

General Terms and Conditions of The Coatinc Company Holding B.V.

and all of its affiliates that reference these conditions.



§ 1. General, scope of applicability

1.1 With the exclusion of all other terms and conditions, these General Trading Conditions (hereinafter the "Conditions") apply to and are an integral part of all quotes and agreements for the provision of all deliveries and services (including contracting) by the Contractor; we do not consent to any of the Client's other conditions or their conditions that deviate from those stipulated in this document, unless we explicitly agree upon the validity thereof in writing. Even when we are aware of Client's other conditions or conditions that deviate from our conditions, our Conditions also apply without reservation to the delivery or work for the Client.

1.2 Our Conditions also apply to all future transactions with the Client.

§ 2. Definitions

These conditions contain the following terms and are used in the sense listed below:

2.1 "Client": the (legal) entity requesting a quote or issuing instructions to provide deliveries or perform services.

2.2 "Contractor" and "we" "us": means the legal entities of our group of companies referred to in these Conditions of which the Client requests a quote or issues instructions to provide or perform services.

2.3 "Quote(s)": the quote(s) provided by the Contractor to the Client that stipulate the conditions that an eventual assignment will be subject to.

2.4 "Order" respectively "Assignment": the Order respectively Assignment commissioned by the Client of the Contractor pertaining to the provision of deliveries, including contracting work, subject to the conditions and provisions stipulated in the Quote.

2.5 "Order Confirmation(s)": the confirmation(s) provided by the Contractor to the Client that the Assignment commissioned by the Client is acceptable and is thereby a confirmation of the applicable conditions and provisions.

2.6 "Agreement(s)": the agreement between the Client and Contractor about the Assignment and the applicability of the conditions and provisions.

2.7 The "Work": the services, goods, the surface finishing respectively refinement work to be performed according to the Agreement.

2.8 "Refinement": the surface finishing respectively refining work using galvanization (high temperature galvanization respectively normal temperature galvanization and centrifugal galvanization) or coating respectively combinations of galvanization and coatings (duplex process).

2.9 "Coats": the surface finishing and refining work using passivation, anodizing, powder coating and wet painting.

§ 3. Request, quote, entering into the Agreement

3.1 The Client is required to inform us in his request and at the latest in his Order of the material quality, material thickness, dimensions and amount of the surface to be refined in m², the workpiece weights, any previous pre-treatment of the components to be refined by us and the desired type of surface finishing, and provide drawings or at least sketches of the workpieces if these are complex or large components, provide us with a sample of the workpieces if these are small metal workpieces and indicate enclosed and/or hidden spaces.

3.2 Our Quotes are subject to confirmation.

3.3 The Agreement between the Contractor and the Client is entered into when it is signed or when the Contractor receives a written acceptance from the Client. In the absence of a written Agreement, in the event of differences between the Quote, Assignment and Assignment Confirmation, only the Assignment Confirmation shall be deemed binding.

§ 4. Hot-dip galvanization within the normal temperature range

4.1 Unless otherwise agreed, the components delivered to us are to be galvanized within the normal temperature range (normal temperature galvanization).

4.2 The nature of our work activities focus exclusively on the agreed upon technical instructions. If such instructions have not been agreed upon, we are obligated to provide professional galvanization using materials and workmanship in accordance with the recognized technical practices, in particular according to NEN-EN-ISO 1461. If we are commissioned by the Client to provide hot-dip galvanization and also prepare the coating (see § 8) of the galvanized components, then the Client is aware and accepts that the zinc layer may be thinner in some places than the minimum zinc layer thickness stipulated in the norm NEN-EN-ISO 1461.

4.3 The chemical composition and mechanical properties of the steel materials that must be refined using hot-dip galvanization must be suitable for hot-dip galvanization and/or coating. Steel materials that conform to other standards and/or other properties may only be delivered to us after the Client has specifically requested this exception beforehand and the request is accepted by us in writing.

4.4 The Client is obligated to provide us, at the latest together with the order, the required order specification when stipulated in the DAST directive 022, "Feuerverzinken von tragenden Stahlbauteilen" (hot-dip galvanization of structural steel components). Before submitting the Order, the Client is obligated to check whether the DAST directive 022 applies. Any additional costs (for inspections, measurements, etc.) arising from the applicability of the DAST directive 022 (excluding the price of hot-dip galvanization, which is subject to § 4 of these Conditions) will be charged on by the Contractor to the Client.

4.5 The galvanizing process sometimes causes cracks in and on galvanized steel materials and steel structures, which cannot be prevented with current techniques ("liquid metal induced cracking (LMAC)"). Moreover, when fine-grain structural steel is used, hydrogen embrittlement must be allowed for and the formation of cracks as a consequence thereof, where the prevention of such damage to the steel materials/steel structures requires sandblasting to standard degree of purity SA 2 1/2 prior to galvanizing; we must be notified of the delivery of such steel materials no later than the time of delivery.

4.6 The Contractor also cannot be held liable for liquid metal induced cracking (LMAC) and cracking that can arise from hydrogen embrittlement and any attendant damage.

§ 5. Powder coatings

5.1 If the Contractor accepts an assignment that includes powder coating work, said work will be carried out by the Contractor in accordance with NEN-EN 15773:2009 unless explicitly agreed otherwise.

5.2 The delivery of components to be refined with powder coatings must be delivered in a state suitable for the coatings. To this end, suitable for coating means, in particular, that the components to be coated are demagnetized and that the materials and surface to be refined are free from defects that could negatively affect the techniques used, corrosion protection, the adhesion to the surface material and/or the outward appearance. The products to be refined shall be manufactured using rolled products and free from defects such as cracks, pore clusters, enclosed foreign substances and doubles, with casting shrinkage cavities, cold laps, shrinkage cracks and notch cracks and swirls and blow holes. In particular, the surfaces must be free of inhibitors (such as zinc and sulfur), silicone, preservatives, lubricants and cutting fluids.

5.3 The Client is obliged to provide us with descriptions of the following criteria at the latest upon delivery of the components:

- material composition (determines raster type, structure, strength, hardness, toughness, and activatability)
- purity (determines the homogeneity of the structure, which is especially of interest at the level of the surface zone)
- heat treatment and surface finishing condition
- internal stresses.

5.4 Steel or aluminum powder coatings must be expressly agreed upon in writing.

§ 6. Wet coatings

6.1 If the Contractor accepts an assignment that includes wet coating work, the work to be carried out by the Contractor will be in accordance with NEN-EN-ISO 12944 unless explicitly agreed otherwise.

6.2 The components to be refined with wet coatings must be delivered in a condition suitable for coating. To this end, suitable for coating means, in particular, that the components to be coated are free from defects that could negatively affect the techniques used, corrosion protection, the adhesion to the surface material and/or the outward appearance. The workpieces shall be manufactured using rolled products and free from defects such as cracks, pore clusters, enclosed foreign substances and doubles, with casting shrinkage cavities, cold laps, shrinkage cracks and notch cracks and swirls and blow holes. In particular, the surfaces must be free of inhibitors (such as zinc and sulfur), silicone, preservatives, lubricants and cutting fluids.

6.3 On delivery, the parts supplied to us must have already been prepared allowing for and observing the stipulations in NEN-EN-ISO 12944 Parts 1 to 5.

6.4 With coated parts, the complete curing of the coating is especially dependent on the outside temperature and may take several weeks. The coated components will be reported ready for shipment and sent with the degree of dryness in accordance with NEN-EN-ISO 9117-5. The Contractor cannot be held liable for damage to the coating during transport that can be attributed to the coating not being completely cured nor liable for damage arising therefrom.

§ 7. Passivation

7.1 Passivation is a form of temporary surface protection. We do not provide a guarantee for the duration of the protection given the temporary nature of the passivation layer.

§ 8. Duplex process

8.1 The components that we will refine using the duplex process are subject to the provisions for hot-dip galvanization stipulated in § 4.

8.2 In addition, surface finishing using the duplex process is subject to the provisions for powder coatings (§ 5), when the second refinement step consists of applying powder coatings on the components to be refined, respectively the provisions for wet layers (§ 6), when the second refinement step consists of applying wet layers on the components to be refined.

§ 9. High temperature galvanization

9.1 The nature of our work activities focus exclusively on the agreed upon technical instructions. If such instructions have not been agreed upon, we are obligated to provide professional galvanization using materials and workmanship in accordance with the recognized technical practices, in particular according to NEN-EN-ISO 1461. If we are commissioned by the Client to provide hot-dip galvanization and also prepare the coating (see § 8) of the galvanized parts, then the Client is aware and accepts that the zinc layer may be thinner in some places than the minimum zinc layer thickness stipulated in the norm NEN-EN-ISO 1461. The DAST directive 022 does not apply to high temperature galvanization.

9.2 The chemical composition and mechanical properties of the steel materials that must be refined using hot-dip galvanization must be suitable for hot-dip galvanization and/or coating. Steel materials that conform to other standards and/or other properties may only be delivered to us after the Client has specifically requested this exception beforehand and the request is accepted by us in writing.

9.3 The galvanizing process sometimes causes cracks in and on galvanized steel materials and steel structures, which cannot be prevented with current techniques ("liquid metal induced cracking (LMAC)"). Moreover, when fine-grain structural steel is used, hydrogen embrittlement must be allowed for and the formation of cracks as a consequence, where the prevention of such damage to the steel materials/steel structures requires sandblasting to standard degree of purity SA 2 1/2 prior to galvanizing; we must be notified of the delivery of such steel materials no later than the time of delivery.

9.4 The Contractor also cannot be held for liquid metal induced cracking (LMAC) and cracking that can arise from hydrogen embrittlement and any attendant damage.

§ 10. Centrifugal galvanization

10.1 The nature of our work activities focus exclusively on the agreed upon technical instructions. If such provisions have not been agreed upon, we are obligated to provide professional galvanization using materials and workmanship in accordance with the recognized technical practices. If we are commissioned by the Client to provide hot-dip galvanization and also prepare the coating (see § 13) of the galvanized components, then the Client is aware and accepts that the zinc layer may be thinner in some places than the minimum zinc layer thickness stipulated in the norm NEN-EN-ISO 1461.

10.2 The chemical composition and mechanical properties of the steel materials that must be refined using hot-dip galvanization must be suitable for hot-dip galvanization and/or coating. Steel materials that conform to other standards and/or other properties may only be delivered to us after the Client has specifically requested this exception beforehand and the request is accepted by us in writing.

10.3 The galvanizing process sometimes causes cracks in and on galvanized steel materials and steel structures, which cannot be prevented with current techniques ("liquid metal induced cracking (LMAC)"). Moreover, when fine-grain structural steel is used, hydrogen embrittlement must be allowed for and the formation of cracks as a consequence, where the prevention of such damage to the steel materials/steel structures requires sandblasting to standard degree of purity SA 2 1/2 prior to galvanizing; we must be notified of the delivery of such steel materials no later than the time of delivery.

10.4 The Contractor also cannot be held for liquid metal induced cracking (LMAC) and cracking that can arise from hydrogen embrittlement and any attendant damage.

§ 11. Anodizing

11.1 Unless otherwise agreed, the anodizing of components will be carried out in accordance with the applicable standards and regulations. The Client is obligated to supply the components to be refined in the manner stipulated in the applicable provisions so that the Contractor can treat the components without further pre-treatment and in accordance with applicable regulations.

11.2 Given the many application areas and the nature thereof, the Contractor can only guarantee that the work activities will be performed in accordance with the instructions, and where appropriate, in accordance with the applicable specifications, quality standards and applicable standards and regulations. When anodizing, a failure rate of 3% is the norm; this is inherent in the process. The Contractor cannot be held liable if a failure is within the 3% norm.

§ 12. Dacromet® and Geomet® coatings

12.1 Unless otherwise agreed, the coating of components with Dacromet® and Geomet® will be carried out in accordance with specifications and quality standards issued by NOF Metal Coatings. The Client is obligated to supply the components to be refined in the manner stipulated in the applicable provisions so that the Contractor can treat the components without further pre-treatment and in accordance with applicable regulations.

12.2 Given the many application areas and the nature thereof, the Contractor can only guarantee that the work activities will be performed in accordance with the instructions, and where appropriate, in accordance with the applicable specifications, quality standards and applicable standards and regulations of NOF Metal Coatings. Dacromet® and Geomet® are applied using a bulk-centrifuge process where the failure rate of 3% is the norm; this is inherent in the process. The Contractor cannot be held liable if a failure is within the 3% norm.

§ 13. Additional work

13.1 We will only carry out additional work on components (aligning components, edging, inserting drainage openings, fine polishing, fastening small components, attaching and securing small parts on components) when explicitly requested by and under the responsibility of the client.

13.2 The supervision of pre-treatment work is solely a matter for the Client.

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§ 14 Prices

14.1 Our prices are always ex works [EX WORKS (EXW) Incoterms 2010], exclusive of VAT and packaging.

14.2 Work activities in addition to the surface finishing process, including in particular the removal of oil, grease, rust, old coatings/layers and permanent markers and other contaminants due to the adding of openings and repeated coatings and/or dipping, are not included in the prices quoted by us and these charges are calculated extra. The Client shall always pay for Additional Work and/or deliveries, of whatever nature whatsoever, where the absence of a written protest within a period of seven calendar days constitutes acceptance of the scope and price.

14.3 We explicitly reserve the right to change our prices after entering into the agreement in the event of reductions or increases in costs, in particular due to (and not limited by) collective bargaining agreements or changes in material prices. We will provide appropriate evidence hereof when requested by the Client.

14.4 Our prices are exclusive of VAT, which is listed separately on the invoice at the rate applicable on the invoice date.

§ 15 Delivery and compliance period

15.1 The delivery/compliance period stipulated by us only begins when all technical questions have been clearly resolved. Delivery/compliance periods are always approximate and never a strict deadline.

15.2 Except for gross negligence on the part of the Contractor, exceeding an expressly agreed strict delivery period does not entitle the Client to completely or partially dissolve the agreement. The Client is obligated to accept the Work and is not entitled to refuse partial deliveries. The Contractor cannot be held liable for Client damages as a result of exceeding delivery terms, unless the overrun is due to gross negligence on the part of the Contractor.

15.3 The fulfillment of our specified delivery/compliance periods assumes that the Client fulfills their obligations in a timely manner and in accordance with the stipulated provisions, in particular, that client complies with the agreed upon supply date for the materials that are suitable for galvanizing in accordance with NEN-EN-ISO 1461 and NEN-EN-ISO 14713, and in compliance with the Client obligations stipulated in accordance with DAST directive 022. The binding delivery deadlines promised by us only begin when we have received the components, but not before the time when we receive the information, documentation and examples stipulated in § 2. If pre-treatment work is required to make components suitable for hot-dip galvanizing and/or coating, for instance, in the specified manner, then the delivery period only begins when this pre-treatment work is completed. We reserve the right to make an exception and not execute the agreement when and as long as the Client does not comply with their obligations.

15.4 If the Client is culpably in breach of their cooperation obligations, we are entitled to claim compensation for our damages arising therefrom, including any additional costs. Further claims remain reserved.

§ 16 Risk transfer and shipment

16.1 Unless otherwise agreed, delivery is "ex works" [EX WORKS (EXW) Incoterms 2010] and risk transfers at the moment of delivery.

16.2 Shipment ready components must be picked up immediately by the Client. If the Client fails to do so within 10 calendar days, then at our discretion, we are entitled to ship the components at the expense of the Client, or ship these to the Client or to store these at the expense of and risk for the Client. In the case of shipment, we will always choose a reasonable form of transport and transport route.

16.3 Any delay in the collection of the components by the Client entitles us to compensation for our damages arising therefrom, including the recovery of any additional costs. Further claims remain reserved.

16.4 When components are transferred to the railway, forwarding agent or freight carrier, respectively beginning of storage, the risk is transferred to the Client, even if we have taken over the delivery according to contact.

16.5 If the Client so desires, we will obtain transport insurance for the delivery; the resulting costs shall be borne by the Client.

16.6 In individual cases, if despite the agreed delivery "ex works" [EX WORKS (EXW) Incoterms 2010], our own employees deliver the components at the request of the Client, then the transport to the delivery place (including loading and unloading) is purely a goodwill service; in this respect, the Contractor cannot be held liable for damage to the components, unless we or our staff caused the damage deliberately or through gross negligence.

§ 17 Packaging

17.1 Unless otherwise agreed, we will package components for shipment only insofar the components were packaged when delivered to us and that packaging is suitable for recycling.

17.2 With the exception of pallets and in accordance with the Packaging Decree, we do not take back transport packaging and other forms of packaging. The Client is obligated to dispose of the packaging at its own expense in accordance with the applicable regulations.

§ 18 Guarantee

18.1 The determining factor for the condition of the goods according to the contract is the time of risk transfer as stipulated in 16.1 of these Conditions.

18.2 We do not offer a guarantee in the event of defects attributable to the unsuitability of steel materials or to the fact that the delivered construction was not manufactured so that it was suitable for hot-dip galvanization as stipulated in the provisions of DAST directive 022, nor for defects attributable to the Client due to unsuitable or unprofessional use, manufacturing faults, normal wear and tear, incorrect or careless handling, nor in the event of the consequences of alterations or maintenance work made by the Client or third parties that are unprofessional or without our consent. We also do not offer a guarantee for mechanical damages that arise, for instance, during transport or assembly, contamination caused by natural or artificial chemicals (e.g. cleaning agents), welding work after delivery that is not in accordance with NEN-EN-ISO 1461, nor for unprotected contact places that are introduced for signs, lights, and so on. Finally, we assume a maximum corrosion load in accordance with Corrosion Category C3; if this is not guaranteed, we offer no guarantee for defects that arise therefrom. Moreover, we offer no guarantee for defects that are attributable to non-compliance with DAST directive 022 or incorrect information from the Client according to DAST directive 022.

18.3 For coated components, the Contractor cannot be held liable for damage to the coating during transport that can be attributed to the coating not being completely cured (see § 5.4 and § 6.4).

18.4 Immediately after delivery and to the extent practicable in accordance with the regulations, the Client must check whether the refined components are in accordance with the specifications and/or free of defects. Complaints regarding non-conformance and/or manifestly inadequate and/or abnormal condition must be reported to us in writing within 3 days of delivery and within 10 days of discovery in the event of hidden defects. If the inspection respectively complaint is submitted later than the periods described above, our guarantee is canceled. If the inspection of components refined by us or first prototype is accepted, the Client can no longer make a complaint about defects that could have been discovered by careful inspection. A complaint regarding hidden defects can only be reported (in writing) to the Contractor at most two years after the delivery of the Work. Moreover, in this case, the Client is only entitled to guarantee claims for hidden defects if a legal claim is made to this effect within three months of discovering the defect.

18.5 We must be given the opportunity to verify the claimed defect, at our discretion, at our headquarters or on-site. Components being complained about must be immediately returned to us at our request; if the claim is valid, we will bear the transport costs. If the Client does not fulfill their obligation to return the goods, or alters the goods being complained about without our consent, the Client loses any right to a guarantee covering defects.

18.6 If the claim is valid and timely, we will seek to remediate the defect (repairs). Indirect or consequential damages shall never be compensated. (for example, from lost profits, loss of revenue, administration and staff costs, loss of clientèle, claims by third parties, etc.)

18.7 Client must allow Contractor a reasonable period of time to make the repair. The reasonableness of the period is determined by the nature of and amount of the work to be done.

18.8 Contractor cannot be held liable at any time for any form of consequential damages. Client indemnifies Contractor against all claims for consequential damages for any reason whatsoever.

18.9 A claim may never give rise to the complete or partial suspension of the Client's payment obligation, even if this was submitted in a timely manner.

§ 19 Extended possessory lien

19.1 In default of payment of one invoice, all invoices become payable regardless of their due date and we shall have a possessory lien on all Client components in our possession. The possessory lien also applies for invoices with respect to work activities carried out for products that have already been delivered.

§ 20 Payment

20.1 Unless otherwise agreed, our invoices are due and payable within at most 14 calendar days of the invoice date.

20.2 A separate written agreement is required for a discount for cash payment.

20.3 Any discounts offered by us are canceled if the invoice amount is not made available to us within at most 15 calendar days of the invoice date.

20.4 The Client is only entitled to set off if their counterclaims are legally valid, undisputed or acknowledged by us.

20.5 Payment due dates being overrun automatically and without prior notice of default causes interest to be charged on overdue sums in an amount annually equal to eight percentage points above the base interest rate of the European Central Bank. Likewise, automatically and without prior notice of default, a fixed compensation is due amounting to 12 percent with respect to extrajudicial collection costs of the still owed invoice amount (with a minimum of € 250.00), without prejudice to the Contractor to claim a larger compensation for damages with the proviso that proof of such damages can be provided. In addition, all previous payment agreements are canceled and the full outstanding debt balance is due and payable.

20.6 If the client runs into arrears, we can notify the Client in writing that we are suspending the fulfillment of our obligations until payment has been received.

20.7 Bills of exchange and checks are only accepted when agreed upon and only to fulfill the payment obligations, subject to the negotiability thereof. Discount costs are calculated from the date the invoice amount was paid. A guarantee for the timely submission of bills of exchange and checks and for the timely submission of protest of a bill of exchange is not possible. If it appears that a bill of exchange is not negotiable and does not permit payment, the Client must settle the invoice amount within eight calendar days of us sending a notice to that effect.

20.8 If the Client does not fulfill any of their obligations properly or in a timely manner that arise from the Agreement entered into with the contractor or an associated agreement arising therefrom, and in case of summons in bankruptcy, the opening of a judicial reorganization procedure, deferred payment, dissolution and liquidation or partial transfer of a significant portion of its receivables, the Contractor shall be entitled to terminate these agreements wholly or partially without judicial intervention and without giving prior notice of default but subject to suitable notification, without having to pay any damages and without prejudice to the Contractor's other rights.

§ 21 Other claims and liability

21.1 Subject to the statutory provisions of public policy or mandatory law, except for deliberate error on the part of the Contractor and except in the event of a valid claim by the Client stipulated in § 18 of these Conditions, all liability of the Contractor is excluded with respect to all direct and indirect damages and damage resulting from liability to third parties within the context of executing the Agreement.

21.2 The Contractor also cannot be held liable for the above mentioned damages when caused by its employees, agents or other intermediaries, even in the event of intentional act or gross negligence of its employees, agents or other intermediaries.

21.3 The Client shall indemnify the Contractor against or compensate for all third-party claims for damage for which the liability of the contractor is excluded in relation to the Client in these Conditions. Moreover, the Client shall indemnify the Contractor against third party claims for product liability due to a defect in a product that is delivered to a third party by the Client and which partly consisted of Work provided by the Contractor. The Client also indemnifies the Contractor against claims by third parties relating to infringement of patents, licenses or other rights of third parties resulting from the use of information provided by or on behalf of the Client.

21.4 The Contractor cannot be held liable at any time for an amount greater than the value of the quoted work price. The Client indemnifies the Contractor against any potential liability that exceeds the amount of the relevant commissioned work activities.

§ 22 Force Majeure

22.1 Force Majeure, labor conflicts, riots, government measures, failures of our suppliers to deliver materials and other not unforeseeable, unavoidable and significant events (hereinafter "Force Majeure") release us from the obligations to execute the Agreement for the duration of the Force Majeure and to the extent of the impact thereof.

22.2 This also applies when such events occur at a time when the contractual partner remains in default.

22.3 The contractual partners are required in the context of what may reasonably be required to immediately provide required information and, in good faith, adjust the mutual obligations to correspond with changed circumstances.

§ 23 Applicable law and jurisdiction

23.1 Agreements with the contractor are governed by Dutch law. Disputes arising from this agreement shall be settled in the competent court for the place of business of the contractor, without prejudice to the Contractor's right to summon –if desired– the Client in the Client's place of business.

23.2. The Vienna Sales Convention is expressly excluded between Client and Contractor.

23.3 The contractual relationship is governed solely by Dutch law.