

Terms and Conditions

General Terms of contracting, delivery and payment of the Metaalunie sector group Holland Container Repair Association (HCRA). This text applies with effect from December 23, 2003 and has been deposited at the Office of the Clerk of the District Court in Rotterdam, The Netherlands

Article 1: Applicability

1.1. These conditions apply to all offers made by members of the Metaalunie sector group Holland Container Repair Association (referred to below as HCRA) and to all agreements they conclude and to all agreements that may be the result thereof.

1.2. The offeror/supplier is the HCRA member who uses these conditions. Such member is designated in these conditions as the contractor or seller. The other party is designated as the customer or buyer, a term which is deemed in these standard conditions to include the owner and/or user of the goods or the persons or businesses used by him or on his behalf.

1.3. These conditions may be used only by members of the Metaalunie sector group HCRA.

1.4. In these conditions repair shall also be deemed to mean maintenance, cleaning, modification, adjustment and/or inspection and the repaired goods shall also be deemed to mean that which is being or has been maintained, cleaned, modified, adjusted and/or inspected.

1.5. The standard conditions of the customer shall not apply and are expressly rejected.

Article 2: Offers

2.1. All offers are made without engagement.

2.2. If the customer supplies data, drawings etc. to the contractor, the contractor may assume them to be correct and may base his offer upon them.

2.3. The prices referred to in the offer are based on delivery ex works in accordance with Incoterms 2000. The prices are exclusive of turnover tax and packaging.

2.4. If his offer is not accepted, the contractor has the right to charge the customer for all the costs which he has had to incur in making his offer

Article 3: Rights of industrial and intellectual property

3.1. Unless agreed otherwise, the contractor retains the copyright and all industrial property rights in the offers made by him and in designs, illustrations, drawings, models, test models, software etc. supplied by him.

3.2. The rights to the data referred to in paragraph 1 shall remain the property of the contractor irrespective of whether costs are charged to the customer for their production. Such data may not be copied, used or shown to third parties without the express consent of the contractor. If this provision is infringed, the customer shall owe the contractor a penalty of EUR 25,000. This penalty may be claimed in addition to any compensation owed by law.

3.3. The customer must return the data supplied to him as referred to in paragraph 1 at the first request of the contractor within the period specified by the contractor. In the event of an infringement of this provision the customer shall owe the contractor a penalty of EUR 1,000 per day. This penalty may be claimed in addition to any compensation owed by law.

Article 4: Advice, designs and materials

4.1. The customer cannot derive any rights from advice and information obtained from the contractor if they do not relate directly to the order.

4.2. The customer is responsible for the drawings and calculations made by him or on his behalf and for the functional suitability of the materials prescribed by him or on his behalf.

4.3. The customer shall determine and is responsible for the extent and effectiveness of the repair(s) and/or other work to be carried out. The customer shall decide on the (technical) specifications by reference to which the repair(s) and/or other works are ultimately carried out.

4.4. The customer shall indemnify the contractor against any claim by third parties relating to the use of drawings, calculations, samples, models and so forth supplied by or on behalf of the customer.

4.5. The customer may, at his own expense, examine (or arrange for the examination of) the materials which the contractor wishes to use before they are processed. If the contractor suffers damage as a result, this shall be borne by the customer.

Article 5: Delivery and/or repair period

5.1. The period within which an estimate is provided shall be approximately 5 working days and the period within which delivery will be effected or a start made on the repair shall be approximately 10 working days.

5.2. In fixing the period within which an estimate is provided or in fixing the delivery and/or repair period the contractor shall assume that he can execute the order in the circumstances known to him at that time.

5.3. Any fluctuation in the supply of containers in relation to the average number of containers supplied by the customer over a preceding period of 12 months may result in a derogation from the periods referred to in paragraph 1.

5.4. Derogations as referred to in paragraph 3 shall be notified by the customer to the contractor within a reasonable period after the customer becomes aware of them or could reasonably be expected to have become aware of them.

5.5. The periods referred to in paragraph 1 shall start when agreement has been reached on all technical details, all necessary data, final drawings etc. are in the possession of the contractor, the agreed payment or instalment has been received and the necessary conditions for execution of the order have been fulfilled.

5.6. (a) If circumstances occur other than those known to the contractor when he determined the delivery and/or repair period, the contractor may extend the delivery and/or repair period by the time necessary to execute the order in the circumstances. If the work cannot be fitted into the planning schedule of the contractor, it shall be completed as soon as his planning schedule permits this.

(b) If there is extra work, the delivery and/or repair period shall be extended by the time that is necessary to supply (or arrange for the supply of) the materials and parts for this purpose and to carry out the additional work. If the extra work cannot be fitted into the planning schedule of the contractor it shall be completed as soon as his planning schedule permits this.

(c) If there is a suspension of obligations by the contractor, the delivery and/or repair period shall be extended for the duration of the suspension. If continuation of the work cannot be fitted into the planning schedule of the contractor, the work shall be completed as soon as his planning schedule permits this.

Article 6: Transmission of risk

6.1. In the case of delivery ex works, in accordance with Incoterms 2000, the risk in relation to the goods shall pass at the moment when the seller makes them available to the buyer.

6.2. Irrespective of the provisions of the previous paragraph, the customer and the contractor agree that the contractor will arrange for the carriage. The risk of storage, loading, carriage and unloading shall be borne by the customer in this case too. The customer may insure himself against these risks.

6.3. Even if the seller installs and/or assembles the goods sold, the risk in relation to the goods shall pass at the moment when the seller makes them available to the buyer at the business premises of the seller or at another agreed place.

6.4. If a purchase involves a trade-in and the buyer continues to use the goods to be traded in pending delivery of the new goods, the risk in relation to the goods to be traded in shall continue to be borne by the buyer until the moment at which he transfers them to the possession of the seller.

Article 7: Price changes

7.1. If price increases have occurred since the date on which the agreement was concluded, for example as a result of changing legislation or regulations, and performance of the contract has not yet been completed by the contractor, the contractor may pass on an increase in the price-determinants on to the customer.

7.2. If the customer is a consumer, i.e. a natural person not acting in the course of an occupation or business, and the price increase referred to in paragraph 1 occurs within three months after the date on which the agreement is concluded, the customer has the right to terminate the agreement.

7.3. Payment of the price increase as referred to in paragraph 1 shall take place together with payment of the principal or the last instalment.

7.4. If goods are supplied by the customer and the contractor is prepared to use them, the contractor may then charge a minimum of 20 percent of the market price of the delivered goods.

Article 8: Impossibility of performance

8.1. The contractor shall be entitled to suspend performance of his obligations if he is temporarily prevented from performing them by circumstances that could not be foreseen at the time of the conclusion of the agreement and which are beyond his control.

8.2. Circumstances which could not be foreseen by the contractor and are beyond his control include the circumstance that suppliers and/or subcontractors of the contractor fail to fulfil their obligations or fail to do so in time, weather conditions (in particular a storm with a wind speed of at least fourteen metres per second as determined by the Royal Netherlands Meteorological Institute (KNMI) or a branch thereof), earthquakes, fire, acts of terrorism, vandalism, loss or theft of tools, the loss of materials to be processed, road blocks, strikes or stoppages and import or trade restrictions.

8.3. The contractor shall not be entitled to suspend performance if performance is permanently impossible or if a temporary impossibility has lasted for longer than six months. The agreement may then be terminated in respect of such part of the obligations as have not yet been performed. In that case the parties shall not be entitled to compensation for damage suffered or yet to be suffered as a result of the termination.

Article 9: Scope of the work

9.1. The customer shall ensure that all licences, exemptions and other decisions that are necessary in order to carry out the work are obtained in good time.

9.2. The customer shall be responsible for performing the requisite formalities when containers are removed from international circulation in the context of performance of the present agreement and these containers no longer leave the Netherlands. The customer shall also arrange for payment of any import duties and/or taxes owed on the value of these containers to the Dutch tax authorities.

Article 10: Execution of the work

10.1. The customer shall ensure that the contractor can carry out his activities without interruption and at the agreed time and that, when executing work at a location other than his own business premises, he has access to the requisite facilities such as:

- gas, water and electricity;
- heating;
- a lockable and dry storage room;
- facilities provided pursuant to legislation and regulations on health and safety at work and/or the environment.

10.2. The customer shall be liable for all damage as a result of the loss, theft or burning of or damage to tools, materials and other property of the contractor located at the place where the work is performed.

10.3. The customer shall ensure that documents (including, but not limited to, the documents required for both receipt and dispatch), instructions and so forth are in the possession of the contractor in good time. The contractor accepts no liability whatever for the incorrectness, inaccuracy or incompleteness of these instructions and/or documents.

10.4. If the carrier used by the customer refuses to sign a receipt for steel pieces and/or their technical condition, the contractor shall not be liable for the consequences in terms of the number and/or technical condition thereof. Subject to proof to the contrary, the number and/or technical condition as referred to in the records of the contractor shall be deemed to be correct.

10.5. If there are unworkable conditions, including unworkable weather conditions, the periods referred to in article 5, paragraph 1, shall be extended by the resulting period of delay.

Unworkable conditions shall be deemed to include all conditions, including unworkable weather conditions (such as precipitation, wind and frost) which are responsible for causing an (unsafe) working situation which does not comply with the relevant requirements of legislation and regulations and as a result of which the work cannot be carried out in accordance with the requirements of good craftsmanship.

10.6. If the customer fails to discharge his obligations as referred to in the previous paragraphs and the work is delayed as a result, the work shall be executed as soon as the contractor's planning schedule permits this. In addition, the customer shall be liable for all loss or damage suffered by the contractor as a result.

Article 11: Completion of the work/acceptance of the work and claims

11.1. If the customer wishes to have an inspection, he shall give notice of this in writing to the contractor within 2 working days of being notified that the goods are ready. The customer shall in that case (but only, of course, when the container is still present at the depot) be obliged to have the actual inspection carried out within 5 working days of the date on which he gives notice that he wishes the container to be inspected. The contractor shall present on one occasion the repaired goods and/or other work that has been carried out for inspection at the expense of the customer.

11.2. If the customer does not approve the work, he shall be obliged to give written notice of this to the contractor, specifying the reasons, within 2 working days of the date on which the inspection referred to in paragraph 1 has taken place, and to give the contractor the opportunity to repair any defect or carry out the repair or other work again or to redeliver the rejected part of the work. The provisions of this article shall apply once again to this delivery.

11.3. The work shall be deemed to have been delivered and accepted when:

(a) the customer has approved the work;

(b) the container has been used by the customer, which is deemed to include the removal of the container from the depot of the contractor by or on behalf of the contractor; if the customer uses part of the work, that part shall be deemed to have been delivered;

(c) the customer has not arranged for the inspection referred to in paragraph 1 to be carried out within the specified period of 5 working days;

(d) the customer does not approve the work owing to minor defects or missing parts which can be repaired or supplied within 48 hours (provided that this is on normal working days) and which do not prevent such use of the work.

11.4. The contractor shall deal with a complaint only if the customer has already fulfilled all his obligations to the contractor.

11.5. Defects shall in any event not be dealt with by the contractor if they are a consequence of:

- normal wear and tear;
- deterioration in quality due to storage;
- injudicious use;
- maintenance that is not carried out or not carried out properly;
- installation, fitting, alteration or repair by the customer or by third parties;
- use of materials, choice of materials or method of repair prescribed and/or supplied by or on behalf of the customer;
- emergency repair(s) carried out at the request of the customer.

Article 12: Storage

12.1. The contractor is entitled to store the goods of the customer in the open air before, during and after repair and/or other activities. Storage is deemed to mean the keeping of goods belonging to or under the management of the customer at the time of the order, whether or not in exchange for payment, for a fixed or indeterminate period.

12.2. The storage shall start on the day that the goods are delivered by or on behalf of the customer and shall end on the day that the goods are collected by or on behalf of the customer. For this purpose, part of a day shall count as a full day. The storage rates charged by the contractor shall apply to storage by the contractor.

Article 13: Liability

13.1. The contractor is liable for damage which the customer suffers and which is the direct and sole result of a failure attributable to the contractor. However, only loss or damage for which the contractor is insured will be eligible for compensation.

13.2. If there is no insurance cover and the contractor is nonetheless liable, for example in the case of gross negligence or intent on the part of the contractor or his subordinates, his liability shall be limited to the repair of the damage without charge. If the estimated costs of the repair exceed the economic value of the relevant container, the maximum liability of the contractor shall be this value.

13.3. If the estimated costs of repair or the amount of the damage exceed(s) the economic value of the relevant container, the maximum liability of the contractor shall be this value.

13.4. The following are not eligible for compensation under any circumstances:

(a) consequential loss or damage, including for example loss or damage due to business standstills and loss of profit;

(b) damage to goods which are in the vicinity of the place where the work is being carried out;

(c) damage which arises as a result of

- the manner and place of storage, including but not limited to damage caused by weather conditions, in particular storm, when there is a wind speed of at least fourteen meters per second as measured by the Royal Netherlands Meteorological Institute (KNMI) or a branch thereof, or by water levels, earthquake, fire and explosion;
- acts of terrorism or vandalism;
- the nature and natural state of the goods in storage.

13.5. The customer shall indemnify the contractor against all claims of third parties in respect of any damage which is the result of the fact that, at the request of the customer, the technical specifications have been changed, the repair and/or other work proposed by the contractor in the quotation is not executed or not executed in its entirety or is executed differently and, as a result, the repaired or otherwise modified goods do not fulfil or no longer fulfil the relevant statutory requirements.

13.6. The customer shall indemnify the contractor against any damage caused by cargo residues, whether or not visible, remaining in the container presented for repair and/or storage, including any radiation and gases, if and in so far as the contractor was unaware of its harmfulness and could not reasonably be expected to have known of its harmfulness. The contractor undertakes, in the case of doubt as to the harmfulness of the cargo residues found in the container, to report this immediately to the customer.

Article 14: Payment

14.1. Payment shall be made at the place of business of the contractor or by remittance to an account designated by the contractor.

14.2. Unless agreed otherwise, payment shall be made as follows:

- (a) cash in the case of an over-the-counter sale;
- (b) if payment in instalments has been agreed:
 - o 40% of the total price at the time the order is placed;
 - o 50% of the total price after the material is supplied;
 - o 10% of the total price upon completion;
- (c) in all other cases: within 30 days of the date of the invoice.

14.3. Regardless of the agreed terms of payment, the customer shall be obliged, at the request of the contractor, to provide such security for the payment as the contractor deems sufficient for the payment. If the customer fails to do so within the specified period, he shall be deemed to be in immediate default. The contractor shall in that case have the right to terminate the agreement and recover his loss or damage from the customer.

14.4. The customer does not have the right to set off claims against the contractor, unless the contractor has been declared bankrupt.

14.5. The full claim for payment shall be immediately due and exigible if:

- (a) a payment period has been exceeded;
- (b) the customer has been declared bankrupt or has applied for a suspension of payments;
- (c) the property or accounts receivable of the customer are seized;
- (d) the customer (being a legal entity) is wound up or liquidated;
- (e) the customer (being a natural person) is made the subject of a guardianship order or dies.

14.6. If payment has not been made within the agreed period for payment, the customer shall immediately owe interest to the contractor. The interest shall be 10% per year or the statutory rate of interest, whichever is the higher. For the purpose of calculating the interest, part of a month shall be treated as a full month.

14.7. If payment has not been made within the agreed period for payment, the customer shall owe the contractor all extrajudicial costs of recovery, subject to a minimum of EUR 50.

The costs shall be calculated on the basis of the following table:

on the first EUR 3,000	15%
on any additional amount up to EUR 6,000	10%
on any additional amount up to EUR 15,000	8%
on any additional amount up to EUR 60,000	5%

on any additional amount over EUR 60,000 3%

If the extrajudicial costs actually incurred exceed the amount as calculated above, the costs actually incurred shall be owed.

14.8. If the contractor is held to be the party in the right in legal proceedings, all costs which he has incurred in connection with the proceedings shall be borne by the customer.

14.9. Without prejudice to the above provisions, payment shall be deemed to have been made in the first place in satisfaction of older claims that are still outstanding, irrespective of whether different instructions are given with the payment.

Article 15: Reservation of title and right of pledge

15.1. After delivery of the goods the contractor shall retain title to them as long as the customer:

(a) fails or subsequently fails to perform his obligations under this agreement or other similar agreements;

(b) fails or subsequently fails to pay for work performed or yet to be performed under such agreements;

(c) has not paid claims that result from the non-observance of the above-mentioned agreements such as damage, penalties, interest and costs.

15.2. As long as title to delivered goods is retained by the contractor, the customer may not encumber them other than in the normal course of his business.

15.3. After the contractor has invoked his reservation of title, he may retake possession of the delivered goods. The customer shall allow the contractor to enter the place where the goods are situated.

15.4. The contractor has a pledge and a lien, against any person who requires the handing over of goods, documents and moneys which the contractor has or will have in his possession on any account and for any purpose whatever, on all containers of the customer which he has in his possession for all claims which the contractor has or may obtain against the customer or owner.

15.5. The person who has made available the said goods, documents and moneys to the contractor shall be deemed to be competent for this purpose. The customer accepts full responsibility for the consequences - whatever they may be - of any lack of competence.

15.6. The said things, documents and moneys shall serve as collateral for the contractor for all claims which he has or will obtain against the customer.

15.7. If the claim(s) is/are not paid or not paid in time, the collateral shall be sold in the manner determined by law or - if the parties agree - by agreement under hand.

Article 16: Termination

If the customer wishes to terminate the agreement in circumstances where the contractor is not in default and the contractor agrees to this, the agreement shall be terminated by mutual consent. The contractor shall in that case be entitled to compensation for all pecuniary damage, such as any loss suffered, loss of profit and costs incurred.

Article 17: Applicable law and choice of forum

17.1. The law of the Netherlands is applicable.

17.2. The Vienna Convention on Contracts for the International Sale of Goods (CISG) is not applicable, nor is any other international regulation the exclusion of which is permissible.

17.3. Only the civil court that has jurisdiction in the place of establishment of the contractor may take cognizance of disputes, unless this would be contrary to peremptory law. The contractor may deviate from this rule of jurisdiction and apply the statutory rules governing jurisdiction.

17.4. The parties may agree a different form of dispute resolution such as arbitration or mediation.

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