

TERMS & CONDITIONS

General sales, delivery and acceptance terms & conditions



NautiCure

Chamber of Commerce number: 86891111.

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City: 's-Hertogenbosch, The Netherlands.

These Terms and Conditions consist of:

GENERAL TERMS I - General provisions art. 1-12

PARTICULAR TERMS II - Supply of goods art. 13-14

TERMS III - Taking on work art. 15 - 24

ADDITIONAL SEPARATE SECTION IV Please also always refer to the specific related quotation, for the project based aesthetic and technical terms and conditions; including implementation restrictions as well as nominated clauses.

INFORMATION

NautiCure operates a variety of disciplines with a range of application processes, as well as advice for repair & maintenance, to achieve aesthetic rather than a technical result. These services are subject to the actual feasibility, the status of the substrate, the weather conditions, the accessibility, the functioning of the products, the machines, the staff, etc.

As NautiCure cannot anticipate all possible implementation variables or subsequent use, nor exposure conditions, as well as performance of project oriented corrective maintenance, NautiCure does not provide any warranty for works completed and does not accept any liability for any and all works completed whether in assessment of a project, during execution or subsequently. Where possible, NautiCure will offer a test that can be evaluated by the client over short and / or long periods at the request of the client, NautiCure will, upon completion of the assignment, also deliver a multiyear maintenance recommendation customised to the client's specific project to deliver the best results in light of the services delivered.

NautiCure may, at our discretion, offer a warranty for third party products sourced or provided by NautiCure which are come with a manufacturer warranty. Prior to the project, a request for warranty must be submitted in writing by the client and agreed in writing with all parties to allow appropriate measures for follow-up, registration, control and correction in accordance with the specific product to be made by all involved.

Where contradiction or ambiguity may exist within the terms provided herein, then section that is most favourable to the Contractor is applicable in all cases. If a client is uncertain of which terms or conditions may or may not apply to a specific project, then the client should request clarification prior to the commencement of work in writing from NautiCure.

For the sale of products through NautiCure, other and / or additional terms of sale and delivery are described in Particular Section II.

GENERAL TERMS I

Article 1. General

"Contractor" means NautiCure. "Client" and "Clients" refers to the natural or legal person who assigns the project to the Contractor with regards to the supply of goods and / or the performance of work and / or the provision of services, which are accepted by the Contractor. "Agreement" refers to the written agreement between the Client / Clients and the Contractor which covers the supply of goods and / or the performance of work and / or the provision of services from the Contractor to the Client/ Clients.

Article 2. Agreement

1. These terms and conditions apply to all tenders of, contracts and agreements which are to be supplied or completed by the Contractor.

2. All quotations are free of charge and are valid for two weeks, unless the quotation indicates otherwise and / or unless the Contractor rescinds the quotation prior to the two-week term.
3. Modification of the Agreement shall only be valid when delivered in writing by the Contractor.
4. No rights may be derived from information in quotes, leaflets, artist impressions, information material, social media, website, word and text statements of individual Contractor employees.
5. The Agreement shall be deemed to be closed and fully proved by the Order Confirmation of Contractor, unless the Client has in writing notified objections to the Contractor within seven business days after the delivery date of the order confirmation.
6. Contractor provides, in case no specific standards or regulations have been agreed on, in accordance with what the Contractor reasonably could assume.
7. Terms for the Contractor are not final unless parties have explicitly agreed otherwise in the Agreement. An agreed term will only come into effect after the Agreement has been established and all the information required for the supply of goods, performance of services and / or services is in the possession of the Contractor. An agreed delivery time and execution time will be extended by at least the number of days elapsed between the moment of the agreement and the moment when all data required for the delivery of goods, execution of work and/or performance of services are in the possession of the Contractor. Unforeseen weather conditions, accessibility, transportation, health personnel, safety, product processing regulations, stock material and machine failure, financial status of the Contractor and Client; these can extend the delivery time and execution time in favour of the Contractor.
8. The Client warrants to the Contractor that the information provided by him, including the history of previously used products, damage status, aesthetic degradation, pollution, quantities, materials, constructions, third party services, accessibility, environmental guidelines, safety rules, tenants- and user interests, administrative obligations in the form of reports, subscriptions and registrations, working hours, storage of work material, permits, legal documentation, deposits, education and training, access passes, execution and delivery locations and facilities are made available to the Contractor in a timely and appropriate manner, and in such a way that the Contractor can prepare and perform its work in the most efficient manner, in the absence of which the Client is held to compensate the Contractor for the additional costs incurred.
9. All costs incurred by circumstances where the Contractor could not reasonably have taken said circumstances into account when entering into the Agreement, shall be borne by the Client.

Article 3. Intellectual Property

1. Unless otherwise agreed, the Contractor shall retain the copyrights, patent rights and all other intellectual property rights on the offers, designs, disciplines offered, products to be processed, techniques to be used, specified advice and maintenance instructions, images, videos, drawings, (test) models, (test) surfaces, software etc.
2. The rights to the data referred to in paragraph 1 shall remain the property of the Contractor, regardless of whether the Client has been charged for the production thereof.
3. All information, oral or written, provided by the Contractor to the Client remains the property of the Contractor, and may only be used by the Client for the purpose for which it has been provided.
4. Client shall not provide the Contractor's information to any third party, in any manner whatsoever, save for when reasonably necessary related to the proper execution of the Agreement and then only after and insofar as a confidentiality obligation has been agreed.

Article 4. Retention of title

1. All delivered goods, processed products and executed activities by the Contractor shall remain the property of the Contractor until the Client has fulfilled his payment obligations from the Agreement to the Contractor. As long as the Client has not fulfilled his payment obligations, the Client is obligated with due and proper care to treat, maintain, insure the delivered goods and not pledge, rent, sell, process, transfer or deliver it to third parties. In case of noncompliance with this obligation, the entire sum covered by the Agreement will be due immediately.
2. If the Client fails to fulfil his obligations towards the Contractor, the Contractor has the right to immediately recall all goods whose property is reserved. And, where possible, undo the performed work and the results obtained. As far as necessary, the Client shall at the Contractor's first request grant immediate access to projects and / or territories, of which the Client is owner or manager, so that the Contractor can revendicate his property/properties.
3. Payments made by Client are first and foremost attributable to claims of Contractor for which no reservation of title is applicable.
5. If and in so far as the Client and Contractor have agreed upon a factory guarantee, the Client may only seek compliance of this Factory Warranty from Contractor.
6. The Client must, in all cases, give the Contractor an adequate opportunity to repair or resume the operation or delivery, failing to do so will invalidate the claims of the Client.
7. The Client may only appeal the obligations arising from this Article if he has fulfilled all of his obligations to the Contractor.
8. Contractor is never liable for indirect damage and / or consequential damages, including company damage, conversion damage, loss of profits, image damage, environmental damage, transport costs, material costs and costs for execution (by third parties), etc.
9. In all cases, the Contractor's liability is limited to compliance with the Contractor's obligations as defined in this Article.

Article 8. Force majeure

Conditions beyond the will and involvement of the Contractor, which are such that compliance or further compliance with the Agreement cannot be reasonably expected, including (but not limited to) weather conditions, limited accessibility, non-economic and noncompliance / or effective implementation restrictions, work strikes, employee availability, company malfunction, stagnation of supply, files, availability of site access by any means, material failure, resulting price increases, and malfunctions in production processes, both of the Contractor and its suppliers and subcontractors. The current financial status of the Contractor applies as a force majeure and entitles the Contractor to cancel the Agreement for the part not yet executed without any liability for damages. In the case of temporary force majeure, the Contractor has the right to choose to either suspend the delivery during that period or to cancel the Agreement for the part not yet executed, all without any liability for damages.

Article 9. Payment

1. Full and final payment must be made within 14 calendar days from the date of invoice, unless otherwise agreed in the quotation.
2. Contractor is at all times entitled to invoice based on deposit or to invoice periodically.
3. In the case of failure to pay on time, the Client shall be liable for interest at the current legal rate, as well as compensation of all fees incurred by the Contractor for the collection of said fees.

Article 10. Suspension, settlement and dissolution

1. The client is not entitled to suspend or settle his obligations.
2. In the following cases, the Client is legally in default and the Contractor has the right to terminate the Agreement, in whole or in part, without extrajudicial or judicial intervention.
 - a. If the Client requests bankruptcy or (provisional) suspension of payment or is declared bankrupt, (provisional) suspension of payment is granted or the Client is under government, management or curator under law;
 - b. If the Client liquidates or strikes or ceases his or her business activities partially or wholly;
 - c. If the Client is charged with a conservatoire or an execution order;
 - d. If the Contractor has good grounds to fear that the Client will fail to comply with his obligations. The above shall not affect the rights of the Contractor.
3. The Contractor is always entitled to settle – whether due or not - claims of one or more of the Contractor and / or one or more of its group companies on behalf of such group companies with claims payable by the Client to the Contractor under the Agreement. In so far as any consent of the Client is required, this consent shall be deemed to have been granted to the Contractor unconditionally and irrevocably.
4. The Contractor is entitled at all times to require the Client to provide security for the Client's fulfilment of his obligations under the Agreement. The contractor will comply with the first request. If the Client makes no or insufficient assurance, the Contractor is entitled to terminate and / or dissolve the Agreement. In that case, the Client shall be liable for all damage caused by the Contractor.

Article 11. Outsourcing

The Contractor is at all times entitled to outsource all or part of the work performed to third parties.

Article 5. Complaints

The period to complain of a lack of performance of the Contractor depends on the nature of the disciplines performed. In disciplines for cleaning, renovation, scratch removal, coating, polishing, brushing and graffiti removal complaints should be raised on the same day of execution. In other disciplines, no later than 14 days after completion. The Contractor is never liable for defects, damage and pollution caused by third parties or, for example, contamination which is usually to be expected. The Client is obliged to report a defect immediately to the Contractor in writing as soon as the Contractor discovers it or reasonably should have discovered the defect.

Article 6. Client Liability

1. The client is responsible for the constructions, products, techniques and methods prescribed by or on his behalf, as well as orders, advice, guidance, specifications and instructions given by or on behalf of him.
2. The Client is liable for all damage and consequential damages resulting from defects in materials, products, ancillary products, machinery and techniques made available by him or prescribed by or on behalf of him.
3. The consequences of compliance with legal regulations or government decisions that come into effect after the day of the quotation is tendered, are the responsibility of the Client.
4. Client is liable for damages resulting from work or deliveries performed by him or third parties assigned by him.

Article 7. Liability Contractor

1. If the agreed quotation includes completion of works, then the liability of the Contractor is governed by the project-oriented aesthetic and technical conditions and restrictions applicable to the project, including clauses as defined in the quotation or which is most favourable to the Contractor stated in this article and Particular Terms III.
2. If the agreed quotation consists of processing materials offered or submitted by the Client, the liability of Contractor is dependent on which discipline is performed, possibly subject to a limitation clause, for the validity of the processing performed. If it appears that an operation has not been performed properly, the Contractor will decide whether he will:
 - re-perform the operation (on site);
 - restore the defect
 - credit the Client for a proportionate part of the invoice.
3. If the quotation includes delivery of goods, then the Contractor retains liability for the validity of the goods delivered. If it appears that the delivery is not correct, then the Contractor will decide whether he will:
 - restore the goods;
 - replace the goods;
 - credit the Client for a proportionate part of the invoice.
4. If the agreed quotation consists of performing a service and which appears to have been performed inadequately, the Contractor will decide whether he will:
 - relinquish or restore the service (partially);
 - credit the Client for a proportionate part of the invoice.

Article 12 Disputes and applicable law

1. Any dispute which may arise between the parties in relation to or in response to an Agreement concluded between them, including disputes raised by one or both of the parties, shall be adjudicated over by the Council of Arbitration and no other legal body or representative.
2. Adjudication of a dispute by the Council of Arbitration suspends the option to consider the agreement as completed in relation to the matters which resulted in the dispute.
3. The relationship between the Client and the Contractor is governed exclusively by Dutch law. The applicability of the Convention on the international Sale of Goods is explicitly excluded.

PARTICULAR TERMS

II DELIVERY OF GOODS

Article 13 Way of delivery

Unless agreed otherwise, the delivery will take place at the factory, supplier and/or establishment of **Contractor**.

Article 14 Place of delivery

If delivery to the project has been agreed, the goods will be delivered at the place specified in the Agreement. If no such place has been agreed upon, delivery will take place on the depot at the construction site, on the project site and/or at the client, or at least as close as possible. The contractor does not need to transport the goods further than to where the vehicle can get to a properly accessible area. The client is obliged to receive the goods there and receive the proof of receipt, immediate release, and verify the goods before continuing to correctly and safely put the goods into storage. If the Client remains in default, the resulting costs will be incurred. Client ensures that there is someone available who signs for receipt and that sufficient space for delivery, unloading and storage is present.

III ASSESSMENT OF WORK

Article 15 Obligations of the Client

1. Client warrants that Contractor has timely availability:
 - To the data and approvals required for the design of the work (such as access, guidance, keys, fitting, training and training, codes of conduct, quantities, constructions, third parties, administrative obligations in the form of reports, registrations and registrations, environmental directives, working hours, safety information, permits, exemptions and decisions);
 - a signed and accepted quotation including any restrictive clauses;
 - the project, building, boat, terrain, water or accessibility systems in which or where the work is carried out;
 - on a timely basis in the immediate vicinity of the project for supply, storage and / or drainage of vehicles, products, auxiliary materials, machinery, accessibility systems and tools;
 - access for connectivity for electrical machines, telephone, internet, wifi, lighting, heating, electricity, gas, compressed air, suction and water.
2. The required electricity, gas and water will be borne by the Client.
3. The Client warrants that any work and/or deliveries to be performed by others that are not part of the Contractor's work shall be carried out in such timely manner that performance of the work will not be delayed, restricted or otherwise hindered.
4. The executive director is authorized to represent the Client unless and in so far as not expressly agreed otherwise.
5. As far as relevant, the Client is obliged to notify the Contractor in writing of the work in writing of:
 - the presence and location of cables, pipes, gratings, open parts, leaks, possible damage to grass, floor and pavement, risks, unworkable days, etc.
 - the specifications, history, previously used products, damage status, aesthetic degradation, pollution, tenants and user interests,

legends, sponsorships, reports and current status of the surface to be processed.

- the log of maintenance frequencies.

Article 16 Duration, postponement of delivery

1. If the period, in which the work has to be delivered, is determined in workable working days, a working day is understood to mean a calendar day, unless it is recognized at a general or at the place of work, or by the government or by or by force Collective agreement prescribed weekend, rest or holiday, holiday or other non-individual day off.
2. Working days are considered unworkable if there cannot be worked by the majority of employees, products or machines for at least four hours due to non-contractual circumstances of the Contractor.
3. If the completion of the work should take place on a day that is not a working day as described in the first paragraph, the next working day shall be the agreed date of delivery.
4. Contractor has the right to extend the period in which the work will be delivered if due to unforeseen weather conditions, due to limited availability, by additional work, by finding non-functioning disciplines (products and techniques), by establishing economic and efficiency-limiting circumstances, due to temporarily being unable to plan and deliver skilled employees, due to Client's circumstances or by modification of the Agreement or in the terms of execution, the Contractor may not require that the work is delivered within the agreed term.
5. If the commencement or progress of the work is delayed by factors which the Client has not communicated prior in writing to the Contractor and/or for which the Client is responsible, the costs incurred by the Contractor shall be reimbursed by the Client.

Article 17 Check and approval

1. A reasonable period before the day on which the work is deemed to be completed by the Contractor, the Contractor shall invite the Client to check the work. The check shall take place as soon as possible but no later than eight days after the day as mentioned above. The inspection is undertaken by the Client in the presence of the Contractor and seeks to ascertain whether the Contractor has fulfilled his obligations under the Agreement.
2. After the work has been checked, the Client shall notify the Contractor immediately, but no later than eight days in writing, whether the work has been approved or not, in the first case, with the possible minor defects referred to in the sixth paragraph, in the latter case, mentioning the defects that are the reasons for abstention of approval. If the work is approved, the date of approval shall be deemed to be the date on which the relevant notice was sent to the Contractor.
3. If no written notice is given to the Contractor within eight days of the inclusion, the work is deemed to have been approved on the eighth day after the inspection.
4. If the check does not occur within eight days after the date referred to in paragraph 1, the Contractor may, by registered letter and/or by e-mail, submit a new application to the Client, requesting the inspection within eight days. If the Client does not comply with this request, the work shall be deemed to have been approved on the eighth day after the date referred to in paragraph 1. If the Client complies with this request, the second and third paragraphs shall apply *mutatis mutandis*.
5. The work is deemed to have been approved if used accessibility systems are removed, restricted access and, as far as it is being taken into service. The day of commissioning of the work or a part thereof is the date of approval of the work or the relevant part.
6. Small defects, which can be repaired, may not be grounds for abstention, provided they do not prevent any commissioning.
7. With respect to a re-admission after withdrawal of approval, the above provisions will apply *mutatis mutandis*.

Article 18 Delivery and maintenance

1. The work shall be deemed to be completed if it is or is deemed to have been approved in accordance with Article 17. The day on which the work is or is deemed to have been approved shall be deemed to be the date on which the work is deemed to be completed.
2. The Contractor is obliged to repair the shortcomings referred to in Article 17, subsection 6 as soon as possible. Contractor is obliged to

repair defects as soon as possible, except for those for which the Client is responsible under Article 6, subsection 1, or for which he is liable under Article 6, subsection 2.

3. Contractor may choose to deliver the assignment in parts.
4. Wherever possible, the contractor will refer to and work in accordance with a previously presented test piece. Result upon inclusion may deviate from the test piece when performance is performed significantly later in time and under other conditions.
5. After completion of delivery, the Contractor will, if desired, provide maintenance advice with, if desired, a quote for multiannual maintenance to be executed by the Contractor.

Article 19 Liability after delivery

1. Upon completion - and if parties have agreed a term of service, after expiration of this service term - Contractor is no longer liable for defects at work, unless a defect in the work or any part thereof is due by the Contractor, his supplier, his subcontractor or his staff which the Client could reasonably have not previously recognized and the Contractor was notified of that defect within a reasonable time after discovery.
2. The action under the limitation referred to in the preceding paragraph shall be inadmissible if it is instituted after one day after the expiration of the maintenance period. However, if the defect referred to in the first paragraph is to be regarded as a serious defect, the action is inadmissible if it is instituted after one day after the expiration of the maintenance period. A defect is only a serious defect if it jeopardizes the rigidity of the building.
3. Immediately after handling treated parts, damage, aesthetic degradation and contamination can adversely affect the result. The Contractor is not liable to keep, maintain, protect, control and correct treated parts until delivery. Weather conditions, location, design, environment, work third parties etc. are not under the direct control of the Contractor.

Article 20 Suspension, termination of work in unfinished condition and termination

1. The Client is authorized to suspend the execution of the work in whole or in part. Provisions that the Contractor must incur as a result of the suspension shall be settled as additional work. Damage suffered by the Contractor as a result of the suspension must be reimbursed by the Client to the Contractor.
2. If damage occurs during the suspension, this will not be borne by the Contractor.
3. If the suspension lasts longer than 14 days, the Contractor may claim that a proportional payment is made for the part of the work performed. Account is taken of the products and assistance materials paid to the employee, not yet processed but already paid by the Contractor, and planned travel and subsistence costs, as well as scheduled hours of work for staff and subcontractors.
4. If the suspension of work lasts longer than one month, the Contractor is authorized to terminate the work in the unfinished state. In that case, it must be settled in accordance with the following paragraph.
5. The Client is authorized to terminate the Agreement in whole or in part. In that case, the Contractor is entitled to the contract amount plus the costs that he has incurred as a result of the non-completion, reduced by the termination costs.

Article 21 Products and auxiliary materials

1. All products and auxiliary materials to be processed must be of good quality, suitable for their intended purpose and meet the requirements.
2. The Contractor allows the Client to approve products and auxiliary materials. The inspection must be done at the time of their arrival at the workplace. The Contractor is authorized to be present at the inspection or to be represented by a third party.
3. Products and materials provided by the Client are deemed to have been approved.
4. Both the Client and the Contractor may claim in the event of a disapproval of products and auxiliary materials that a mutually sampled, both certified, sealed sample will be retained.
5. The work-related products and auxiliary materials, of which the Client has stated that he wishes to keep them, must be removed by him from work.

6. If after the conclusion of the agreement it has been found that the project and/or building site is contaminated or the products and auxiliary materials from work are contaminated, the Client is liable for the consequences, costs and damages resulting from the performance of the work.
7. For the supplied products and auxiliary materials, the Client bears the risk of loss and/or damage from the moment when they were supplied to the project during the time that they remain outside the normal working hours under the supervision of the Client.

Article 22 More and less work

1. In any event, settlement of more or less work shall be: - in case of changes to the agreement or the terms of execution; - in the case of deviations from the amount of the costs - in the event of deviations from settable quantities.
2. If the final payment of the work shows that the total amount of the lesser work exceeds the total amount of the additional work, the Contractor shall be entitled to an amount equal to 10% of the difference of those totals.
3. Changes to the Agreement or the terms of performance will be agreed in writing. The lack of a written assignment does not affect the claims of the Contractor and of the Client on settlement of more and less work.
4. Estimated costs as well as estimated working days are the amounts stated in the Agreement, which are included in the contractual amount and which are intended for either - the purchase of products and auxiliary materials, or - the purchase of products and auxiliary materials and their processing, or - the purchase and/or hiring accessibility systems, or - performing activities which are insufficiently specified on the day of the agreement and which must be completed by the Client. With regard to each estimate, the Agreement will state which it relates to.
5. Expenses incurred in connection with estimates shall be calculated with the prices charged to the Contractor and the costs incurred by him, with a contractor fee of 10%.
6. If an estimate exclusively relates to the purchase of products and auxiliary materials, the cost of processing is included in the purchase price and are not separately deducted. However, these costs will be deducted from the estimate on which the purchase of those products and auxiliary materials is calculated, so far as they are higher than those which the Contractor must reasonably have considered.
7. Where an estimate relates to the purchase of products and auxiliary materials and the processing thereof, the cost of processing is not included in the contractual amount and are separately deducted from the estimate.
8. If amounts entered into in the Agreement are included and those quantities appear to be too high or too low to make the work, the excess or lower costs resulting from that deviation will be offset.

Article 23 Price

1. The price mentioned in the agreement is exclusive of V.A.T. and, unless expressly stated otherwise, based on a continuous implementation process and price level of wages, materials, products, procurement and leasing of equipment, transportation, etc. at the time of the quotation.
2. Price increases up to the time of delivery may be passed on to the Client in accordance with the risk regime applicable to the industry concerned, unless explicitly agreed otherwise.
3. If the parties have agreed to the execution of the work, the Contractor will disclose the actual days and materials, products, procurement and leasing of equipment and transport on the basis of pre-agreed tariffs and general cost, risk and profit inventory to the Client. The days and materials used are monitored and administered by the Contractor. The monitoring and administration of the Contractor is binding in all cases to the Client.

Article 24 Car insurance

Unless expressly agreed otherwise, the Contractor is co-insured on a Construction All Risk (C.A.R.) Insurance undertaken by the Client, for which the terms and conditions of the Contractor are forwarded by the Client at his request.