the work has been sent to the client or has come within the control of the contractor.
- 13.2. If client does not approve the work, then he is obligated to communicate this, stating reasons, to contractor in writing. Client must give contractor the opportunity to deliver the work still.
- 13.3. Client safeguards contractor against third-party claims for damage to undelivered parts of the work caused by the use of parts of the work that have already been delivered.

Article 14: Liability

- 14.1. In case of an attributable shortcoming, contractor is obliged to comply with his contractual obligations still.
- 14.2. The obligation to compensate damage of contractor on any legal grounds whatsoever is limited to such damage as contractor is insured against on account of an insurance taken out by him or for his benefit. The scope of this obligation never exceeds, however, the amount that is paid out in the relevant case by the insurance.
- 14.3. If contractor for whatever reason is not entitled to appeal to section 2 of this article, the obligation to compensate damage is limited to a maximum of 15% of the total contract sum (exclusive of VAT). If the agreement consists of components or batches, this obligation is limited to a maximum of 15% (exclusive of VAT) of the contract sum of that component or that batch. In case of continuing performance contracts, the obligation to compensate damage is limited to a maximum of 15% (exclusive of VAT) of the contract sum owed over the last twelve months preceding the damage-causing event.
- 14.4. Not eligible for compensation is:

- a. consequential damage. By consequential damage is intended, e.g., stagnation damage, loss of production, lost profit, transport costs, and travel and accommodation costs;
 - b. supervision damage. By supervision damage is intended, e.g., damage that is caused by or during the implementation of the work to matters that work is being done on or to matters that are located in the vicinity of the place where work is being done;
 - c. damage caused by the willful intent or deliberate recklessness of auxiliary persons or non-managing subordinates of contractor.
- 14.5. Client can, if possible, take out insurance against such damage.
 - 14.6. Contractor is not obliged to compensate damage to material delivered by or on behalf of client as a result of processing not carried out soundly.
 - 14.7. Any liability of contractor lapses three years after delivery. Client safeguards contractor against all third-party claims on account of product liability as a result of a defect in a product that was delivered by client to a third party and the products of that third party delivered by contractor were a part. Client is obliged to compensate all damage incurred by contractor in this connection, also including the (full) costs of defence.

Article 15: Warranty and other claims

- 15.1. Unless established otherwise, contractor guarantees the proper implementation of the established performance for a period of six months after delivery, as is further elaborated in the following articles.
- 15.2. If parties have established deviating warranty terms, what is established in this article is fully applicable, unless this violates those deviating warranty terms.
- 15.3. If an established warranty term has not been properly implemented, contractor will choose within a reasonable term whether he will properly implement it still, or credits client for a proportional part of the contract sum.
- 15.4. If contractor chooses to still properly implement the performance, he determines himself the manner and timing of implementation. Client must provide contractor the opportunity to do so under all circumstances. If the established performance (also) consisted of the processing of material supplied by client, then client must at own expense and risk supply new material.
- 15.5. Parts or materials that are restored or replaced by contractor must be sent to him by client.
- 15.6. Borne by client are:
 - a. all transport or shipping costs;
 - b. costs for disassembly and assembly;
 - c. travel and accommodation costs and travel hours.
- 15.7. Contractor is only obliged to implement the warranty if client has complied with all his obligations, namely:
 - a. No warranty is provided if defects are the result of:
 - normal wear;
 - inexpert use;
 - maintenance not or not correctly carried out;
 - installation, assembly, modification, or repair by client or third parties;
 - defects in or the unsuitability of matters deriving from or prescribed by client;
 - defects in or unsuitability of materials or tools used by client.
 - b. No warranty is provided for:
 - delivered matters that were not new at the moment of delivery;
 - inspection and repair of matters of client;
 - parts for which manufacturer's warranty was provided.
- 15.9. What is established in section 3 through 8 of this article is not possibly applicable in case of any possible claims of client on grounds of non-performance, non-conformity, or on any other grounds whatsoever.

Article 16: Complaint obligation

- 16.1. Client can no longer appeal to a defect in the performance if he has not filed a written complaint to contractor within fourteen days after he has discovered or should reasonably have discovered the defect.
 - 16.2. If in case of the delivery of a lot the defect in the performance amounts to only one percent or less of the number of delivered matters, the client will have to accept the entire lot without any claim on the contractor.
 - 16.3. Client must have submitted complaints about the invoice supplied by the contractor in writing, on pain of all rights lapsing. If the payment term is longer than thirty days, client must have included in writing no later than within thirty days after invoice date.
- 17.1. Client is obligated after the end of the delivery time and/or implementation period to factually accept the matter or matters that are the object of the agreement at the established location.
 - 17.2. Client must render all assistance free of charges to enable contractor to deliver.
 - 17.3. Matters not accepted are stored at the expense and risk of client.
 - 17.4. Upon violation of what is established in sections 1 and/or 2 of this article, client owes contractor, after contractor has declared his default, a fine per violation of € 250 per day with a maximum of € 25,000. This fine can be claimed besides compensation of damages pursuant to the law.

Article 17: Matters not accepted

- 17.1. Client is obligated after the end of the delivery time and/or implementation period to factually accept the matter or matters that are the object of the agreement at the established location.
 - 17.2. Client must render all assistance free of charges to enable contractor to deliver.
 - 17.3. Matters not accepted are stored at the expense and risk of client.
 - 17.4. Upon violation of what is established in sections 1 and/or 2 of this article, client owes contractor, after contractor has declared his default, a fine per violation of € 250 per day with a maximum of € 25,000. This fine can be claimed besides compensation of damages pursuant to the law.
- 18.1. Payment is made at the place of establishment of contractor or on an account to be designated by contractor.
 - 18.2. Unless established otherwise, payment occurs within 30 days after invoice date.
 - 18.3. If client does not comply with his payment obligation he is bound to comply, instead of with payment of the established monetary sum, with a request of contractor for transfer in lieu of payment.
 - 18.4. The right of client to set off his claims on contractor or to suspend such after compliance with his obligations is excluded, unless in the event of suspension of payments or bankruptcy of contractor or if legal debt restructuring is applicable to contractor.
 - 18.5. Regardless of whether contractor has carried out the established performance in full, everything that client owes or will owe to him on account of the agreement is immediately payable if:
 - a. a payment term has been overrun;
 - b. client is not compliant with his obligations from article 17;
 - c. the bankruptcy or the suspension of payments of client has been filed for;
 - d. an attachment is levied on matter or receivables of client; or
 - e. client (corporation) is dissolved or liquidated;
 - f. client (natural person) makes the request to be admitted to legal debt restructuring, is placed in receivership, or is passed away.
 - 18.6. In case of a delay in the settlement of a monetary sum, Client owes interest on that monetary sum to contractor with effect from the day following the day that was established as due date for payment, although the payment of the established monetary sum. If parties have not established a due date for payment, interest is owed from 30 days after it becomes payable. The interest amounts to 12% per year, but is equal to the statutory interest rate if this is higher. For the calculation of interest, a part of a month is considered an entire month. After the end of the year the amount on which the interest is calculated is increased each time by the interest owed over that year.
 - 18.7. Contractor is authorised to set off his debt client against claims of enterprises affiliated with contractor on client. Contractor is authorised in addition to set off his claims on client against debts that enterprises affiliated with contractor have to client. Contractor is authorised besides to set off his debts to client against claims on enterprises affiliated with client. By affiliated enterprises is intended: all enterprises that belong the same group, in the sense of article 2:24b BW (Netherlands Civil Code) and a participation in the sense of article 2:24c BW.
 - 18.8. If payment has not occurred on time, client owes contractor all extrajudicial costs, with a minimum of € 75.

These costs are calculated on the basis of the following table (principal sum incl. interest):

over the first € 3,000	15%
over what exceeds it up to € 6,000	10%
over what exceeds it up to € 15,000	8%
over what exceeds it up to € 60,000	5%
over what exceeds it from € 60,000	3%

The extrajudicial costs incurred effectually are owed if these are higher than follows from the calculation above. If in a legal procedure contractor is ruled entirely or mostly in favour of, all costs that he has incurred in connection with this procedure are borne by client.

Article 19: Securities

- 19.1. Regardless of the payment conditions that were established, client is obligated upon first request of contractor to lodge security for payment that in the opinion of the latter is sufficient. If client does not comply with this within the established term, he falls into default immediately. Contractor has the right in such case to rescind the agreement and to claim his damage from client.
- 19.2. Contractor remains the proprietor of delivered matters for as long as client:
 - a. has not complied with his obligations from any agreement with contractor;
 - b. has not settled claims that flow from non-compliance with the agreements referred to above, such as damage, fine, interest, and costs.
- 19.3. For as long as delivered matters are subject to a retention of title, client may not encumber or dispose of these outside of his normal business operations. This clause has effect in the field of property law.
- 19.4. After contractor has invoked his retention of title, he may recover the delivered matters. Client will render all assistance to such effect.
- 19.5. If client, after the matters have been delivered to him by contractor in conformity with the agreement, has complied with his obligations, the retention of title with regard to these matters revives if client does not comply with his obligations from an agreement concluded later on.
- 19.6. Contractor has a lien and a right of retention to all matters that he has or will have under his control on any account whatsoever and for all claims he has or may get on client.

Article 20: Rights of intellectual property

- 20.1. Contractor qualifies respectively as the maker, designer, or inventor of the works, models, or inventions realized in the context of the agreement. For this reason, contractor has the exclusive right to apply for a patent, brand, or model. Upon the implementation of the agreement, contractor does not transfer any intellectual property rights to client.
- 20.3. If the performance to be delivered by contractor (also) consists of the delivery of computer software, the source code is not transferred to client. Client obtains, exclusively for the purpose of normal use and the proper functioning of the matter, a non-exclusive, worldwide, and perpetual user license on the computer software. It is not permitted to client to transfer the license or to issue a sub-license. Upon the sale of the matter by client to a third party, the license legally passes to the acquirer of the matter.
- 20.4. Contractor is not liable for damage incurred by client as a result of a violation of intellectual property rights of third parties. Client safeguards contractor against any claim of third parties with regard to a violation of intellectual property rights.

Article 21: Transfer of rights or obligations

- 21.1. Client cannot transfer or pawn rights or obligations on account of any article from these general conditions or the underlying agreement(s), barring the prior written consent of contractor. This clause has effect in the field of property law.

Article 22: Cancellation or annulment of the agreement

- 22.1. Client is not authorised to cancel or annul the agreement, unless contractor agrees to it. In case of the consent of contractor, client owes contractor an immediately payable fee in the amount of the established price minus the savings that flow from the termination for contractor. The fee amounts to a minimum of 20% of the established price.
- 22.2. In case the price was rendered dependent on the costs effectively to be incurred by contractor (cost-plus basis), the fee as intended in the first section of this article is budgeted at the sum of the costs, labour hours, and profit that contractor was expected to have made on the entire order.

Article 23: Applicable law and competent court

- 23.1. Netherlands legislation applies.
- 23.2. The Vienna commercial convention (C.I.S.G.) is not applicable, nor are any other international regulations the exemption of which is permitted.
- 23.3. The Netherlands civil court that is competent in the place of establishment of contractor hears disputes. Contractor may derogate from this rule of competence and apply the legal competence rules.