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General terms and conditions

Version January 2019



Adopted by the Vakgroep GLAS [Glass Section] of Bouwend Nederland [the Dutch Construction and Infrastructure Federation] and filed with the Registry of the District Court of Amsterdam, the Netherlands, under number 21/2019.

Clause 1 Definition

'Counterparty' will mean both the party which, acting in the capacity of practising a profession or operating a company, has accepted or may be presumed to have accepted in any way the applicability of these General Terms and Conditions as well as the Consumer.

"Other party" means the person who has accepted, or may be assumed to have accepted the validity of these General Terms and Conditions in any way.

"Consumer" means a natural person who does not act in the course of a profession or business and who has also accepted, or may be assumed to have accepted, the validity of these General Terms and Conditions in any way. All stipulations included in these General Terms and Conditions apply to agreements between the user and a consumer, unless explicitly stipulated otherwise.

Clause 2 General; offers and confirmations

- 2.1 These General Terms and Conditions apply to all agreements in respect of which the user acts as offering party, vendor and/or supplier of items or renders services regarding the treatment and/or processing and/or fitting of glass and/or related goods.
- 2.2 All offers are free of obligation, unless they include a period of time for acceptance. All samples and other data provided with the offer are only provided as an indication. If a quotation includes an offer free of obligation which is accepted, the user shall be entitled to revoke the offer within 5 working days from receipt of the acceptance.
- 2.3 All orders taken by representatives of the user or intermediaries shall only be binding on the user if they have been confirmed in writing by the user in a confirmation of the instruction, an order confirmation or otherwise. A written confirmation includes a confirmation by e-mail and/or fax.
- 2.4 The applicability of general terms and conditions applied by the other party is dismissed explicitly; in so far as necessary, these Terms and Conditions replace them.
- 2.5 If, apart from these Terms and Conditions, any other terms and conditions apply to an agreement as referred to in paragraph 1, the stipulation most favourable to the user, at the discretion of the user, shall apply in the event of any conflict.
- 2.6 Derogations from the Terms and Conditions shall only be valid when agreed between the parties in writing.
- 2.7 An offer to a consumer shall be made in writing, bear a date and, in derogation of paragraph 2, be irrevocable during 30 days from receipt. The offer shall include a description of the work to be performed and the materials to be supplied, which shall be detailed enough to allow a proper assessment of the offer by the consumer. The offer to the consumer shall give an outline of the price and as to whether or not there is a fixed contract price, a guide price or whether the work will be performed on a cost-plus basis.

Clause 3 Prices

- 3.1 The user shall be entitled to pass on to the other party any taxes, import duties, levies or other charges introduced or increased by the government after the offer or the formation of the agreement.
- 3.2 If one or more of the cost determining factors which form the basis of the price(s) of the user changes after the offer or the formation of the agreement, regardless of the circumstances that caused it, the user shall be entitled to increase the price(s) offered or agreed upon accordingly, without such giving the other party the right to terminate the agreement.
- 3.3 Only in the case where the price offered to the consumer is increased as early as within three months from the offer, the consumer shall be entitled to terminate the agreement.
- 3.4 All prices are always exclusive of Netherlands VAT (*BTW*), unless agreed otherwise in writing. The price offered to consumers is always inclusive of Netherlands VAT.

Clause 4 Delivery; delivery time and transport

- 4.1 Delivery times agreed prevail as an indication and not as strict deadlines.
- 4.2 Unless agreed otherwise in writing, deliveries take place ex user or, if they take place directly from the manufacturer to the other party, ex factory.
- 4.3 The transport of the glass is always at the expense and risk of the other party, unless agreed otherwise in writing. The User will be entitled to charge an amount of at least €50, exclusive of VAT, to the Counterparty for transport.
- For Consumers:*
The User will always be free to select the means of transport. The User will be entitled to charge an amount of at least €50, inclusive of VAT, to the Consumer for transport. If the Consumer designates a transporter and the User does not offer this transporter as one of the options, the glass will be transported at the Consumer's expense and risk in each case.
- 4.4 The user is always at liberty to choose the means of conveyance and transport.
- 4.5 With regard to the transport, the other party has the possibility to take out an insurance policy with the user.
- For Consumers:* The Consumer will bear the risk for the item from the time that the Consumer or a third party designated by it (which is not the transporter) has received the item.
- 4.6 The transport shall terminate at the time the glass has been placed next to the means of transport at the place of destination.
- 4.7 If the other party places an order on call, it actually has to be called and taken up within the period of time fixed by the other party and accepted by the user.
- 4.8 If the agreed delivery time to a consumer is exceeded by more than two weeks, the user shall undertake to compensate the consumer for the direct loss suffered as a consequence, unless such exceeding cannot be attributed to the user.
- 4.9 Any work not performed by the user leading to a delay in the work of the user, must be reported to the user in due time. If the delivery time agreed is exceeded as a consequence of these circumstances, the user shall not be liable for compensation to the other party.

Clause 5 Packaging

- 5.1 On the delivery of glass, the user shall make packaging available to the other party. The user may charge a compensation for it. From the moment of delivery of the glass up to and including the day on which the user collects the packaging again, the packaging shall be at the risk of the other party.
- 5.2 The other party shall undertake to make the packaging available again to the user in the same condition and quantity on the day the user collects it.
- 5.3 The other party shall inform the user in writing or by e-mail as soon as the packaging can be collected.

Clause 6 Complaints

A. General

- 6.1 Unless special quality requirements are made by the other party on placing the order and such requirements are confirmed by the user in writing, normal commercial quality in accordance with applicable NEN¹ standards shall be delivered.
- 6.2 The user shall be entitled to deliver items that vary slightly in colour and/or design from the model, sample or example.
- 6.3 The other party shall undertake to inspect immediately after delivery whether the items delivered meet the agreed requirements.
- 6.4 Subject to what the user can reasonably recognize, the user shall undertake to point out the following to the consumer:
- inaccuracies in the constructions and working method required by the consumer;
 - known flaws in the (im)movable goods on which the work is performed;
 - flaws in the materials or auxiliary materials made available by the consumer or their unsuitability;
 - inaccuracies in respect of the work instructed, including the performance of work on a faulty base.

With regard to those other than consumers, the user is explicitly not under the above obligation.

¹ Netherlands Standardization Institute

- 6.5 Despite the obligation of the user to warn the consumer pursuant to the above paragraph, the consumer shall bear the risk of loss in the case where it has – despite the above warning by the user – been caused by:
- inaccuracies in the work instructed;
 - inaccuracies in the constructions and working method required by the consumer;
 - flaws in the (im)movable goods on which the work is performed;
 - flaws in the materials or auxiliary materials made available by the consumer.

B. Complaints related to quality

- 6.6 Complaints by the other party which entail that the items delivered fail to meet the quality agreed upon, must be communicated to the user by registered letter within 8 days from receipt of the items, in the absence of which it cannot enforce any right against the user.

For Consumers:

A complaint by the Consumer that the items delivered do not conform to the agreed quality must be brought to the User's attention within a reasonable period after the Consumer discovered or should have discovered this, but in any event within 10 days after delivery. A Consumer may not claim that the item does not conform to the agreement if it was aware or reasonably could have been aware of this when the agreement was entered into.

- 6.7 If a timely submitted complaint appears to be correct, the user shall only be obliged to replace the originally delivered items by items of the quality agreed upon. At his discretion, the user shall also have the right to remedy the item or to proceed to crediting of the relevant invoice. Consequently, the other party shall not be able to enforce a right to terminate the agreement. Any other or further liability of the user is ruled out.

For Consumers: Only in cases where repair or replacement is impossible or cannot be required of the User, will the Consumer not be entitled to have the delivered items repaired or replaced. This will be the situation if the costs of this are not proportional to the costs of exercising another right or asserting another claim which the Consumer has. The Consumer may only rescind the agreement (in whole or in part) if repair or replacement is impossible or cannot be required of the User.

- 6.8 The user shall not be liable for technically inevitable variations in colour, quality, design and dimensions.

C. Other complaints

- 6.9 Complaints by the other party regarding the way the user fulfils the agreement which do not relate to the quality of that delivered, must be communicated to the user in such time and manner that the user can ascertain whether the complaint is correct, in the absence of which the other party shall not be able to enforce any right against the user in this respect.

- 6.10 Any flaws that can be established immediately on delivery (including flaws with regard to quantities, dimensions and colour) must be reported by the other party immediately in the document signed on delivery (for example, a consignment note).

If such flaw is not stated in the document mentioned above, the other party cannot derive any rights from the flaws referred to in this clause.

For Consumers:

The Consumer must notify the User of the defects referred to in this Article within a reasonable period after the Consumer discovered or reasonably should have discovered these, but in any event within 10 days after delivery.

- 6.11 If a timely submitted complaint appears to be correct, the user shall still have the right to fulfil his obligations, without the other party being able to claim anything further in this respect from the user, such excluding the case where fulfilment is no longer possible.

Clause 7 Payment

- 7.1 The other party shall undertake to pay the invoices of the user within 30 days from the invoice date without deducting any discount. Payment shall take place without settlement or suspension for whatever reason and without the other party being allowed to block its payment obligation by means of an attachment by the other party in respect of a counterclaim against its creditor or otherwise. A discount for prompt payment of 3% will be computed in the invoices, which may exclusively be deducted if the invoice amount is paid in time. On payment within 8 days from the invoice date, a 1% discount may be applied to the net invoice amount. However, the user shall always be entitled to demand cash payment before or on delivery of the items, such without stating reasons.

- 7.2 A payment shall be considered to have been received as soon as the amount has been credited to one of the bank or giro accounts of the user or handed over to the user upon issue of a receipt.
- 7.3 On exceeding the period of payment mentioned on the invoice, the other party shall be in default by operation of law without any notice of default being required. In that case, the other party shall owe an interest of 1.5% per month on the amount due from the date said amount became due and payable until the date the pending amount is fully paid; in this respect part of a month shall be considered to be a whole month.
- 7.4 If the consumer is in default, the user will send him a written demand in which the consumer is allowed a final term of fourteen days in which he can still pay. The consequences of non-payment will also be pointed out to the Consumer, as to which non-payment the User will claim statutory interest and compensation for the out-of-court costs in accordance with Section 6:96 of the Dutch Civil Code [*Burgerlijk Wetboek*], while indicating the amount of these costs.
- 7.5 Each payment shall initially go to reduce the costs, subsequently to reduce the outstanding interest and, finally, to reduce the earliest invoices and the interest accrued, also if the other party indicates a different order of allocation.
- 7.6 In the case of overdue payment in respect of an invoice, all payment obligations of the other party will become immediately due and payable, regardless of whether or not the user has already invoiced in this respect.
- 7.7 The user is also entitled to claim the price agreed immediately and in its entirety or terminate the agreement in the case of the other party's bankruptcy or moratorium, attachment of an important part of its business property, attachment of goods destined to the execution of the agreement or the closing down or liquidation of its business.
- 7.8 In the case of default of the other party, other than a consumer, it shall be obliged to pay all extrajudicial collection costs, which are set at 15% of the total amount due, observing a minimum of € 250.00.
- 7.9 If the user files a petition for the bankruptcy of the other party, the latter shall, apart from the price agreed, the interest due and the extrajudicial collection costs, also owe the cost of the bankruptcy petition in accordance with the rate prevailing in the district where the bankruptcy petition comes before the court.
- 7.10 The stipulations under paragraphs 1 up to and including 8 above shall not be affected in the case where the user, after the other party has appeared to be in default, sends any payment reminders or other requests for payment to the other party.

Clause 8 Security and Retention of Title

- 8.1 If there is good reason to fear that the other party will not fulfil its obligations under the agreement, the user shall have the right to require that it forthwith provides adequate security for the fulfilment of its duties in the form desired by the user on the latter's demand, especially with regard to the payment of the price agreed. Non-compliance with a written demand to that effect, shall give the user the right to suspend fulfilment of his obligations or terminate the agreement, without prejudice to his right to compensation.
- 8.2 The user shall continue to have the exclusive ownership of all items delivered and to be delivered by the user to the other party until all amounts the vendor owes or will owe the user, including in any event the amounts owed referred to in section 92.2 of Book 3 of the Dutch Civil Code, have been fully paid.
- 8.3 If the other party is in default with regard to any obligation resting upon it, the user shall be entitled to collect the items belonging to him himself from the place where they are, at the expense of the other party. All costs and loss attaching to or caused by the items during the time they were in possession of the other party, shall be at the latter's expense and risk. The other party shall undertake to cooperate with the user if the latter wishes to make use of the authority to collect, under penalty of a fine of 10% of the invoice amount.
- 8.4 If and as long as the user continues to be the owner of the items delivered or to be delivered to the other party, the other party will immediately inform the user when the items mentioned are (impended to be) attached or any third party otherwise claims (any part of) the items mentioned. Furthermore, the other party will inform the user on demand as to the location of said items.
- 8.5 The other party guarantees that an attachment of the items mentioned will be lifted as soon as possible. In the event of an (impending) attachment, a (provisional) moratorium or bankruptcy on the part of the other party, the latter shall immediately point out the rights (of ownership) of the user to the third party threatening to attach, the bailiff levying the attachment, the administrator or the receiver.

Clause 9 Items provided for keeping, treatment or processing

- 9.1 The risk of loss or fracture at the time or as a consequence of transport, temporary storage and/or keeping, or in respect of the treatment of the items provided to the manufacturers or traders for treatment, processing or keeping, or in respect of items to which or with which an instruction is carried out wherever that is, shall be at the expense of the other party.

Clause 10 Dimensions, weights and measures

- 10.1 With regard to dimensions and weights of all items, the user reserves the tolerances in conformity with applicable NEN standards.
- 10.2 On calculation in millimetres, all measures are rounded up to a number divisible by thirty, on the understanding that in the case of standard measures this rounding up takes place to numbers divisible by twenty. The rounded up measures replace the actual measures in all price, length, width and surface calculations.
- 10.3 With regard to forms other than right-angled ones, the surface is calculated according to the rectangle into which the mould fits, including excesses applicable to it for deviating measures and models.
- 10.4 The cost of measuring, as well as preparing the moulds, fitting or fastening of glass and all other extra performances shall be at the expense of the other party.

Clause 11 Force Majeure

- 11.1 The user shall not be liable for loss as a consequence of circumstances that could not be foreseen by the user at the time of concluding the agreement. Among others, such circumstances include: lack of raw material, factory failure of whatever nature, strikes, exclusion or lack of employees, quarantine, epidemics, natural disasters, mobilisation, state of siege, state of war or war, traffic congestions near railways or lack of means of transport, road blocks, as well as the incomplete, overdue or non-fulfilment by the glass manufacturers mentioned in clause 4 of their obligations in respect of the user, regardless of the reason or cause of such.
- 11.2 In case of force majeure, the user shall be entitled to suspend the fulfilment of the agreement or terminate it. The user retains the right to invoice the other party for the part of the agreement already executed.
- 11.3 If the user executes a temporary suspended part of the agreement at a later stage, the other party shall owe the entire agreed consideration without any form of discount.

Clause 12 Risk distribution on contracting for work

- 12.1 If the user also undertakes the obligation of treating and/or fitting any glass sold by him on the instructions of the other party, or in the case exclusively concerning treatment and/or fitting of glass, the stipulations laid down in this clause and the following clauses apply to the agreement between the parties, apart from the stipulations included in the previous clauses. In case of conflict, the stipulations included in this clause and the following clauses apply.
- 12.2 At the end of each working day, the other party shall undertake to inspect the fitting work performed by the user that day and, in case of agreement, approve them. If the other party fails to do this without any good reason or, in case of rejection, fails to inform the user forthwith of the reasons for the rejection, the work will be considered to have been delivered to the other party's satisfaction and to have its approval.
- 12.3 If a timely submitted complaint with regard to the fitting of glass is found to be correct, the user shall only be obliged to replace the glass. Any other or further liability of the user is ruled out.
- 12.4 Storage of the glass from the end of the transport referred to in paragraph 5 of clause 4 shall be at the expense and risk of the other party.
- 12.5 If the glass is stored at the construction site before it is fitted, treated or processed by the user, the other party shall not have the right to move the glass.

Clause 13 Safety at the construction site

- 13.1 The other party is responsible for safety at the construction site. The other party guarantees that all building materials, auxiliary materials and other items present at the construction site are sound and meet the requirements laid down in the relevant (legal) provisions.
- 13.2 Construction site means the entire grounds where building activities take place, regardless of whether or not these building activities take place under the other party's responsibility.

Clause 14 Measurements and other data

- 14.1 The other party guarantees the accuracy of the details regarding measurements, quantities, constructions, fitting methods etc., appearing in the specifications and drawings or otherwise

provided to the user, all in the broadest sense of the word. When there is a difference between these details and reality, the user shall have the right to compensation or additional payment.

- 14.2 The other party can never demand that the user works with one or more special trademarks or a certain quality with regard to the auxiliary materials he uses, such as glue, putty, etc., unless such has been explicitly agreed beforehand.

Clause 15 Extra work, less work

- 15.1 Extra or less work will generally be settled in accordance with the unit prices agreed upon by the parties. If these are not available, settlement will take place in accordance with the unit prices mentioned in the specifications.
- 15.2 When the specifications do not help, settlement will take place on the basis of usual standard prices prevailing on the date the work is performed or should have been performed.

Clause 16 Loss and liability

- 16.1 The user shall in no case ever be obliged to any compensation exceeding the normal invoice amount of the items and/or services provided in respect of which compensation is claimed.
- 16.2 The user is not liable for loss resulting from exceeding periods of time, nor for consequential or indirect loss, including loss due to loss of profit.
- 16.3 The user is not liable for damage to items which are stored at the user's premises on the other party's request, nor for the missing or loss of such items. Such storage shall at all times be at the risk of the other party.
- 16.4 The user is exclusively liable for damage to the building and damage to or loss of building materials, tools or other objects supplied at or near the work, when such is caused by a clearly demonstrable intentional act or gross negligence by himself or by those he employed for the performance of the commitment.
- 16.5 The user is not liable for the consequences of the delivery and/or fitting of glass of an inaccurate quality, thickness and/or composition according to existing standards, code of practice and/or manufacturing instructions. Neither is the user liable for the consequences of the fitting of glass in grooves of inaccurate dimensions, form or finishing and/or in weather conditions that do not permit fitting in dry and clean grooves.
- 16.6 The consumer bears the risk of loss as described in clause 6 A, paragraph 5.

Clause 17 Guarantee multi-sheet insulating glazing

- 17.1 If the manufacturer, through the User or not, provides a guarantee regarding the glazing delivered and/or installed by the latter party, only the guarantee provisions by the manufacturer will apply with respect to the User's liability for the quality of the glazing delivered or installed.
- 17.2 If the manufacturer does not provide a guarantee for whatever reason, juridical or factual, the user will not provide a guarantee either.
- 17.3 The user will make every effort to support the manufacturer to fulfil its obligations pursuant to the guarantee it provided.
- 17.4 The other party cannot assert any right under any guarantee as long as it has not met all its obligations, both financially and otherwise, arising from the agreement concluded with regard to the delivery and/or fitting of the multi-sheet insulating glazing.
- 17.5 The user guarantees the consumer that the multi-sheet insulating glazing will be fitted in accordance with applicable standards and code of practice. Not included in the guarantee are fracture, for example by local heating that may be caused by partial plastering, painting of the window, hanging sun blinds and/or a heater placed too close to the window, condensation generation on the room side or outside of the window, interference, discoloration as a consequence of glass thickness and other inevitable properties of the material applied. Thermal fracture due to cast shadows and mechanical fracture are also excluded from the guarantee. All this within the scope of (inter)national standards applicable in this respect.
- 17.6 The Counterparty may not invoke the guarantee for proper installation if it installs the glass itself or has someone else besides the User install the glass.
- 17.7 The Counterparty may not invoke the guarantee if the glass is exposed to items as a result of which the User can no longer guarantee the quality of the glass (or the installation of it). This will include, but not be limited to, using chemical agents, using aggressive cleansers, thermal causes, using sealants which are incompatible with the seal, covering the glass with foil/film, applying paint, changes in the unit or other similar actions.

Clause 18 Additional stipulations with regard to fitting work

- 18.1 With regard to the vertical transport of all materials to be supplied by the user, an industrially safe construction crane in working order or a builder's hoist with operating staff present at the

building site should be available for use free of charge; it should be possible for this vertical transport to take place within normal working hours at the times established in close consultation with the user.

- 18.2 If unloading materials on the intermediate floors requires the presence of industrially safe bracket scaffolding in working order, the other party will provide such at its expense.
- 18.3 The user will be able to make use free of charge of any scaffolding necessary for the fitting of glass; format and design of such scaffolding are or will be adapted to the work to be performed by the user.
- 18.4 The user shall assume no liability whatsoever with regard to fitting regulations established without prior consultation with the user.
- 18.5 If the user is instructed to fit materials made available to him for that purpose by the other party, the user shall not accept any risk, not even during the assembly and the work being part of it, if it concerns fracture of and/or damage to such materials.
- 18.6 If fitting or assembly is hindered or slowed down through circumstances that are not the fault of the user, the latter shall be entitled to charge the extra costs arising from it to the other party.

Clause 19 Legal Provisions

- 19.1 If after the formation of the agreement for services, the execution costs of the work end up higher than those prevailing on the date the user provided the quotation, due to any law, legal provision etc., ceasing to be applicable, being changed or introduced, any extra costs that relate directly to the work shall be settled. Likewise, any lesser costs that relate directly to the work shall be settled.

Clause 20 Prescription

- 20.1 Rights of action of the other party, other than a consumer, in respect of the user, prescribe no later than one year after they arise.

Clause 21 Applicable law; competent court

- 21.1 Personal Data will be processed in connection with construction, installation and maintenance work. The purpose of the processing will not be to process the Personal Data as such. Rather, the purpose will be to perform construction, installation and maintenance work. Personal Data, such as addresses and names, must be processed to provide this service.
- 21.2 The provisions in the privacy statement indicated on the User's website will apply to these General Terms and Conditions.