

HCRA TERMS AND CONDITIONS

General contracting, delivery and payment terms and conditions of the Metaalunie sector group
Holland Container Repair Association (HCRA),
filed with the Registry of the District Court in Rotterdam on 1 December 2023

Article 1: Applicability

- 1.1. These Terms and Conditions apply to all offers made by a member of the Metaalunie sector group Holland Container Repair Association (hereinafter referred to as HCRA), to all agreements that it enters into and to all agreements arising from this, all of which insofar as the HCRA member is the supplier or the Contractor.
- 1.2. These Terms and Conditions may only be applied by members of the Metaalunie sector group HCRA. HCRA members who apply these Terms and Conditions are referred to as the Contractor. The other party is referred to as the Client.
- 1.3. In these Terms and Conditions, the term 'Client' is also understood to mean the owner and/or user of the container or the persons or companies engaged by or on behalf of it.
- 1.4. In these Terms and Conditions, the term 'agreed performance' includes handling, inspection, storage, cleaning, maintenance, repair, adjustment, modification, blasting and spraying of containers in the broadest sense of the word.
- 1.5. In the event of conflicts between the agreement entered into by the Client and the Contractor and these Terms and Conditions, the provisions of the agreement will prevail.

Article 2: Offers

- 2.1. All offers are without obligation. The Contractor is entitled to revoke its offer up to two working days after it has received the acceptance.
- 2.2. If the Client provides the Contractor with information, the Contractor may assume that it is accurate and complete and will base its offer on this information.
- 2.3. The prices stated in the offer are denominated in euros, excluding VAT and other government levies or taxes. The prices do not include travel, accommodation, packaging, storage and transport costs, nor do they include costs for loading and unloading and for rendering cooperation with customs formalities.
- 2.4. If the Client does not accept the offer from the Contractor, the Contractor will be entitled to charge the Client for all costs it has incurred in order to prepare its offer.

Article 3: Confidentiality

- 3.1. The Client and the Contractor will treat the information provided to each other, whether or not on their behalf, (such as offers, designs, images, drawings and know-how) of whatever nature and in whatever form as confidential and not use it for any purpose other than for the execution of the agreed performance.
- 3.2. The parties shall not disclose or reproduce the information referred to in paragraph 1 of this article.
- 3.3. The Client must return or destroy the information referred to in paragraph 1 of this article, provided by or on behalf of the Contractor, immediately on request, and within a period set at the discretion of the Contractor. If this provision is infringed, the Client will owe the Contractor an immediately payable penalty of €1,000 per day. This penalty can be claimed in addition to compensation by virtue of the law.

Article 4: Advice and information provided

- 4.1. The Client cannot derive any rights from advice and information received from the Contractor if such is not directly related to the contract.
- 4.2. If the Client provides the Contractor with information, the Contractor may assume that it is accurate and complete when performing the agreement.
- 4.3. The Client is responsible for the drawings and calculations made by or on behalf of the Client, the (functionality of) requested, stated or prescribed specifications and for the functional suitability of materials prescribed by or on behalf of the Client.

- 4.4. The Client indemnifies the Contractor against any third-party claims related to the use of advice, drawings, calculations, designs, materials, brands, samples, models and the like provided by or on behalf of the Client. The Client will compensate the Contractor for all damage/loss suffered by the Contractor, including all costs incurred for defence against these claims.

Article 5: Delivery time/implementation period

- 5.1. Delivery times or implementation periods specified are indicative.
- 5.2. The delivery time or implementation period only commences once an agreement has been reached on all commercial and technical details, all the information, including final and approved drawings and the like, is in the possession of the Contractor, the agreed payment (or instalment) has been received, and the other conditions for the implementation of the contract have been met.
- 5.3. If:
- a. there are circumstances other than those known to the Contractor at the time it set the delivery time or implementation period, the delivery time or implementation period will be extended by the time the Contractor needs – taking into account its planning – to implement the contract under these circumstances;
 - b. there are contract extras, the delivery time or implementation period will be extended by the time the Contractor needs – taking into account its planning – to deliver the materials and parts for these extras, or have such delivered, and to carry out the contract extras;
 - c. the Contractor suspends its obligations, the delivery time or implementation period will be extended by the time the Contractor needs – taking into account its planning – to implement the contract after the reason for the suspension no longer applies.
- Unless the Client has evidence to the contrary, the duration of the extension of the delivery time or implementation period is presumed to be necessary and to be the result of a situation as referred to above in a to c.
- 5.4. The Client is obliged to pay all costs that the Contractor incurs or damage/loss that the Contractor suffers as a result of a delay in the delivery time or implementation period as stated in paragraph 3 of this article.
- 5.5. Under no circumstances does exceeding the agreed delivery time or implementation period give the Client the right to compensation or to terminate the agreement. The Client indemnifies the Contractor against any third-party claims due to exceeding the delivery time or implementation period.

Article 6: Delivery and risk transfer

- 6.1. Delivery takes place 'Free Carrier' in accordance with Incoterms 2020, at the moment when the Contractor has loaded the container at its business location on or into the means of transport made available by the Client. From that time onwards, the Client bears the risk of the container in terms of transport and unloading, among other things.
- 6.2. The Client and the Contractor may agree that the Contractor will be responsible for the transport. The risk of, among other things, the transport and unloading of the container also rests with the Client in that case. The Client can insure itself against these risks.

Article 7: Price changes

The Contractor may pass on to the Client an increase in cost-determining factors that occurs after entering into the agreement. The Client is obliged to pay the price increase immediately on the Contractor's request.

Article 8: Force majeure

- 8.1. If the Contractor fails to fulfil its obligations, this cannot be attributed to the Contractor if this failure is due to force majeure.
- 8.2. Force majeure circumstances include: riots, (civil) war, terrorism, sabotage, cybercrime, outbreaks of infectious diseases, (including pandemics and, epidemics, such as COVID-19), government measures, urgent government advice, natural disasters, weather conditions and in particular wind (gusts), including brief gusts or gusts of wind, with a speed of at least fifty kilometres per hour (50 km/h) recorded by the Royal Netherlands Meteorological Institute (KNMI), a branch thereof, or a comparable institute of good repute, water damage, disruption of digital infrastructure, explosion, fire, breakdown of or failure to equipment to be used in the performance of the agreed service, disruption in the power supply, loss, theft or destruction of tools or materials, road blocks, strikes or work stoppages and import or trade restrictions, the circumstance that third parties engaged by the Contractor, such as suppliers, subcontractors and transporters, or other parties on which the Contractor or the Client depends, fail to fulfil their obligations or fail to fulfil them in time.
- 8.3. The Contractor is entitled to suspend fulfilment of its obligations if it is temporarily prevented from fulfilling its obligations to the Client due to force majeure. Once the force majeure circumstances no longer apply, the Contractor will fulfil its obligations as soon as its planning permits.
- 8.4. If there is force majeure and fulfilment is or becomes permanently impossible, or the temporary force majeure circumstances have lasted for more than six months, the Contractor is entitled to terminate the agreement with immediate effect either entirely or in part. In those cases, the Client is entitled to terminate the agreement with immediate effect, but only for that part of the obligations that the Contractor has not yet fulfilled.
- 8.5. The parties are not entitled to compensation for the damage/loss suffered or to be suffered as a result of the force majeure, suspension or termination as referred to in this article.

Article 9: Scope of the agreed performance

- 9.1. The Client must ensure that all licences, exemptions and other decisions that are necessary to carry out the agreed performance are obtained in good time. The Client is obliged to send the Contractor a copy of the aforementioned documents immediately on the Contractor's request.
- 9.2. Unless otherwise agreed in writing, the agreed performance does not include:
 - a. earthworks, piling, cutting, demolition, foundation, painting, repair or other (construction) work;
 - b. realising and supplying connections and installations for gas, water, electricity, climate, sanitary facilities, internet or other infrastructural facilities;
 - c. measures to prevent or limit damage to, or theft or loss of, items present at or near the location where the agreed performance is to be carried out;
 - d. removing materials, building materials or waste;
 - e. vertical and horizontal transport.

Article 10: Contract extras

- 10.1. Changes in the agreed performance will in any event lead to contract extras:
 - a. if it concerns changes in the design, the specifications or the contract documents;
 - b. if the information provided by the Client does not correspond with reality.
- 10.2. Contract extras are calculated on the basis of the price-determining factors that apply at the time the extra work is performed. The Client is obliged to pay the price for the contract extras immediately on the Contractor's request.

Article 11: Execution of the agreed performance

- 11.1. The Client will ensure that the Contractor can carry out the agreed performance undisturbed and at the agreed time.
- 11.2. The Client ensures that documents (for example those required for receipt and dispatch), and instructions and the like, are in the possession of the Contractor in a timely manner. The Contractor accepts no liability whatsoever for the incorrectness, inaccuracy or incompleteness of these documents and/or instructions.
- 11.3. The Client is at all times obliged, before the start of the execution of the agreed performance, to report to the Contractor all facts that are important for the Contractor to be able to safely process the offered container.
- 11.4. The Client guarantees that the container referred to in paragraph 3 of this article is empty. This means that it does not contain any (waste) substances that pose risks to the health and safety of persons who come into direct or indirect contact with the container, or cargo or other items that the Contractor could not have expected to find there.
- 11.5. The Contractor is entitled to refuse to accept the container if there is any doubt as to whether the container meets the conditions set out in paragraphs 3 and 4 of this article.
- 11.6. If, however, the container has been admitted by the Contractor for the execution of the agreed performance and the container is found, contrary to paragraph 4 of this article, not to be empty, the Contractor shall be entitled to clean the container or have it cleaned. The actual costs incurred for this, with a surcharge of 10%, will be borne by the Client.
- 11.7. If the execution of the agreed performance takes place at a location other than the business premises of the Contractor, the Client shall ensure that:
 - a. all necessary safety measures have been taken at the start of the agreed work and are maintained during the work;
 - b. the workplace where the agreed performance is to be carried out is suitable for that purpose and meets the requirements laid down by or pursuant to the Working Conditions Act and/or any other national or international regulations (e.g. Community Directives);
 - c. all licences, exemptions and other decisions that are necessary to carry out the agreed performance have been obtained in good time;
 - d. the Contractor's employees are given the opportunity to start their work immediately after arriving at the place where the agreed performance is to be carried out;
 - e. the agreed performance can be carried out during normal working hours. The Contractor will only deviate from this if the Client has informed the Contractor in a timely manner that it is necessary for the progress of the work to set the time of the start or end of the work outside normal working hours;
 - f. the Contractor will have access to the necessary facilities, such as:
 - gas, water and electricity;
 - heating;
 - lockable dry storage space.
- 11.8. The Client bears the risk and is liable for damage to and theft or loss of property of the Contractor, the Client and third parties, such as tools, materials intended for the execution of the agreed performance or equipment used in the agreed performance and other property of the Contractor that is located at the place where the agreed performance is carried out or at another agreed location.
- 11.9. Notwithstanding the provisions in paragraph 8 of this article, the Client is obliged to take out adequate insurance against the risks referred to in that paragraph. In addition, the Client must take out insurance for the risk of work-related damage with regard to the equipment to be used. The Client must send the Contractor a copy of the relevant insurance(s) and proof of payment of the premium immediately on request. In the event of damage, the Client is obliged to report this immediately to its insurer for further processing and settlement.

Article 12: Storage

- 12.1. The Contractor shall be entitled to store the Client's container in the open air both before, during and after execution of the agreed performance.
- 12.2. Storage starts on the day the container is delivered by or on behalf of the Client and ends on the day the container(s) is/are collected by or on behalf of the Client. In this context part of a day counts as a whole day. Storage shall be subject to the (storage) fee applied by the Contractor at the time of storage.
- 12.3. If additional handling activities must be carried out with regard to the container(s) referred to in paragraph 1 of this article at the request of the competent authority or other (government) authorities in the context of the investigation of criminal offences, the prevention of subversion or otherwise, then the costs incurred by the Contractor for this purpose will be borne by the Client.

Article 13: Inspection, duty to complain

- 13.1. The Client has the right to carry out an inspection of the agreed performance, or have such carried out. The Client must notify the Contractor of this in writing no later than 5 working days after receipt of the notification of completion or before the container(s) is/are collected by or on behalf of the Client.
- 13.2. The Contractor shall offer the object of the agreed performance once to the Client for inspection. The actual inspection must take place a maximum of 5 working days after the Client's notification that it wishes to have the agreed performance inspected.
- 13.3. If the Client does not approve the agreed performance, the Client is obliged to inform the Contractor of this in writing within 14 days after the inspection has taken place, stating reasons.
- 13.4. If no inspection takes place, the Client is obliged to complain (in writing) about any defects in the execution of the agreed performance, at the latest before the container(s) has/have left the Contractor's premises.
- 13.5. If any damage is not externally visible, the Client is obliged to complain to the Contractor in writing within 14 days after the Client has discovered or reasonably should have discovered the defect, stating the general nature of the damage.
- 13.6. The Client must in all cases give the Contractor the opportunity to rectify any defect or to carry out the agreed performance again.
- 13.7. If the written complaint from the Client is not received by the Contractor within the periods stated in paragraphs 2, 3, 4 or 5 of this article, the Client will lose all legal rights and powers in this regard.
- 13.8. The Contractor will only consider a complaint if the Client has fulfilled all its obligations towards the Contractor. Defects that will in any case not be considered by the Contractor are those resulting from:
 - a. normal wear and tear;
 - b. improper use;
 - c. lack of maintenance, or incorrectly performed maintenance;
 - d. installation, assembly, change or repair by the Client or by third parties;
 - e. application of materials, choice of materials or repair method prescribed and/or supplied by or on behalf of the Client;
 - f. emergency repair(s) carried out at the request of the Client.
- 13.9. The Client must have submitted complaints about the invoice with the Contractor in writing and within the payment term, subject to forfeiture of all rights. If the payment term is longer than thirty days, the Client must have submitted its complaint in writing within thirty days of the invoice date at the latest.

Article 14: Failure to take possession of goods

- 14.1. The Client is obliged to take actual possession of the container or containers that are the subject of the agreed performance at the agreed location at the end of the delivery time or implementation period.
- 14.2. If storage has been agreed for an indefinite period of time, or takes place in the context of the performance of another agreed service, the Contractor shall be entitled to require the Client in writing by registered letter to remove or arrange for the removal of the container(s) in the Contractor's possession within a period of 2 weeks from the date of such letter. The foregoing shall apply regardless of whether payment of the amount due has already taken place or is yet to be made before or at the time of delivery to the Contractor or their representative.
- 14.3. The Client must cooperate fully and free of charge to enable the Contractor to deliver the container(s).
- 14.4. If the Client does not comply with the provisions of paragraph 2 of this article, the containers that are not collected will be stored at the expense and risk of the Client.
- 14.5. If the provisions of paragraph 1, 2 or 3 of this article are infringed, the Client will owe the Contractor a penalty of €250 per day up to a maximum of €25,000, after the Contractor has given the Client notice of default. This penalty can be claimed in addition to compensation by virtue of the law.

Article 15: Liability

- 15.1. In the event of an attributable failure, the Contractor is obliged to still comply with its contractual obligations.
- 15.2. The Contractor's obligation to compensate for damage/loss – regardless of the grounds – is limited to the damage/loss against which the Contractor is covered under an insurance policy taken out by it or on its behalf. However, the scope of this obligation is never greater than the amount paid out under this insurance in the case in question.
- 15.3. If there is no insurance cover and the Contractor is nevertheless liable, in the event of gross negligence or intent on its part or its subordinates for example, its liability shall be limited to, at the Contractor's discretion, either repairing the damage free of charge or compensating the damage/loss up to a maximum of 15% of the total contract price (excluding VAT). If the agreement consists of parts or partial deliveries, this obligation is limited to a maximum of 15% (excluding VAT) of the contract price for that part or that partial delivery. If it concerns continuing performance contracts, the obligation to compensate for damage/loss is limited to a maximum of 15% (excluding VAT) of the contract price owed over the last twelve months prior to the damage/loss-causing event.
- 15.4. The following do not qualify for compensation:
 - a. consequential loss. Consequential loss includes business interruption loss, loss of production, lost profit, transport costs, and travel and accommodation costs. The Client can, if possible, insure itself against this damage/loss;
 - b. damage to goods in or under its care, custody or control. This damage includes damage caused by or during the execution of the agreed performance to goods that are being worked on or to goods that are located in the vicinity of the place where the work is being carried out; The Client can, if required, insure itself against this damage/loss;
 - c. damage that arises:
 - due to the manner and place of storage, including but not limited to damage caused by weather conditions, water level, fire and explosion;
 - due to wind (gusts), including brief gusts or gusts of wind, with a speed of at least fifty kilometres per hour (50 km/h) recorded by the Royal Netherlands Meteorological Institute (KNMI), a branch thereof, or a similar institute of good repute;
 - due to the nature and natural condition of the items placed in storage;
 - d. damage as a result of intent or wilful recklessness by the Contractor's auxiliary staff or non-managerial subordinates.
- 15.5. The Contractor is not obliged to compensate damage to material supplied by or on behalf of the Client as a result of improper processing.

- 15.6. The Client indemnifies the Contractor against all third-party claims due to product liability as a result of a defect in a product that has been delivered by the Client to a third party and of which the products or materials supplied by the Contractor are a part. The Client is obliged to reimburse all the damage/loss suffered by the Contractor in this respect, including the (full) costs of the defence.
- 15.7. The Client indemnifies the Contractor against any damage/loss suffered by it, or any claims made by persons who have directly or indirectly come into contact with a container and who have suffered damage or incurred costs because the container was found not to be in the safe condition that could reasonably be expected of it. For example, because cargo residues, whether visible or not, including any radiation and gases, have been left behind in the container, all insofar as the harmfulness thereof was not known to the Contractor, or should reasonably have been known to the Contractor.

Article 16: Payment

- 16.1. Payment is made at the Contractor's business address or into an account to be designated by the Contractor.
- 16.2. Unless otherwise agreed, payments must be made within 30 days of the invoice date.
- 16.3. If the Client fails to fulfil its payment obligation, it is obliged to comply with a request from the Contractor for a tender of payment instead of the agreed amount.
- 16.4. The Client's right to offset its claims against the Contractor or to suspend the fulfilment of its obligations is excluded. unless the Contractor has been granted a suspension of payments or is bankrupt or the statutory debt adjustment scheme applies to the Contractor.
- 16.5. Irrespective of whether the Contractor has fully executed the agreed performance, everything that the Client owes or will owe it under the agreement is immediately due and payable if:
 - a. a payment term has been exceeded;
 - b. the Client does not fulfil its obligations under article 16;
 - c. the Client has filed for bankruptcy or suspension of payments;
 - d. the Client's goods or claims are attached;
 - e. the Client (a company) is dissolved or wound up;
 - f. the Client (a natural person) files an application to be admitted to the statutory debt adjustment scheme, is placed under a guardianship order or has died.
- 16.6. If payment of a sum of money is delayed, the Client will owe interest on that sum to the Contractor with effect from the day following the day agreed as the final day of payment up to and including the day on which the Client has paid the sum of money. If the parties have not agreed on the final day of payment, the interest is due from 30 days after the sum has become due and payable. The interest is 12% per year but will be equal to the statutory interest if this is higher. For the interest calculation, a part of the month is considered to be a full month.
- 16.7. The Contractor is entitled to offset its debts to the Client against claims that companies affiliated with the Contractor have against the Client. In addition, the Contractor is entitled to offset its claims against the Client against debts that companies affiliated with the Contractor have to the Client. Furthermore, the Contractor is entitled to offset its debts to the Client against claims against companies affiliated with the Client. 'Affiliated companies' means all companies belonging to the same group, within the meaning of Article 2:24b of the Dutch Civil Code, and a participation within the meaning of Article 2:24c of the Dutch Civil Code.

16.8. If payment has not been made within the agreed payment term, the Client owes the Contractor all extrajudicial costs, subject to a minimum of €75.

These costs are calculated on the basis of the following table, i.e., the principal sum plus interest:

- on the first €3,000	15%
- on the excess up to €6,000	10%
- on the excess up to €15,000	8%
- on the excess up to €60,000	5%
- on the excess from €60,000 or more	3%

The extrajudicial costs actually incurred are due if they are higher than the outcome of the calculation given above.

16.9. If during legal proceedings the decision is made in favour of the Contractor, all costs incurred by the Contractor in relation to these proceedings will be payable by the Client.

Article 17: Securities

17.1. Irrespective of the agreed payment terms, the Client is obliged to provide sufficient security for payment on the Contractor's request and at its discretion. If the Client does not comply with this provision within the set time limit, it shall immediately be in default. In that case, the Contractor has the right to terminate the agreement and to recover its loss from the Client.

17.2. The Contractor remains the owner of the delivered container as long as the Client:

- a. has not fulfilled its obligations under any agreement with the Contractor;
- b. has not settled any claims arising from non-fulfilment of the aforementioned agreements, such as damage/loss, penalty, interest and costs.

17.3. As long as the delivered container is subject to retention of title, the Client may not encumber or dispose of this container other than in the course of its normal business operations. This provision has effect under property law.

17.4. After the Contractor has invoked its retention of title, it may recover the delivered goods. The Client will cooperate fully with this.

17.5. If the Client has fulfilled its obligations after the Contractor has delivered the container to it in accordance with the agreement, the retention of title with respect to this container is revived if the Client does not fulfil its obligations under an agreement entered into subsequently.

17.6. The Contractor has a right of pledge and a right of retention on all containers it has in its possession from the Client vis-à-vis anyone demanding the surrender of goods, documents and funds which the Contractor has or will have in its possession on whatever account and for whatever purpose, for all claims which the Contractor has or may have against the Client or owner. Based on the foregoing, the Contractor has the right to refuse to anyone the surrender of goods, documents and funds that the Contractor has or will have in its possession in connection with the agreement.

17.7. The Contractor will be able to regard anyone who entrusts goods to the Contractor on behalf of the Client for the execution of the agreed performance as having been authorised by the Client to establish a right of pledge on those goods.

17.8. The person who makes said goods, documents and funds available to the Contractor is deemed to be authorised to do so. The Client accepts full liability for the consequences - whatever they may be - of their possible lack of authority.

17.9. Sale of any collateral takes place at the expense of the Client in the manner determined by law or, if agreed, privately.

Article 18: Intellectual Property Rights

18.1. The Contractor is considered to be the maker, designer or inventor of the works, models or inventions created in the context of the agreement. The Contractor therefore has the exclusive right to apply for a patent, trademark or model.

18.2. The Contractor will not transfer any intellectual property rights to the Client in the performance of the agreement.

- 18.3. If the performance to be delivered by the Contractor (also) includes providing computer software, the source code will not be handed over to the Client. The Client will only acquire a non-exclusive, worldwide and perpetual licence for use for the computer software solely for the purpose of the normal use and proper functioning of the container. The Client is not permitted to transfer the licence or to issue a sub-licence. When the Client sells the container to a third party, the licence transfers by operation of law to the acquirer of the container.
- 18.4. The Contractor is not liable for damage/loss that the Client suffers as a result of an infringement of third-party intellectual property rights. The Client indemnifies the Contractor against any third-party claims related to an infringement of intellectual property rights.

Article 19: Transfer of rights or obligations

The Client may not transfer or pledge any rights or obligations pursuant to any article in these General Terms and Conditions or the underlying agreement(s), unless it has the prior written consent of the Contractor. This provision has effect under property law.

Article 20: Termination or cancellation of the agreement

- 20.1. The Client is not entitled to cancel or terminate the agreement unless the Contractor agrees to this. If the Contractor agrees, the Client will owe the Contractor an immediately due and payable compensation equal to the agreed price, less the savings for the Contractor as a result of the termination. The compensation will be at least 20% of the agreed price.
- 20.2. If the price depends on the actual costs to be incurred by the Contractor (on a cost-plus basis), the compensation as referred to in the first paragraph of this article is estimated based on the sum of the costs and labour and the profit that the Contractor would have been expected to make for the entire contract.

Article 21: Applicable law and choice of forum

- 21.1. Dutch law applies.
- 21.2. The Vienna Sales Convention (CISG) does not apply, nor does any other international regulation that may be excluded.
- 21.3. Only a civil court with jurisdiction in the Contractor's place of business will hear any disputes, unless this is in conflict with mandatory law. The Contractor may deviate from this rule governing jurisdiction and rely on the statutory rules governing jurisdiction instead.
- 21.4. The parties can agree on another form of dispute resolution, such as arbitration or mediation.

These Terms and Conditions constitute a comprehensive translation of the Dutch version of the HCRA Terms and Conditions as filed with the Registry of the District Court in Rotterdam on 1 December 2023. The Dutch version will prevail in the explanation and interpretation of this text.