

# GENERAL TERMS AND CONDITIONS

## for members of RAI CarrosserieNL

### (division of RAI Vereniging)

#### 1. Definitions

Several major concepts in these Conditions are defined as follows:

- 1.1 *User*: any company, affiliated to RAI CarrosserieNL, which uses these *conditions* as part of the *agreement* with its *counterparties*.
- 1.2 *Counterparty*: the client, *company* or *consumer*, who/which in connection with the agreement gives instructions to the *user* to carry out *activities*.
- 1.3 *Company*: the *counterparty* acting in the course of its professional or business operations.
- 1.4 *Consumer*: the *counterparty* being a natural person and not acting in the course of professional or business operations.
- 1.5 *Parties*: the *user* and the *counterparty*.
- 1.6 *Offer*: a written invitation from the *user* to the *counterparty* in order to enter into an *agreement*.
- 1.7 *Agreement*: an arrangement between the *parties* concerning *activities* of the *user* for the *counterparty*.
- 1.8 *Conditions*: these General Conditions of RAI CarrosserieNL, forming part of the *agreement*.
- 1.9 *Object*: the movable property to which the *agreement* relates, such as a car, light goods vehicle, trailer and any part of or for a vehicle.
- 1.10 *In writing*: via e-mail, app, text message, mail, fax or other readable means of communication.
- 1.11 *Activities*: all acts, services, items and supplies of the *user* for/to the *counterparty* in connection with the *agreement*.
- 1.12 *Additional work*: extra *activities* performed by the *user* for the *counterparty*, which occur after the *agreement* has been formed.

#### 2. Applicability

- 2.1 The *conditions* are applicable to and form an integral part of the *agreement* and any subsequent *agreement* between the *parties*.
- 2.2 Before the *agreement* and every time the *conditions* are renewed the *user* will provide the *counterparty* with the *conditions* such that the *counterparty* can take note of the *conditions*.
- 2.3 The *user* is obliged to apply the *conditions* as part of every *agreement* with a *counterparty*.
- 2.4 The *user* himself or itself cannot change the *conditions*.
- 2.5 In the event of any contradiction between the *agreement* and the *conditions*, the *agreement* will prevail.
- 2.6 The *user* rejects the applicability of any general terms and conditions of the *counterparty*.

#### 3. Offer / agreement

- 3.1 *Offers* by the *user* to the *counterparty* are in writing and are without any obligation and do not lead to any obligations for the *parties*.
- 3.2 By the *written*, unaltered and unconditional acceptance of the *offer*, the *counterparty* has given an assignment to the *user* and the *agreement* is formed.
- 3.3 If the *counterparty* changes or adds anything to the *offer*, this does not constitute an acceptance and no *agreement* is formed.
- 3.4 An *offer* by the *user* will lapse four weeks after its date. Subsequent acceptance does not result in an *agreement*.
- 3.5 In the event of clauses 3.3, 3.4 and 4 the *user* will provide the *counterparty* with a replacement or additional *offer*, which will lead to the *agreement* by acceptance (clause 3.2).
- 3.6 Any deviations, amendments and additions to the *agreement* are laid down as much as possible in accordance with clauses 3.1 and 3.2, subject to clauses 4.3 and 4.8.
- 3.7 The *user* is not liable for obvious mistakes and typing errors in the *offer*.

#### 4. Activities / contract variations / provisional sums

- 4.1 The *user* will perform the *activities* properly with good workmanship according to the generally applicable standards and in accordance with the *agreement*.
- 4.2 The *user* shall ensure that the *activities* carried out and, on completion, the *object* comply with the applicable legal requirements, unless this was neither the case before the *activities* nor explicitly agreed between the *parties*.
- 4.3 The *user* may exceed or fall below any amounts in the *agreement* by no more than 10% without any grounds for complaint by the *counterparty* or termination of the *agreement* or the necessity of a new *agreement* in accordance with clause 3 unless there are also other changes.
- 4.4 Clause 4.3 also applies in the event of provisional sums, hourly estimates and quantities included in the *agreement*, which the *user* can only determine definitively after its *activities*.
- 4.5 After the *user* has established or foreseen that these will be higher or lower than the numbers, according to clauses 4.3 and 4.4, the *user* must explain this higher or lower deviation to the *counterparty*.
- 4.6 If a deviation above or below the numbers in accordance with clauses 4.3 and 4.4 exceeds 10%, the *user* must consult the *counterparty*. The parties will then be able to continue the agreement and form a new agreement in accordance with clause 3 in connection with the deviation higher or lower than the numbers.
- 4.7 If there is *additional work* the *parties* will enter into a new *agreement* for those *activities* in accordance with clause 3.

4.8. In the event that the *counterparty* does not respond to an *offer* with regard to *additional work* and is unavailable while *additional work* is required under time pressure, the *user* can nevertheless carry out the *additional work* as an *agreement* without applicability of clauses 3.1, 3.2 and 3.4, provided this *additional work* is necessary and/or logical, is obviously reasonable and constitutes added value for the *counterparty* and his *object*.

4.9. In the event of clauses 4.6 and 4.7 the *counterparty* can terminate the *agreement*. The *agreement* is valid until its termination and the *counterparty* shall pay the agreed fee for the *activities* with application of clause 4.3, after which the *user* shall complete the *object* as much as possible in an assembled and usable condition.

## 5. Prices / invoices

5.1. The *user* must state as much as possible in the *offer* and the *agreement* and on its invoice the prices of labour, costs, parts as well as any duties and VAT.

5.2. Price and wage changes at the user and price changes of labour, materials and knowledge to be purchased can be passed on to the *counterparty* provided they are regular and reasonable.

5.3. The *counterparty* must notify the *user* of any objections to the price changes and invoices within 20 working days after receipt of the notice or the invoice stating the reasons.

5.4. Any objections in accordance with clause 5.3 do not grant a right to suspend payment.

## 6. Payment

6.1. The *user* can invoice its *activities* periodically, in-between, through an advance or on completion of the *object*.

6.2. The *user* can apply to its invoices a payment period between 14 and 30 days and stipulates this period in its *offer*.

6.3. In the event of invoicing upon completion of the *object* the *user* may demand immediate payment by the *counterparty*.

6.4. The *user* may demand security from the *counterparty* for payment of its invoices.

6.5. The *user* will already state its payment conditions as much as possible in the *offer*.

6.6. Payment of the invoice of the *user* is immediately due and payable by the *counterparty* without any notice of default being required and with immediate default, if:

- a. with regard to the *counterparty* a moratorium or bankruptcy has been applied for or granted or there is an assignment of the estate or a death;
- b. with regard to the *counterparty* an asset has been or will be attached;
- c. the company or the shares of the *counterparty* are transferred, disposed of, discontinued, etc.

6.7. If the *counterparty* does not pay an invoice of the *user* on time and in full, the *user* will initially send a written

reminder to the *counterparty* with a payment period of 14 days, the second time the *counterparty* will demand payment with a period of 7 days and the third time summon the *counterparty* with a period of 2 days. In this connection the *user* will each time send a notice of default to the *counterparty* and point out clause 6.8.

6.8. In the event of a default, after the demand for payment of clause 6.7 the *counterparty* will be liable for 1% interest per month (or part of a month) over the unpaid principal amount until payment in full, as well as for extrajudicial collection costs of 15% over the unpaid principal amount plus interest due, with a minimum of €250 for each unpaid invoice, insofar as this is legally allowed.

6.9. In the event of a continued default after the demand of clause 6.7 the *user* may take legal action against the *counterparty*. The *counterparty* will be liable for all associated costs of the *user* including integral lawyers' fees.

6.10. Payments by the *counterparty* go first to reducing the costs of the *user*, subsequently the collection costs, then the interest and only after this the unpaid principal sum of the *user* in the order of the oldest to the most recent.

6.11. The *user* may offset any payment by the *counterparty* against its older unpaid invoices, regardless of the intention of the *counterparty* with regard to the payment.

## 7. Completion

7.1. A completion period for the *object* specified by the *user* is without any obligation and is not a deadline within the sense of Section 6:83 under a of the Dutch Civil Code.

7.2. The *user* will inform the *counterparty* as soon as it reasonably expects the completion period will be exceeded and confirm the arrangements *in writing*.

7.3. A completion period being exceeded as a result of changes to the *agreement*, *additional work* or non-fulfilment of the (payment) conditions of the *agreement* by the *counterparty* does not constitute a deadline.

7.4. The *user* will deliver the *object* to the *counterparty* immediately after completion of its *activities* in accordance with the (*additional work*) *agreement*.

7.5. In the absence of taking receipt of the completed *object* in accordance with the arrangements, the *user* may charge the *counterparty* storage costs amounting to not more than €50 per day. The *user* will notify the *counterparty* of this within good time.

## 8. Warranty

8.1. The *user* grants a warranty of one year on its *activities* from the completion of the *object* onwards.

8.2. With regard to *activities* by third parties for the benefit of the *object* on the instructions of the *user*, the warranty of clause 8.1 will apply.

8.3. The warranty does not apply in the event of:

- a. defects being the consequence of an act connected with the *object* not being carried out by or on behalf of the *user* and/or of the *object* being exposed to extreme circumstances and/or of construction faults with regard to the *object* and/or of the use of parts or materials which are not original and/or not supplied by the brand importer and which the *counterparty* made available to the *user*;
  - b. colour differences in the coating of the *object* undetectable in daylight;
  - c. deterioration of the coating of the *object* caused:
    - o by an external cause;
    - o to parts not fitted by the *user* or not worked on by the *user*;
  - d. defects of the *object* as a result of necessary acts not carried out by the *user* on the instructions of the *counterparty*;
  - e. services, acts or deliveries with regard to the *object* which the *user* explicitly advised the *counterparty* against;
  - f. an *object* in a poor condition or worked by third parties such that the *user* cannot remedy the damage within the scope of the *agreement* or can render the *object* into the condition to be expected;
- 8.4. The entitlement to warranty will lapse if:
- a. the *counterparty* does not make the *object* available for an assessment/check of the complaint of the *counterparty* within the period indicated by the *user*;
  - b. with regard to visible defects the *counterparty* does not submit its complaint in writing to the *user* with a clear description of the complaint within one month after it arose;
  - c. with regard to non-visible defects the *counterparty* who is not a *consumer* does not submit to the *user* its complaints in writing with a clear description of the complaints within 14 days after discovery of these defects;
  - d. the *counterparty* does not give the *user* the opportunity to remedy the defect;
  - e. there are complaints associated with *activities* with regard to the *object* performed by third parties, unless this was necessary and those third parties are generally recognised as experts, for instance in connection with a breakdown service.
9. **Liability / indemnity**
- 9.1. The liability of the *user* for any damage to the *object* or items of the *counterparty* is limited to 25% of its most recent invoice to the *counterparty* with regard to the *object*.
- 9.2. The liability of the *user* is limited to the amount that its liability insurer – as the case may be – will pay to it, to be increased by the excess.
- 9.3. The *counterparty* must ensure that no items of value are situated in/on the *object* when it is offered to the *user*.
- 9.4. The *user* is not liable for any damage such as by theft or fire with regard to the *object* or items belonging to the *counterparty* or third parties in the *object* or at the *user*, such as a cargo, fittings, money, documents and securities.
- 9.5. The *user* is not liable for indirect and consequent loss as a result of a delay in the completion of the *object*.
- 9.6. The limitations of liability with regard to the *user* are not applicable in the event of any contradiction between mandatory law or intention or conscious recklessness of the *user*.
- 9.7. The *counterparty* indemnifies the *user* against, and will compensate the *user* for, claims by third parties with regard to the performance of the *agreement*.
10. **Force majeure**
- 10.1. The *user* will not be blamed for a failure if this is the result of force majeure.
- 10.2. The term 'force majeure' means: a failure which cannot be attributed to the *user* because the *user* cannot be blamed for it and in addition it should not be at its expense according to legislation, the law or the generally prevailing opinion.
- 10.3. Some examples of force majeure are:
- a. operational breakdown, disruption in business operations, wildcat strikes, which the *user* could not reasonably prevent;
  - b. late delivery by a supplier of the *user* of parts which are necessary in order to carry out the *agreement*;
  - c. transport problems or restrictions by which the transport to or from the *user* is impeded;
  - d. war, riots, sabotage, flood, fire, terrorism, an internal accident with serious injuries and other serious disturbances/breakdowns and duress/threats as well as a real chance of this, as well as directions from the competent authority, consequences of unlawful or unjustified acts by bailiffs, banks and other parties, sit-down strikes, work strikes and government measures;
  - e. a situation in which the *user* is unable to carry out the *agreement* due to the failure or negligence of a third party.
- 10.4. In the event of force majeure the *user* will be entitled within 3 weeks after it arose to change the completion period or to dissolve the *agreement* extra-judicially, without being obliged to pay any compensation.
- 10.5. After the dissolution of the *agreement* due to force majeure the *user* will be entitled to reimbursement of

the costs incurred and the activities carried out until that time, in accordance with the *agreement*.

#### 11. Replaced parts

11.1. The (old) parts and/or materials left behind in connection with the *activities* and after the completion will become the property of the *user*, unless the *parties* have agreed otherwise *in writing*. In that case the *counterparty* must take these parts and/or materials immediately on completion of the *object*.

#### 12. Advice and information

12.1. The *counterparty* cannot derive any rights from the advice and information of the *user* beyond the scope of the *agreement*.

12.2. In performing the *agreement* the *user* can assume the accuracy and completeness of the information provided by the *counterparty*.

12.3. The *counterparty* indemnifies the *user* against every claim by third parties in connection with information provided by or on behalf of the *counterparty*.

12.4. All information of the *user* or made in its assignment, including offers, drawings, photographs, designs, images, plans, prototypes and other physical and digital records is and remains its (intellectual) property to the exclusion of the *counterparty*.

12.5. This information cannot be used, reproduced or otherwise appropriated by the *counterparty*, not even for the benefit of third parties, regardless as to whether the *counterparty* paid a fee to the *user* in this connection.

12.6. If the *parties* have agreed otherwise this must be laid down explicitly, without any doubt and *in writing*.

12.7. Apart from the compensation payable by law the *counterparty* will owe to the *user* a penalty immediately due and payable of €25,000 for each violation of clause 12.

12.8. In accordance with this clause the *counterparty* must return to the *user* the information provided to the former at the first request within the period stipulated by the *user*. Failing this, the *counterparty* will owe to the *user* a penalty immediately due and payable of €1,000 per day, apart from the compensation payable by law.

#### 13. Dissolution

13.1. Dissolution of the *agreement* is possible by means of a written notice to the other *party* but only after the other *party* has first been given a written notice of default and has had a reasonable period and the opportunity to fulfil its obligations or to remedy the failure established.

13.2. In the event of clause 6.7 the *user* can also - apart from clause 6.9 - terminate the *agreement* in full or in part without judicial intervention.

13.3. If the *counterparty* is a *consumer* and has died, the heirs or the executor may continue or terminate the *agreement* with application of clause 4.9.

#### 14. Retention of title and right of retention

14.1. After completion of the *object* the *user* reserves the title with regard to all repairs it has carried out and parts it has fitted until the *counterparty* has paid the invoices of the *user*.

14.2. The *counterparty* shall respect this retention of title and manage those parts with due care and neither dispose of or encumber the parts or the *object*.

14.3. Insofar as the parts are quite accessible and easy to dismantle according to clause 14.1, in the case of clause 6.9 the *user* can proceed to retrieve those parts.

14.4. Upon completion the *user* will have the right of retention with regard to the *object* including all repairs it performed and parts it fitted until the *counterparty* has paid the *user* in accordance with clause 6.

14.5. In the event of clauses 14.2 and 6.9 the *user* will be entitled to disassemble the parts fitted to the *object* and to use them elsewhere, whereby the *counterparty* is liable for the costs of the *user*.

#### 15. Disputes

15.1. Any disputes with regard to the *agreement* will be settled by the competent court in Amsterdam.

#### 16. Applicable law

16.1. The *conditions* and *agreements* as well as all disputes arising from them will exclusively be governed by Dutch law.

These conditions are effective from 1 January 2019 onwards and are filed at the Commercial Register of the Ch. of Comm. in Amsterdam under number 40530216.