

GENERAL TERMS AND CONDITIONS FOR CONSUMERS FOR FINISHING COMPANIES IN THE NETHERLANDS

These General Terms and Conditions for Finishing Companies (plasterers and finishing companies, floor and terrazzo floor companies and ceiling and wall installation companies) in the Netherlands, represented by the Netherlands Business Association for Finishing Companies (Nederlandse Ondernemersvereniging voor Afbouwbedrijven - NOA) were drawn up in consultation with the Dutch Consumers Association (Consumentenbond) and home owners association Vereniging Eigen Huis in the framework of the SER Coordination Group Self Regulation Discussions and are effective as from 1 January 2007.

They were revised on 1 April 2013 and 1 January 2014. These Terms and Conditions were deposited by NOA with the Chamber of Commerce in Utrecht under number 30171023.

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ARTICLE 1 - Definitions

In these Terms and Conditions, the following will be taken to mean:

Consumer: natural person not acting in the exercise of a profession or business.

Contractor: natural person or legal entity, member of NOA, that issues quotations on a commercial basis and that undertakes plastering and/or finishing, floor and/or terrazzo floor and/or ceiling and wall installation work, and supplies the necessary products.

Work: the total of the work activities agreed between the Consumer and the Contractor, including the material supplied by the Contractor.

NOA: Netherlands Business Association for Finishing Companies.

ARTICLE 2 - Scope of application

These General Terms and Conditions apply to all agreements between Contractor and Consumer.

ARTICLE 3 - Offer

1. The offer for work is issued in writing or by electronic means unless this is impossible due to urgent circumstances.
2. The offer is dated and will remain irrevocable for a period of 30 days following receipt.
3. The offer contains a description of the work to be undertaken and the materials to be supplied that is sufficiently detailed to permit a sound assessment of the offer by the Consumer.
4. The offer specifies as precisely as possible the time or time period in which the work will be started and contains an indication of the duration of the work and a set or predicted date for completion.
5. The offer provides an indication of the price of the materials and the pricing method to be employed for the work to be undertaken: contract sum or cost plus.
 - a) In the case of the pricing method contract sum, the parties agree a fixed amount for which the work will be undertaken;
 - b) For the pricing method cost plus, the Contractor will issue an accurate specification of the price factors (including hourly rate and unit prices for the necessary materials). At the request of the Consumer, the Contractor will issue an indication of the expected implementation costs by specifying a guide price, unless in the judgement of the Contractor, in the specific circumstances, this is not reasonably possible.
6. The offer specifies the payment method.
7. The offer is accompanied by a copy of these General Terms and Conditions.

ARTICLE 4 - Establishment of the agreement

The agreement will be established following acceptance of the offer by the Consumer, preferably in writing or by electronic means.

ARTICLE 5 - Obligations upon the Contractor

1. The Contractor will undertake the work correctly, soundly and in accordance with the provisions of the agreement. The work will be undertaken within normal working hours, unless otherwise agreed.
2. In undertaking the work, the Contractor will comply with all applicable regulations as in force or entering into force at the moment of undertaking the work.
3. The Contractor is required to inform the Consumer of:
 - inaccuracies in the work commissioned, including work on an unsound subsurface;

- inaccuracies in the constructions and working methods demanded by the Consumer; shortcomings in the (non)movable property on which the work is being undertaken;
- shortcomings in or unsuitability of materials or provisions made available by the Consumer;

All unless the Contractor was not aware or was not reasonably required to be aware of these shortcomings or inaccuracies.

4. The Contractor is liable for damage unless not attributable to the Contractor.
5. The Contractor will ensure that the work is undertaken by duly qualified persons.
6. The Contractor indemnifies the Consumer against claims from third parties for compensation in as much as caused by the implementation of the work and attributable to negligence, carelessness or incorrect actions on the part of the Contractor himself or his subordinates or other assistants called in by him to undertake the work.

ARTICLE 6 - Obligations upon the Consumer

1. The Consumer will enable the Contractor to carry out the work.
2. The Consumer will ensure that the Contractor is in possession in good time of all approvals required for the work (including permits, etc.) and of the information to be provided for the work.
3. The Consumer will provide all available connections for power and water necessary for the work. The costs for electricity, gas and water will be for the account of the Consumer.
4. The Consumer must ensure that work to be undertaken by third parties and/or deliveries that are not part of the work of the Contractor are undertaken in such a way and at such a time that implementation of the work is not delayed, as a result. If a delay nonetheless occurs, the Consumer must duly inform the Contractor, in good time.
5. If the start or progress of the work is delayed by circumstances as intended in the previous section, the Contractor must compensate the Contractor for all resultant damage and costs if said circumstances can be attributed to the Consumer.
6. If the Consumer claims under the warranty conditions in article 15 of these Terms and Conditions, in order to determine the possible liability, the Contractor must be given an opportunity to carry out any necessary destructive investigation, in a manner that causes the least possible nuisance for the Consumer.
7. The Consumer must notify the Contractor preferably in writing of any shortcomings in the work within a reasonable time after he discovers or reasonably should have discovered those shortcomings.
8. The Consumer himself bears the risk for damage caused by:
 - inaccuracies in the commissioned work;
 - inaccuracies in the constructions and working methods demanded by the Consumer;
 - shortcomings in the (non)movable property on which the work is undertaken;
 - shortcomings in materials or equipment provided by the Consumer.This is without prejudice to the obligation of the Contractor to warn the Consumer pursuant to article 5 section 3.

ARTICLE 7 - Additional and less work

1. In the case of the pricing method contract sum as intended in article 3 section 5, after the agreement has been entered into, in accordance with the pricing method, the Consumer can award additional or less work, without a separate agreement being entered into, on condition that the balance of the resultant setoff does not exceed 10% of the price for the work.
2. Additional or less work for a total amount in excess of 10% of the price of the work must be agreed in advance, in writing or by electronic means, except in urgent circumstances.

ARTICLE 8 - Force majeure

1. If implementation of the work becomes temporarily impossible for one of the parties, the counterparty will be relieved from its obligations for that period.
2. If implementation of the work becomes permanently impossible for one of the parties due to a cause that cannot be attributed to that party, the counterparty will be entitled to terminate the implementation of the work (or have it terminated) in return for payment to the other party of all reasonably incurred costs.

ARTICLE 9 - Completion

1. If the completion date or the agreed time or period is exceeded, the Contractor will be required to compensate any demonstrable loss suffered as a consequence, unless the overrun cannot be attributed to him.
2. The work will be considered completed when the Contractor has informed the Consumer that the work is complete, and the Consumer has accepted the work.
3. The work will be considered completed:
 - if at least 14 days have passed after the Consumer has received the registered letter from the Contractor that the work is complete and the Consumer has failed within that time to accept the work;
 - when the Consumer once again takes the property on which the work was carried out into use, subject to the proviso that by taking into use part of the work, that part will be considered completed, unless the consequence of taking into use (completion) is not justified.

ARTICLE 10 - Payment in instalments

Parties may agree that payment in instalments will be made in accordance with the progress of the work. In that case, payment must be made at the latest two weeks following receipt of the invoice.

ARTICLE 11 - Final settlement

1. Within a reasonable term following completion, the Contractor will submit the final settlement to the Consumer.
2. The final settlement provides a clear description of the work, broken down according to the original order, and of any commissioned additional and/or less work.
3. In the final settlement, a final specification is given of the materials used and their costs, of the hours worked and the hourly rate and of all other costs. If applicable, a specification is further provided of additional and/or less work.
4. The specification referred to in the previous section is not provided in as much as the work was undertaken for a contract sum, with the exception of any commissioned additional and/or less work.
5. If the Contractor issued a guide price according to the pricing method cost plus, this guide price may not be exceeded by more than 10%, except for additional work subject to the provisions in article 7. The reason for any overrun of the guide price must be clearly explained in the specification.
6. Payment of the final settlement takes place within three weeks following receipt of the invoice.

ARTICLE 12 - Non-timely payment

1. The Consumer must pay the outstanding amount before the expiry of the payment date. If the Consumer fails to do this, the Contractor will send a payment reminder following expiry of that date, and will offer the Consumer an opportunity to still pay the outstanding amount within fourteen days following receipt of this payment reminder.
2. If following expiry of the payment reminder period, payment has still not been made, the Contractor is entitled to charge interest from the moment of default. This interest will be equal to the statutory interest rate.
3. Any extrajudicial costs incurred by the Contractor for enforcing payment of an amount owing may be charged on to the Consumer. The amount of these extrajudicial collection costs is subject to legal limits. These may be deviated from in favour of the Consumer.
4. If the consumer remains in default of payment of an instalment as intended in Article 10, the Contractor is entitled to suspend the work, on condition he has called upon the Consumer to make payment in writing or by electronic means. The provision in the previous sentence will be without prejudice to the right of the Contractor to demand payment of costs, damages and interest.
5. The Contractor remains owner of any materials not yet processed until the Consumer has fulfilled his payment obligation.
6. If the Contractor fails to pay to the Consumer an outstanding payment or compensation in time, he will be in default. If the Contractor still fails to pay within 10 days after having been duly reminded by the Consumer, the Consumer is entitled to take action in accordance with sections 2 and 3 of this article.

ARTICLE 13 - Non-compliance with the agreement

1. If one of the parties fails to comply with an obligation from the agreement, the counterparty may suspend compliance with the return obligation. In the event of partial or incorrect compliance, suspension will only be permitted in as much as justified by the shortcoming.
2. If one of the parties fails to comply with the agreement, the counterparty will be authorised to dissolve the agreement, unless the shortcoming does not justify dissolution, given its limited scope.

ARTICLE 14 - Ownership of drawings, designs, etc.

1. The designs, illustrations, descriptions, drawings, models, budgets and calculations, etc. issued by or on behalf of the Contractor, ownership of which the Contractor wishes to retain, will remain his property.
2. All rights established in respect of designs, illustrations, descriptions, drawings, models, etc. (copyrights, model rights, etc.) are reserved and must be honoured.

ARTICLE 15 - Warranty

Warranty provisions Plasterers and Finishing Companies

The Contractor guarantees that any shortcomings in the work will be corrected free of charge following completion during the periods referred to herein below, unless he demonstrates that the shortcoming is not related to the work.

Contractor and Consumer may deviate from the warranty conditions specified below, to the detriment of the Consumer. The Contractor may only appeal to any such deviation if:

- the Contractor has agreed to this prior to entering into the agreement with the Consumer and
 - this agreement is recorded in writing or by electronic means.
- The burden of proof for the existence of this agreement lies with the Contractor. The above provision is without prejudice to the fact that also following the specified periods for any shortcomings, in the work, the Contractor can still remain liable on the basis of the law.

This liability may extend to beyond the warranty period specified below or agreed between the parties.

Warranty Outdoor Plasterwork

1. The Contractor guarantees that the applied plasterwork:
 - a) will remain sufficiently attached to the subsurface;
 - b) will not tear in the plaster layer, unless this is caused by the movement of the subsurface and only in as much as the Contractor could not have reasonably predicted that movement.

2. The warranty is issued for a period of three years.

Warranty Indoor Plasterwork

1. The Contractor guarantees that the applied plasterwork:
 - a) will remain sufficiently attached to the subsurface;
 - b) will not tear the plaster layer, unless this is caused by movement of the subsurface, and only in as much as the Contractor could not have reasonably predicted that movement.
2. The warranty is issued for a period of five years.

Warranty provisions Floors and Terrazzo floor companies

1. The Contractor guarantees that any shortcomings in the work will be corrected free of charge following completion during the periods referred to herein below, unless he demonstrates that the shortcoming is not related to the work
 - for terrazzo work three years;
 - for plastic floor coating five years.
2. The warranty periods referred to in section 1 apply unless the Contractor and the Consumer have agreed a longer period.
3. Minor inconsistencies that do not detract from the usability, quality, durability, appearance and look of the delivered work are not covered by the warranty.
4. If the Contractor has issued written maintenance instructions to the Consumer at the moment the agreement is established, the warranty in respect of shortcomings caused by failure to maintain and/or treat the work in accordance with the instructions will expire. The burden of proof lies with the Contractor.
5. The above is without prejudice to the fact that the Contractor may also remain liable after the specified period pursuant to the law.

Warranty provisions Ceiling and Wall insulation companies

The Contractor guarantees that any shortcomings in the work will be corrected free of charge for a period of five years following completion, unless he demonstrates that the shortcoming is not related to the work. The above provision is without prejudice to the fact that also following the specified periods for any shortcomings in the work, the Contractor can still remain liable on the basis of the law.

Warranty Ceilings

The Contractor guarantees that the installed ceiling will be permanently suspended from the support structure.

Warranty Walls

The Contractor guarantees that the walls satisfy the Building Decree with regard to sound insulation, fire resistance and stability. Fouling by smoke, etc. and any discolouration for example as a consequence of UV radiation are excluded from the warranty.

ARTICLE 16 - Dispute settlement procedure

1. Disputes between the Consumer and the Contractor concerning the establishment or implementation of agreements regarding the services and goods supplied or to be supplied by the Contractor may be brought by either the Consumer or the Contractor before the Disputes Committee for Finishing Companies (Geschillencommissie Afbouw), P.O. Box 90600, 2509 LP The Hague (NL).
2. A dispute will only be processed by the Disputes Committee if the Consumer has first submitted his complaint to the Contractor.
3. After the complaint is submitted to the Contractor, the dispute may be brought before the Disputes Committee at the latest three months after it arose.
4. If the Consumer brings a complaint before the Disputes Committee, the Contractor is bound by this choice. If the Contractor wishes to do so, he must call upon the Consumer to state within five weeks whether he agrees. The Contractor must thereby announce that following expiry of this period, he will consider himself at liberty to bring this dispute before the court.
5. The Disputes Committee will issue its judgement taking account of the provisions of the regulations by which it is bound. The regulations of the Disputes Committee will be sent, on request. The decisions by the Disputes Committee are issued by way of binding recommendation. A charge is payable for the processing of a dispute.
6. The courts or the Disputes Committee referred to above are exclusively competent to hear disputes.

ARTICLE 17 - Sector guarantee of compliance with binding recommendations

1. NOA guarantees compliance with the binding recommendations from the Committee by its members, unless the member presents the binding recommendation to the court, for nullification, within two months following it being sent. If following assessment by the court this binding recommendation is upheld and the judgement demonstrating this fact is made final (and not open to appeal), this guarantee statement will once again apply.
2. For application of this guarantee, it is required that the Consumer submits a written or electronic appeal to NOA, P.O. Box 310, 3900 AH Veenendaal (NL), info@noa.nl.
3. If, before the dispute is processed at a hearing of the Disputes Committee and a final decision is passed, one of the following situations arises, NOA will not issue a compliance guarantee:
 - the member has been granted a moratorium or
 - the member has been declared bankrupt or
 - the business activities have been effectively terminated.Determinant for this latter situation is the date on which the termination of business was filed with the Trade Register or an earlier date, according to which NOA can plausibly demonstrate that the business activities were factually terminated.

4. This guarantee by NOA is limited to € 5,000 per binding recommendation. NOA issues this guarantee subject to the proviso that the Consumer issuing an appeal to this guarantee will transfer (assign) his claim on the basis of the binding recommendation up to a maximum of the paid amount, simultaneously with the settlement of his appeal to the compliance guarantee. For any additional amounts, NOA is subject to a best efforts obligation to ensure that the member complies with the binding recommendation. This best efforts obligation means that the Consumer is given the opportunity to also assign his claim for any additional amounts to NOA, at which point this

organisation, under its own name and for the account of NOA will submit a legal request for payment of the amount for settlement to the Consumer, or NOA will offer the consumer, on behalf of the Consumer and for the account of NOA, to undertake an (extra)judicial collection procedure, all at the discretion of NOA.

ARTICLE 18 - Amendment to the General Terms and Conditions

NOA will only amend these Terms and Conditions in consultation with the Consumentenbond and Vereniging Eigen Huis.

These general terms and conditions were drawn up in Dutch and translated into various other languages. In the event of any contradiction arising in respect of a translated version, the original Dutch version of these terms and conditions will prevail.