

## **VAN HEEMSKERK B.V - GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT**

### **Article 1. Definitions**

In these general terms and conditions, the following terms shall have the following meanings:

- a. 'General terms and conditions of delivery and payment': the provisions of this document, whether or not amended from time to time.
- b. 'Van Heemskerk': Van Heemskerk B.V., with its registered office in Rijssen.
- c. 'Contract': the agreement between Van Heemskerk and the Client, under which Van Heemskerk will perform work for the Client.
- d. 'Client': the party who instructs Van Heemskerk to perform work.
- e. 'Offer': the work specified to a greater or lesser extent and the estimate of the costs associated with that work.
- f. 'Party or Parties': Client and Van Heemskerk, either separately or jointly.

### **Article 2. Applicability**

- 2.1 These General Terms and Conditions apply to the Contract and all other legal relationships between Van Heemskerk and the Client.
- 2.2 If a situation arises between the Parties that is not regulated in these General Terms and Conditions, this situation must be assessed 'in the spirit' of these General Terms and Conditions.
- 2.3 In the event that these General Terms and Conditions differ from the agreements expressly agreed in writing between the Parties, the agreements expressly agreed in writing will prevail over these General Terms and Conditions.
- 2.4 Van Heemskerk expressly rejects the applicability of the Client's General Terms and Conditions or any reference to them.

### **Article 3. Offer process**

Offers of work made by Van Heemskerk are without obligation, unless the offer deviates from this.

### **Article 4. Formation and termination of the agreement**

- 4.1 An agreement is concluded between the Parties:
  - a. by the written acceptance of Van Heemskerk's Offer within 30 days after receipt of the Offer by the Client.
  - b. by commencing the performance of the work.
- 4.2 After acceptance of the Contract, Van Heemskerk has the right to revoke the Offer for a period of two working days.
- 4.3 The Contract includes the work and materials described in the Offer.
- 4.4 The parties may terminate the Contract at any time (prematurely) in writing, with due observance of a reasonable notice period. Termination without notice is possible if the other party is unable to pay its debts, ceases its activities, or if a receiver, administrator or liquidator has been appointed.

### **Article 5. Amendment to the agreement**

- 5.1 If the Parties wish to make changes to the Contract after the formation of the Contract, these changes must be included in a rider to the agreement. This rider will then form part of the agreement.
- 5.2 In the event of changes to the Contract, Van Heemskerk will be entitled to charge the additional and reduced costs resulting therefrom to or for the benefit of the Client.

## **Article 6. Costs**

After termination of the Contract, for example by giving notice or termination, Van Heemskerk will be indemnified. The costs incurred by Van Heemskerk will be reimbursed by the Client.

## **Article 7. Prices and Payment**

- 7.1 The Contract includes the price that Van Heemskerk will charge.
- 7.2 The prices are deemed to be listed in Euros. If another currency is stated on the invoice, it will be converted into Euros at the current exchange rate.
- 7.3 Van Heemskerk will submit an invoice to the Client for the amount owed by the Client. Payment must be made:
  - a. net and in cash upon delivery of the work or
  - b. by means of a deposit or transfer to a bank account specified by Van Heemskerk on the invoice within 30 days of the invoice date.
- 7.4 The Client is not entitled to suspend payment of an invoice, or to set off payment of an invoice against an amount that Van Heemskerk owes the Client.
- 7.5 After expiry of the term of payment and after having been reminded once to pay within a reasonable term, the Client will be in default without notice of default being required. The Client will then owe Van Heemskerk statutory commercial interest on the outstanding amount. The Client will also owe Van Heemskerk the exchange rate loss incurred.
- 7.6 Both judicial and extrajudicial costs relating to the collection and recovery of payments not received in time from the Client by Van Heemskerk will be for the Client's account.
- 7.7 Payments made by the Client will primarily serve to pay the interest and exchange rate loss due as referred to in paragraph 5 of this Article 7, and furthermore the judicial and extrajudicial costs referred to in paragraph 6 of this Article 7, and will then be deducted from the oldest outstanding claim.

## **Article 8. Work**

- 8.1 The place designated by the Client shall be the place where the work is to be performed.
- 8.2 The Client must ensure that Van Heemskerk can commence the work on the agreed day. In that context, the Client must ensure that the working environment is tidy, safe and easily accessible.
- 8.3 The Client must ensure that Van Heemskerk has the necessary facilities at its disposal, such as power current, electricity, water and sanitary facilities, within a radius of 50 metres from the location where the work is to be performed.
- 8.4 The Client must report hidden defects and/or risks prior to commencement of the work.
- 8.5 If the agreed work cannot commence on the agreed day, the Client is obliged to inform Van Heemskerk of this at least five working days before the day on which the work is to commence.
- 8.6 If Van Heemskerk is unable to perform or deliver the work within the agreed period due to force majeure or a change in the agreement or in the terms and conditions on the Client's initiative, Van Heemskerk will be entitled to extend those periods.
- 8.7 If the performance of the work is delayed due to circumstances that are for the Client's account, the ensuing loss or damage will be for the Client's account.

- 8.8 The weather is one of the most important factors in Van Heemskerk's performance of the work. In the event of rain, too high humidity, too high or too low temperatures and strong wind, Van Heemskerk is unable to carry out the work. Catching up with or overrunning of projects as a result of weather conditions is at the expense and risk of the Client.
- 8.9 During the performance of the work, the Client must ensure that no cars or other objects are parked within 75 metres of the location where the work is to be performed. Van Heemskerk is not liable or responsible for spray mist on cars or other objects parked within this distance.
- 8.10 Additional hours that are the result of stagnations that are not at the expense and risk of Van Heemskerk will be charged to the Client as additional hours.
- 8.11 The Client is responsible for permits and/or reports required in the context of the performance of the work.
- 8.12 Van Heemskerk uses solvent-based products in the performance of its work. Any risks resulting from the use of these products are for the Client's account.
- 8.13 The Client and other persons who are in the vicinity of the place where the work is being performed are required to provide their own personal protective equipment.
- 8.14 Van Heemskerk endeavours to make the colour of a damage repair virtually the same as the colour of adjacent panels. Colour differences will not or barely be noticeable. Van Heemskerk cannot prevent minimal colour differences, also in the long term. The Client agrees to minimal colour differences. Colour retention depends on position damage, degree of UV exposure, maintenance work carried out and local conditions, and Van Heemskerk can therefore guarantee colour retention for a maximum of five years. Van Heemskerk bases its repairs on spot repairs, with the result that these remain somewhat visible. Van Heemskerk's assessment model for repairs is that the repair is not noticeable five metres from the facade, at an angle of 45 degrees and on a sunless day. Large damages will always remain visible, due to their size. Oblique light is not an assessment model.
- 8.15 If, during the performance of the Contract, facades with plastisol coatings which have become detached are removed, cleaned and repainted, there is a risk of island formation. Under oblique light, island formation may be visible. The solid parts at the time of repair can usually not be removed, the lacquers used for this are somewhat flexible, but there can be no guarantee on old parts of the coating coming loose under the new lacquer as yet. The condition of the substrate largely determines the final quality. Van Heemskerk cannot be held liable for island formation and any resulting damage.
- 8.16 Van Heemskerk cannot prevent the occurrence of imperfections in the performance of its work, such as spraying marks and differences in gloss in the spraying work. The Client cannot claim compensation for any damage as a result of the presence of imperfections.
- 8.17 Van Heemskerk is not liable for damage as a result of damage and/or discolouration to coatings during the cleaning activities.
- 8.18 Van Heemskerk has separate terms and conditions in the context of issuing the guarantee and the guarantee conditions.

#### **Article 9. Delivery of the work**

- 9.1 The work performed by van Heemskerk will be delivered as soon as possible after the work has been completed. Van Heemskerk will invite the Client to this end. If the Client does not accept the invitation within five working days after the invitation for delivery, the work performed by Van Heemskerk will be deemed to have been approved.

- 9.2 Minor defects that can be easily repaired by Van Heemskerk cannot be a reason for the Client to withhold approval. In this case, a note on the inspection list will suffice.
- 9.3 The work will be delivered and signed off on site.

#### **Article 10. Liability**

Van Heemskerk endeavours to carry out the Contract to the satisfaction of all Parties. Van Heemskerk is not liable for any loss or damage the Client may suffer in connection with the Contract. Van Heemskerk B.V.'s liability will in any event always be limited to the amount paid out by its insurer, as the occasion arises, unless the loss or damage is the result of intent or gross negligence on the part of Van Heemskerk.

#### **Article 11. Retention of title**

- 11.1 All goods delivered in the context of the performance of the Contract will remain the property of Van Heemskerk until the Client has paid the amounts due.
- 11.2 In the event of late payment of one or more invoices that have already fallen due, in the event of suspension of payment and/or bankruptcy of the Client and/or its Client, Van Heemskerk will be entitled to take possession of the goods delivered, as well as any materials delivered, and to remove them from the place of storage (right of retention).

#### **Article 12. Personal data**

- 12.1 By means of the Contract, the Client gives Van Heemskerk permission to process its personal data for the purposes of the performance of the Contract. This personal data will only be accessible by Van Heemskerk and will not be provided to third parties, unless Van Heemskerk is obliged to do so by law or by a judgment.
- 12.2 Van Heemskerk has published the privacy statement on the website <http://www.vanheemskerk.nl/nl/privacy-verklaring>. In the privacy statement Van Heemskerk informs the Client of the manner in which Van Heemskerk handles the processing of the Client's personal data.

#### **Article 13. Applicable law**

- 13.1 These General Terms and Conditions of Delivery and Payment and the Contract are governed exclusively by the law of the Netherlands.
- 13.2 Disputes arising from or in connection with the Contract, as well as disputes relating to these General Terms and Conditions of Delivery and Payment, shall, if they lie within the competence of the District Court, be brought before the District Court of Overijssel, location Almelo.