

GENERAL TERMS AND CONDITIONS FOR COMPANIES AFFILIATED TO THE DUTCH ASSOCIATION OF ENTREPRENEURS IN THE BODY WORK INDUSTRY (FOCWA TERMS AND CONDITIONS)

1. Definitions

The following terms in these terms and conditions have the following meaning:

- 1.1 User: the FOCWA member who uses these general terms and conditions in a contract.
- 1.2 Other party: the natural or legal person or his legal successor on whose behalf user carries out or commissions services and/or performs activities.
- 1.3 Consumer: an other party, a natural person who does not act professionally.
- 1.4 Object: the item to which an offer or the contract relates.
- 1.5 Consumer dispute: a dispute between a user and a consumer.
- 1.6 FOCWA-Eurogarant company: the company of a user affiliated to the Foundation FOCWA Guarantee fund, recognisable as such from a "FOCWA Eurogarant Company" sign on the business premises.
- 1.7 FOCWA-Guarantee Fund company: a company affiliated with the FOCWA Guarantee Fund Foundation and recognisable as such from a 'Member of the FOCWA Guarantee Fund' sign on the business premises.
- 1.8 Activities: new construction, restoration, cleaning, upholstery as well as repairs and maintenance.
- 1.9 New construction: the construction, mounting, conversion and/or adaptation of vehicles (including trailers) or parts of vehicles such as body works and/or undercarriages and all related preparation, execution and completion activities in the broadest sense of the word.
- 1.10 Restoration: all activities, including dismantling, repair and/or replacement of parts, revision and mounting, with the specific purpose of returning the object to its original condition, both in appearance and from a technical point of view, as it may be assumed was the case when the object was first delivered by the manufacturer, as well as preparing the object for use on the public roads where applicable.
- 1.11 Cleaning: all activities aimed at cleaning and/or polishing the object.
- 1.12 Upholstery: the renewal or repair of the upholstery of an object.
- 1.13 Repairs and maintenance: damage repairs, paint work and spraying, maintenance and any other work to or relating to vehicles or parts of vehicles which cannot be regarded as new construction, cleaning and/or restoration work.

2. Applicability

- 2.1 These general terms and conditions shall apply to all legal actions by user, as well as to contract(s) closed between the user and the other party and any preceding legal relationships, regardless of the place(s) of residence or establishment of the parties to the contract and also regardless of the place where the contract was established or is carried out. The other party shall receive a copy of the general terms and conditions before or on closing the contract.
- 2.2 Without prejudice to the stipulations from the previous paragraph, the other party may also peruse these general terms and conditions held at the District Court in The Hague or request the user to forward a copy immediately and at no cost.
- 2.3 These general terms and conditions shall at all times prevail over any terms and conditions used by the other party. Where necessary, user hereby explicitly dismisses the applicability of any general terms and conditions used by the other party.
- 2.4 If any stipulation of these terms and conditions is dissolved or proves to be void or otherwise non enforceable, all legally valid parts shall remain intact. The dissolved, void or non enforceable part shall be replaced by a stipulation that represents the meaning of the original stipulation to the extent permitted by law.

3. Offers

- 3.1 An offer from user is an invitation to a proposal.
- 3.2 If, however, an offer is or may be regarded as a proposal, it is deemed to be without engagement, also if the offer contains a term of acceptance or if it otherwise results from the offer that it is irrevocable.
- 3.3 If the proposal included in the offer is not without engagement, it shall be valid for two weeks after it was signed, unless user explicitly determines otherwise in the offer.
- 3.4 Although user shall carefully formulate his offers, including the price list, brochures and any other information that may suggest any (upcoming) legal relationship between the user and the other party, the actual activities to be carried out or the costs may deviate, and shall be subject to printing errors. The user shall therefore be unable to guarantee the accuracy and completeness of the information included herein, unless expressly agreed differently in writing.

4. Amendments

- 4.1 Deviating terms and conditions or changes to the contract shall be agreed between parties in writing only and shall not form part of these general terms and conditions.
- 4.2 If during the execution of the activities it becomes clear that they cannot be carried out or cannot be carried out in full due to the object's condition, its parts or goods made available by the other party, the user shall inform the other party regarding this. Parties shall then determine in mutual consultation if the contract needs amending. If necessary, the contract shall be changed reasonably and fairly.

5. Provisional sums; variations in the amount of work and materials

- 5.1 If a contract for certain activities incorporates one or more provisional sums or deductible amounts, the actual activities carried out and amounts supplied shall be charged.
- 5.2 As soon as the user foresees that the relevant provisional sum is to exceed the amount stipulated in the contract by more than 10%, the user shall inform the other party hereof. Parties shall then determine in mutual consultation if the contract is to be amended. The changes to the contract thus agreed shall be binding only after they have been confirmed in writing by the user and this confirmation has been signed by both parties.
- 5.3 Both the user and the other party shall have the right to dissolve the contract in the event of the situation referred to in article 5.2. In that case, the other party will remain liable for the activities carried out by the user up to the moment of dissolution.

6. Prices

- 6.1 If the other party is a consumer, prices shall apply inclusive of VAT and other fees, unless stipulated otherwise by the user. If the other party is not a consumer, the prices shall apply exclusive of VAT and other fees, unless stipulated otherwise by the user.

6.2 If after a contract has been agreed and before the agreed time of supply and/or termination of the activities the prices of tools, raw materials or parts, wages or any other price-determining factors change, the user shall be permitted to alter the price accordingly. If the price change is not reasonably and fairly acceptable, the consumer shall be authorised to dissolve the contract.

6.3 Price increases resulting from additions and/or changes to the contract made at the request of the other party shall be for the account of the other party.

6.4 At the request of the other party, the user shall provide an itemised invoice for the activities carried out. If a price was agreed beforehand, a written specification of the activities shall be provided at the request of the other party.

6.5 The other party must make any objections to any bill or invoice known within 10 days of receipt.

7. Payment

7.1 Payment shall take place immediately before the delivery of the object, unless parties have agreed differently (for example payment in advance).

7.2 If payment after the delivery of the object was agreed, the other party shall be obliged to settle the outstanding sum or the remaining part within thirty days of the invoice date.

7.3 However, user's claim shall remain fully due and payable, and the other party shall be in default if:

- (a) the other party has requested a suspension of payment or if a suspension of payment has been granted, its bankruptcy has been applied for or if it has been declared bankrupt, or its estate is assigned;
- (b) the other party's property or part thereof is seized;
- (c) the other party winds up, sells or transfers shares in (an essential part of) its company to a third party, or proceeds to do business in a different manner.

7.4 Debts incurred by the other party – regardless of what account – must be paid to the user in cash or by means of a giro or bank transfer.

7.5 In the reciprocal contract with the user, the other party is expected to perform first. The user shall perform in this case by supplying the object.

7.6 If the other party fails to settle any amount due in time, it shall be liable to pay an interest of 1% per month calculated over the amount due from the moment the term stipulated under this article has lapsed (whereby part of a month shall be regarded as one month), up to its full settlement, with no further notice of default being required.

7.7 All costs to be reasonably made by the user to obtain satisfaction outside the courts from the other party for all it owes the user shall be for the account of the other party.

7.8 If user must sue the other party in order to force compliance with the contract, the other party shall pay all costs incurred in the legal proceedings, such as the costs for legal assistance and lawyers, if the decision is in the user's favour in part or in full.

8. Delivery time

8.1 The delivery time stipulated by the user for the object is never a firm date under Section 6:83 sub a of the Dutch Civil Code; instead it is a term given without any obligation.

8.2 Changes to the contract as referred to in article 4.1 may result in the delivery times being exceeded. In the event of a change, the delivery time is deemed to have been extended by a non firm term that reflects the changes agreed.

8.3 After executing the agreed activities and notification hereof by the user to the other party, the other party is obliged to collect the relevant object within one week after the notification has been sent out.

8.4 If the other party does not meet the obligation stipulated in paragraph 8.3 of this article, it shall nevertheless be obliged to pay the sum owed, as if the object had been supplied. Moreover, in that case the user shall be authorised to charge the other party reasonable storage costs.

9. Guarantee

A. Users

1. The user guarantees that the activities it carries out or assigns to third parties are executed professionally and skilfully. This guarantee is awarded for one year following delivery of the object and upon full payment of the amount owed, unless agreed otherwise in writing.
2. The user may provide the other party with a document detailing guarantee conditions concerning the activities carried out.
3. With regard to goods used during the activities and not manufactured by the user, the guarantee and the term of guarantee of the supplier or manufacturer in question, if applicable, shall apply.
4. The guarantee described in A paragraph 1 of this article shall not apply if it concerns:
 - a. defects that are the result of work not carried out by the user or that is carried out carelessly and/or that are the result of exposing the object to extreme conditions or that are the result of construction errors in the object not made by or on behalf of user;
 - b. defects that are the result of the use of goods which have been made available by the other party to the user, unless the assignment was to clear those defects;
 - c. variations in colour in the paint work of the object not noticeable in the daylight with the naked eye;
 - d. damage to the paint work of the object caused by:
 - external influences;
 - parts not installed by the user or not processed by the user;
 - e. defects to objects which have not undergone further treatment on the user's premises following the delivery by the user, while this further treatment was professionally required and while the other party was informed in writing by the user no later than at the time of delivery of the object. This exclusion shall apply only if the defect and the default are related;
 - f. goods or activities regarding which the user on closing the contract explicitly indicates that he does not agree with the choice of materials, parts and/or work methods assigned to him by the other party;
 - g. goods in a condition that makes it impossible to sufficiently remedy or remove the defects present – such as corrosion – within the framework of what has been agreed, or when the goods have not been treated on the user's premises.
5. Any warranty claims as referred to in this article A shall lapse if:

- a. the other party fails to offer the object for an assessment/check within the term set by the user, which assessment/check is free of charge for the other party;
- b. in the event of visible defects the other party fails to submit a written claim with a clear description of the complaints within one month of delivery of the object;
- c. in the event of defects not externally visible the other party who is not a consumer fails to submit its claims in writing and with a clear description of the complaints within 14 days after discovering these defects;
- d. the other party fails to permit the user to repair the defect;
- e. activities that relate to the activities carried out by the user have been carried out by parties other than the user, without permission from the user, unless the other party can demonstrate the need for the immediate carrying out of these activities.

B. Users who are also FOCWA Eurogarant and/or FOCWA Guarantee Fund members

1. If the activities concern the repair and maintenance of a vehicle, the user who is also a FOCWA Eurogarant member and/or a FOCWA Guarantee Fund Member shall provide the other party with a FOCWA Eurogarant Guarantee Certificate or a FOCWA Guarantee Fund Certificate containing the guarantee stipulations concerning the repairs and maintenance carried out by the user or contracted out to third parties.
2. The FOCWA Guarantee Company shall not be obliged to provide a FOCWA Guarantee Certificate for activities carried out under commission from a motor company.
3. If the FOCWA Eurogarant member or the FOCWA Guarantee Fund Member has not issued a guarantee certificate, the guarantee as set out in paragraph A of this article shall apply.

10. Liability

- 10.1 User's liability for any damage to the object or goods belonging to the other party shall be limited to the amount paid out in such cases by its liability insurance company. For the duration of the contract the user shall have an adequate business liability insurance.
- 10.2 User shall not be liable for any theft or loss of goods belonging to the other party and/or to third parties which are in or on the object and which the user on whatever account has in its possession. Goods belonging to the other party are also understood to include cargo, inventory and written documents and negotiable instruments.
- 10.3 User shall not be liable for any indirect damage, also including but not restricted to consequential damage, loss of profit or any other damage resulting from or relating to the failure to realise the terms as referred to in article 8 and the early termination of introductory negotiations.
- 10.4 User's liability restrictions set out in this article 10 shall not apply in so far as this conflicts with any applicable mandatory law or in so far as the damage causing event was deliberate or attributable to the intentional recklessness of the user or its highest executive staff.

11. Force majeure

- 11.1 A user's default shall not be attributable if he is in a situation of force majeure.
- 11.2 Force majeure is understood to mean: any failure not attributable to user since it cannot be attributed to its fault, neither by law, legal action or according to socially accepted notions, including the circumstance where user is unable to carry out its services due to the (an attributable) fault or carelessness by a third party. Force majeure is also understood to include the following:
- (a) Interruption of operations of whatever nature, regardless of the manner in which it arose;
 - (b) Belated or overdue supply by one or more of user's suppliers;
 - (c) Transport difficulties or restrictions of whatever kind, hindering or restricting the transport to the user or from the user to the other party;
 - (d) War (threat), riots, sabotage, floods, fire, lockouts, plant occupation, strikes and new government measures;
- 11.3 In the event of force majeure, the user shall have the right to change the term of supply or to dissolve the contract out of court, without becoming liable to pay damages, within 3 weeks after a circumstance has arisen that leads to the force majeure.
- 11.4 Following the dissolution of the contract, the user shall be entitled to payment of all and costs made and/or activities carried out, which right the user entertains only in so far as it benefits the other party in the case of repairs and maintenance.

12. Replacement of parts

Any parts and/or materials replaced and/or remaining following the activities shall become the property of the user, unless parties agree otherwise in writing. In that event the other party shall take receipt of these parts and/or materials immediately following the delivery of the object.

13. Drawings and other documents

13.1 Drawings and other documents – with the exception of surveyor's reports and written documentation supplied by the other party – which form part of the contract or offer, shall remain the property of the user and may not be adopted or reproduced or given for perusal to third parties in any way in part or in full without user's permission. They shall be returned to the user at its first request.

14. Dissolution

- 14.1 Dissolution of the contract shall take place by means of a written declaration of the person authorised to do this. Before a written dissolution statement is addressed to a party, the party shall at all times give written notice of default to the other party and set the party a reasonable term to meet its obligations or to repair any failures whereby the failures must be accurately detailed in writing.
- 14.2 If the other party does not in time, in full or properly meet any obligation to pay resulting from any contract agreed with the user and as set out in article 5 of these general terms and conditions, the user shall be authorised to dissolve the contract in full or in part immediately without notice of default being required and without judicial intervention.
- 14.3 If the other party is a natural person and he dies, his joint heirs may choose to have the activities carried out in full, or to stop any activities already started with a compensation of the costs of activities already carried out by the user. Within one month after the decease of the other party, the joint heirs must inform the user which option they choose. If they fail to do so, the user shall be entitled to dissolve the contract without judicial intervention.

14.4 Upon dissolution of the contract as referred to in paragraphs 2 and 3 of this article, the user shall be entitled to claim payment of the entire sum agreed, if all activities have been carried out by the user or a pro rata part of the agreed price if the activities have been carried out in part, without prejudice to the right to compensation of any damage suffered by user resulting from the dissolution of the contract.

15. Retention of title and right of retention

- 15.1 All goods (and objects) (yet to be) delivered within the framework of a specific contract shall remain the exclusive property of the user until any and all current and future claims that the user has against the other party under the contract – or any other similar contracts - have been settled in full.
- 15.2 Until such time as the other party has settled all due amounts within the framework of a specific contract (and/or any other similar contracts), the user may retain possession of the other party's goods in question and recover his claim from it before anything else, unless the other party puts up sufficient surety to pay these amounts.
- 15.3 If the term of payment for an amount due for activities has lapsed as set out in article 7, the user shall also be entitled to remove goods that are its property and that have been mounted on the object or parts thereof, in so far as this does not damage the object. The user may charge the other party for any resulting costs.
- 15.4 In the event the user processes the goods referred to in paragraph 1 of this article by means of (auxiliary) goods supplied by or on behalf of user, the processed goods (main goods in the sense defined in article 3:4 of the Dutch Civil Code) shall be deemed to have been provided by the other party to the user as a possessory pledge.
- 15.5 If work have been carried out, the other party is obliged to store the goods it has received under retention of title with due care and as the user's recognisable property.
- 15.6 The other party is not permitted to encumber goods still subject to retention of title delivered and/or processed by the user beyond the constraints involved in the normal conduct of business.
- 15.7 If the other party fails to meet its payment obligations or has difficulties paying within the framework of a specific contract, the user shall be entitled to repossess any goods still held by the other party, which have been delivered under this specific contract and are subject to retention of title, without prejudice to any of the user's remaining rights. The user shall also be entitled to repossess and retain any processed goods held by the other party as possessory pledge until the other party has met all of its payment obligations.
- 15.8 If for some reason it is not possible or advisable to establish a possessory pledge, the other party is obliged to pledge goods that have been or are yet to be delivered, to the user by means of an authentic or registered private instrument.

16. Disputes

- 16.1 Any consumer dispute may, at the choice of the consumer to which choice the user shall be bound, be submitted by the consumer or the user to the FOCWA-NIVRE Disputes committee, which will decide by means of a binding advice in the dispute between parties, or to the competent civil court.
- 16.2 Disputes, not being consumer disputes, following from contracts to which these terms and conditions apply or as the result of further contracts that are the result thereof, may at the request of parties be submitted to the Supervisory Committee for the Body Work Industry which will decide in the dispute between parties by means of a binding advice.
- 16.3 In the event no use is made of the services of the above-mentioned Disputes committee, the district court of the district where the user is registered and/or runs its business shall have exclusive jurisdiction, in so far as it concerns a dispute about which the district court has jurisdiction.
- 16.4 In the event of a binding advice as referred to in 16.1 and 16.2, the procedure shall be as follows:
- (a) A dispute must be submitted in writing to the Secretary of the committee in question, addressed to Postbus 299, 2170 AG in Sassenheim, stating the names and addresses of parties and a clear description of the dispute and the claim, no later than six months after the dispute has arisen.
 - (b) The person who submits the dispute shall be liable to pay complaints charges in a manner indicated by the Secretary of the relevant Disputes committee. The complaints charges must be regarded as a contribution towards the costs involved in handling the dispute.
 - (c) The treatment of disputes is further established by regulations. A copy of the regulations, accompanied by a questionnaire to be filled in, shall be forwarded to the complaining party.
- 16.5 Disputes relating to or resulting from these general terms and conditions shall be settled by the competent Dutch court only. This stipulation forms a written contract in the sense of article 17 of the EEC Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters dated 27 September 1968.

17. Applicable law

Dutch law shall apply exclusively to these terms and conditions and to offers and contracts to which the terms and conditions apply in part or in full, as well as to disputes which result from these terms and conditions or which relate thereto.

1 juli 2010

These General Terms and Conditions were filed with the District Court in The Hague under number 58/2010 on 26 July 2010.

The original Dutch text of these general conditions shall apply as the sole authentic text and shall, in the event of differences or differences of interpretation, prevail over any translations of these conditions into other languages.