

General terms and conditions of Graffiti Clean BV with trade name ProNed

Article 1 – Definitions

In these general terms and conditions the following terms are used in their respective meanings unless explicitly stated otherwise;

ProNed (ProNed):	a natural or legal person to whom the work is assigned;
Other Party (Client):	a natural person or legal entity who, within the scope of practicing a profession or running a business, has commissioned ProNed to carry out work;
Agreement:	all arrangements made between the client and ProNed concerning the performance of work by ProNed.

Article 2 - General

- These general terms and conditions shall, in addition to or in deviation from the Dutch Civil Code, apply to all Agreements concluded between ProNed and Client. The parties have agreed that these terms and conditions shall be regarded as an integral part of the Agreements.
- The applicability of general terms and conditions of the Client to an Agreement is expressly excluded, even if these terms and conditions were accepted in the context of an earlier legal relationship, unless the parties expressly agree otherwise in writing. The Client may therefore not assert any rights whatsoever vis-à-vis ProNed concerning any general terms and conditions applied by it.
- These general terms and conditions shall at all times prevail over any general terms and conditions of the Client.

Article 3 - Offers, quotations, and formation of the Agreement

- All offers made by ProNed, in whatever form, shall be without obligation and, unless otherwise stated in the offer, be valid for 30 days from the date on which the offer is sent. The offer may be revoked, withdrawn, or amended by ProNed within 7 calendar days of ProNed's knowledge of the acceptance of its offer.
- Amendments and/or supplements to the agreement shall be valid only after such amendments and/or supplements have been agreed in writing by ProNed and the client. ProNed shall on the other hand be entitled to amend the offer, the agreement including the general terms and conditions unilaterally with immediate effect on marginal parts (such as the use of materials and/or indexed rate increases).
- If the client supplies ProNed with data, drawings, calculations, etc., and/or other information, ProNed may assume their accuracy and may base its offer on them.
- All Agreements are entered into on the resolutive condition that the Client proves to be sufficiently creditworthy for the financial performance of the Agreement - this exclusively to be assessed by ProNed. If so desired ProNed can demand an irrevocable bank guarantee without restrictions for an amount to be determined by ProNed from the Client before the Agreement is executed.
- If the offer is not accepted by the Client, ProNed shall be entitled to charge the expenses incurred in making it to the party at whose request it made the offer.
- If neither party confirms the Agreement in writing and ProNed, with the consent of the client, has started to perform the Agreement, the client shall be deemed to have provided the Agreement in accordance with the quotation.

Article 4 - Prices and price changes

- The prices quoted by ProNed shall be in Euros and shall exclude VAT and other government taxes and/or levies, in the broadest sense of the word.
- The price shall as far as possible be determined based on an hourly rate agreed in advance or based on a fixed amount agreed in advance.
- If ProNed has agreed to a fixed price with the Client, ProNed shall nevertheless be entitled to increase the price if after the date on which the Agreement is concluded price changes occur in, for example, raw materials, transport, import duties, social security charges, taxes, duties, levies and wages as well as, but not limited to, exchange rates. If the price increase is more than 10% of the original agreed total price, the Client has the right to dissolve the Agreement.
- ProNed may also adjust the price if the cost increase is the result of incorrect information supplied by the Client which is relevant for determining the price.
- ProNed may demand an increase in the price if the client wishes to add to or change the agreed work. Subsequent calculation shall be based on all costs incurred or to be incurred and at the applicable fixed hourly rate.

Article 5 - Execution of the Agreement

- ProNed shall execute the Agreement to the best of its knowledge and ability and in accordance with the requirements of good craftsmanship.
- Unless otherwise agreed, the work shall be performed in normal 5-day working weeks.
- If and to the extent required for the proper performance of the Agreement, ProNed shall be entitled to have work done by third parties.
- The Client shall ensure that all data and/or approvals which ProNed indicates are necessary or which the Client should reasonably understand are necessary for the performance of the Agreement are provided to ProNed in time. If the data and/or approvals required for the performance of the Agreement are not provided to ProNed in time, ProNed shall be entitled to suspend performance of the Agreement and/or to charge the Client for the additional costs arising from the delay in accordance with the customary rates.
- ProNed shall not be liable for the consequences, of whatever nature and however named, of the provision by the Client of incorrect and/or incomplete data unless this incorrectness or incompleteness was immediately evident to ProNed.
- The Contracting Authority will ensure that the design and execution of the work are such that the damage to persons, property, and the environment is limited as much as possible as a result.
- If the commencement or progress of the work is delayed by factors for which the Client is responsible, the Client must compensate ProNed for the resulting costs and damage.
- The Client must ensure if required, that ProNed has timely access to:
 - the building in which and/or on which or a suitable terrain on which the Work can be carried out;
 - adequate facilities for the supply, storage, and/or removal of materials and resources;
 - connections for electrical machines, lighting, heating, gas, compressed air, and water
 - collection of chemical construction waste;
 - drawings showing the location of cables, tubes, and pipes.
- The necessary electricity, gas, water, and suchlike will be at the expense of the Client.

- At ProNed's request, the Client is obliged to make storage space available for materials and equipment free of charge.
- The Client shall be liable for all damage resulting from loss, theft, burning, and/or damage to ProNed's tools, materials, and other property located at the place where the work is carried out.
- If the Client is in default with the provisions of the preceding paragraphs of this article, ProNed shall be entitled to suspend the performance of the Agreement and to charge the Client for the costs arising from the delay.
- The Client shall indemnify ProNed against any claims by third parties, of whatever name, who sustain damage in connection with the performance of the Agreement and which damage is attributable to the Client.

Article 6 - Completion, additional work

- If ProNed requires information from the Client within the framework of the execution of the Agreement, the delivery time will commence at the moment the Client has made that information available to ProNed.
- If ProNed has specified a time for completion or delivery this shall be indicative. Consequently, any completion or delivery time stated by ProNed shall never be a deadline.
- ProNed shall be entitled to deliver the work in parts unless this has been agreed otherwise or the partial delivery is of no independent value. ProNed shall be entitled to invoice partial deliveries separately.
- If additional work is requested by the Client or proves necessary, the completion time shall automatically be extended by the time required to carry out or be able to carry out this additional work. If the additional work cannot be fitted into ProNed's planning, the work will only be completed as soon as the planning allows.
- In case of unworkable weather, the completion time shall be extended by the resulting stagnation.
- Exceeding the agreed completion/delivery time, for whatever reason, will not directly entitle the Client to compensation, dissolution of the Agreement, or non-fulfillment of any obligation arising from it from the Agreement or any other agreement related to the Agreement. If the agreed delivery time is exceeded ProNed will consult further with the Counterparty regarding the performance of the Agreement. If these consultations do not lead to a result acceptable to both parties, the Client shall only be entitled to rescind the Agreement for the part that has not yet been executed after it has given ProNed written notice of default setting a further reasonable period and ProNed is unable to perform within the period thus set. In this case, ProNed shall not be obliged to pay any compensation either.
- The Work shall be considered accepted and therefore completed when:
 - the client has approved the work;
 - the work has been put into use by the client. If the client puts part of the work into use, that part shall be deemed to have been completed;
 - ProNed has notified the client (in writing) that the work is finished and the client has not indicated in writing within 14 days after the notification that the work has not been approved;
 - ProNed has sent a final invoice and the client has not informed ProNed in writing within 14 days of dispatch that the work has not been approved.

Article 7 - Examination, complaints

- The Client will be obliged to examine the work completed or that which is delivered (or have it examined) at the moment of completion/delivery. In doing so, the Client must examine whether the quality and quantity of the work carried out or that which is delivered corresponds to what was agreed, or at least meets the requirements that are set for it in normal (commercial) dealings.
- The inspection and/or examination shall be carried out by the Client in the presence of ProNed and is intended to establish whether ProNed has fulfilled its obligations under the Agreement.
- Any visible shortcomings must be reported to ProNed immediately on delivery and will then be recorded in writing, on penalty of the forfeiture of any and all claims that the Client might have against ProNed. Non-visible shortcomings must be reported to ProNed in writing within 8 days of discovery, again on penalty of the lapse of any and all claims that the Client might have against ProNed.
- ProNed must be allowed to check any claims submitted.
- If a claim is made in time and ProNed considers the claim to be correct, ProNed shall correct the shortcomings and/or defects within a reasonable period or replace the delivery. The Client, however, remains obliged to pay for the work carried out and/or the goods supplied.
- If no timely complaint is made or if the Client has taken the work constructed, carried out, or delivered by ProNed into use, the work will be deemed to have been carried out properly.
- If it is no longer possible and/or useful to still carry out the agreed work, ProNed shall only be liable within the limits of the provisions below under "Liability".
- Any claims by the Counterparty based on shortcomings shall in any case lapse six months after the date of delivery.

Article 8 - Suspension and dissolution

- ProNed shall be authorized to suspend the fulfillment of the obligations arising from the Agreement or to rescind the Agreement if:
 - circumstances become known to ProNed after the Agreement has been concluded which gives ProNed good reason to fear that the Counterparty will not fulfill its obligations or will not do so on time or in full. If there is good reason to fear that the Counterparty will only partially or improperly fulfill its obligations, the suspension shall only be permitted so far as justified by the shortcoming.
- ProNed shall furthermore be authorized to dissolve the Agreement if circumstances arise of such a nature that performance of the Agreement is impossible or if, according to standards of reasonableness and fairness, ProNed can no longer be required to perform the Agreement, or if other circumstances arise of such a nature that the unaltered maintenance of the Agreement cannot reasonably be expected.
- ProNed shall at all times retain the right to claim damages.
- ProNed shall never be liable to pay any compensation to the Client on account of the termination of the Agreement and the suspension of any obligations arising under the Agreement.

Article 9 - Cancellation

- Counterparty may cancel the Agreement provided that it pays ProNed a certain percentage of the agreed price (including value-added tax) as a cancellation fee in accordance with the regulation below, or at ProNed's option reimburses ProNed for the full costs already incurred and lost profit.
- The cancellation charges shall be:
 - for cancellation up to 4 weeks before the scheduled start of the Work 15%;
 - in the event of cancellation up to 2 weeks before the planned commencement of the Work 30%;
 - Cancellation up to 1 week before the planned commencement of the Work 45%;
 - for cancellation less than 1 week before the scheduled commencement of the Work 60%.

3. If an hourly rate or daily rate has been agreed, ProNed shall reasonably determine what is to be considered the agreed price for this cancellation arrangement. ProNed shall therefore be required to estimate how many hours or parts of a day would have been charged if the Agreement had not been canceled.
4. In the event of premature termination of the Agreement by Client without any culpable failure on the part of ProNed to comply with the Agreement and in the event of premature termination by ProNed due to culpable acts on the part of Client, Client shall be obliged to pay ProNed
 - a. the price applicable to the entire work, less any savings resulting for ProNed from the termination, against delivery by ProNed of the work, already completed.
 - b. in the absence of a contract price, 125% of the work invoiced and/or to be invoiced that had already been performed at the time of termination.
5. ProNed shall retain the right to claim damages at all times.

Article 10 - Liability

1. ProNed shall, in the event of any defects for which it is liable, be given the opportunity by the principal to remedy these defects or to limit or eliminate the damage arising from such defects.
2. If the Work carried out by ProNed is defective, ProNed's liability to the Client shall be limited to what is provided for under "Guarantee" in these Terms and Conditions.
3. ProNed shall not be liable for damage to property or persons unless there is intent or gross negligence on the part of ProNed. ProNed shall not be liable for any damage attributable to an intentional act or omission or gross negligence of its non-managerial subordinates.
4. ProNed shall never be liable for loss or damage relating to goods supplied by it and work carried out outside the Netherlands.
5. ProNed shall never be liable for damage resulting from advice given.
6. The Client shall bear responsibility for the constructions and working methods prescribed by it or on its behalf, as well as for any orders and/or instructions given by it or on its behalf.
7. If building materials or resources which the Client has made available or has prescribed should have any defects, ProNed shall not be liable for any loss or damage arising from this.
8. The goods supplied by ProNed shall comply with the technical requirements, environmental standards, and specifications set by Dutch legislation at the time the Agreement is concluded. ProNed shall not be liable for rejected material and resources if such rejection is a consequence of environmental legislation/regulations amended after the conclusion of the Agreement.
9. ProNed shall never be liable for the possible presence and the consequences arising therefrom of any substances forbidden by law on or in the delivered goods and raw materials of which ProNed was not aware or could not/should not have been aware at the time of performance of the Agreement.
10. ProNed shall never be liable for any damage resulting from poor quality of the items to be handled.
11. ProNed shall never be liable for damage as a consequence of work or deliveries carried out by the Client or on its behalf by third parties.
12. ProNed shall not be liable for any loss as a result of the term of performance being exceeded.
13. The Client shall indemnify ProNed against all successful claims by third parties in respect of work carried out and/or goods supplied by ProNed as a result of which that third party might have sustained damage, irrespective of the cause or time at which that damage was sustained.
14. If the client has insured any risk related to the Agreement, he shall be obliged to indemnify ProNed against such risk.
15. ProNed shall not be liable for any loss or damage caused by ProNed having relied on incorrect and/or incomplete information supplied by the Client.
16. The client shall bear the risk of any damage caused by defects in materials made available by him or used at his request unless ProNed has breached its duty to give warning within the meaning of section 7:760 in conjunction with section 7:754 of the Dutch Civil Code.
17. The Client shall bear the risk of damage to all materials, parts, or tools present at the work as well as of defects in materials made available by him or used at his request.
18. If ProNed is liable for direct damage, such liability shall be limited to a maximum of the amount of the payment to be made by ProNed's insurer, or at least to a maximum of the invoice amount, or at least that part of the order to which the liability relates. Direct damage is exclusively understood to mean:
 1. the reasonable costs of establishing the cause and extent of the damage, in so far as such establishment relates to damage within the meaning of these Terms and Conditions;
 2. any reasonable costs incurred to have ProNed's defective performance still conform to the Agreement unless this defect cannot be attributed to ProNed.
 3. the reasonable costs incurred to prevent or limit the damage, in so far as Client demonstrates that these costs have resulted in limiting the direct damage as referred to in these general terms and conditions.
19. ProNed shall never be liable for indirect loss, including consequential loss, loss of profit, lost savings, and/or loss due to business interruption.
20. Any claim for damages on the part of the Client shall lapse if the claim is not made known to ProNed in writing within one month after the damage or the defect has been ascertained or should reasonably have been ascertained, and if it is not brought before the courts within one year of that time.

Article 11 - Force majeure

1. If ProNed is temporarily unable to perform the agreement due to force majeure, it shall be authorized to suspend the performance of the agreement in whole or in part for as long as the force majeure lasts. If ProNed is unable to perform the contract for more than one month due to force majeure, ProNed shall be entitled to terminate the contract in whole or in part with immediate effect.
2. In these general terms and conditions, force majeure shall be understood, in addition to its definition in the law and case law, to include all external causes, foreseen or unforeseen, over which ProNed has no control, but which prevent ProNed from fulfilling its obligations; this shall include strikes in ProNed's company, illness of its personnel, traffic obstructions, government measures, weather conditions and delays in the supply of materials by suppliers.
3. ProNed shall also be entitled to invoke force majeure if the circumstance causing force majeure occurs after ProNed should have fulfilled its obligation.
4. If ProNed is temporarily or permanently unable to perform the agreement due to force majeure, the client may not make any claim to ProNed for the performance of the agreement, rescission of the agreement, and/or damages.
5. To the extent that ProNed has already partially fulfilled its obligations under the Agreement or will be able to fulfill them at the time of the occurrence of the force majeure event and independent value can be attributed to the part already fulfilled or still to be fulfilled respectively, ProNed shall be entitled to separately invoice the part already fulfilled or still to be fulfilled respectively. The Client is obliged to pay this invoice as if it were a separate Agreement.

Article 12 - Payment and interest

1. Payment must be made within 30 days of the invoice date. Objections to the amount of an invoice do not suspend the payment obligation. Any objections concerning the invoice must be submitted to ProNed in writing within 8 days of receipt by the Client. After the expiry of these 30 days, Client shall be in default and all ProNed's claims against Client shall become immediately due and payable.
2. The client shall owe an interest of 3% per month on the amount due from the moment of default, as referred to in paragraph 1.
3. If payment by installments has been agreed and the Client is in default of payment of an installment, ProNed shall be entitled, without prejudice to its other rights, to suspend the work until Client has fulfilled all its due obligations.
4. Client shall pay without discount or set-off against any claim of Client against ProNed, whether or not disputed.
5. In the event of liquidation, (application for) bankruptcy, admission to debt rescheduling under the Dutch Natural Persons Debt Rescheduling Act, (provisional) suspension of payments or attachment of the Client's property, ProNed's claims against the Client shall become immediately due and payable.
6. Each payment shall first be applied to settle all interest and costs due and secondly to settle the oldest outstanding invoices, irrespective of whether the Contracting Authority states at the time of payment that this relates to a later invoice.
7. If the Client is in default concerning the fulfillment of its obligations, all reasonable costs incurred in obtaining satisfaction out of court will be at its expense. The Client shall in any case owe collection charges in the event of a monetary claim. Nederlandse Orde van Advocaten in incasso zaken is advised, with a minimum of € 350,-.
8. If ProNed has reasonably had to incur higher costs, these costs must also be reimbursed by the Client.
9. In addition to the extrajudicial costs, any awarded court costs and enforcement costs are for the Client's account.

Article 13 - Warranty

1. A warranty on the Work shall only apply if the parties have expressly agreed to this in writing.
2. There is never any warranty for defects that are the result of normal wear and tear, improper use, maintenance not carried out or carried out incorrectly, installation, assembly, modification, or repair by the Client or by third parties. Nor is there any guarantee for delivered items that were not new at the time of delivery.
3. Within the framework of a granted guarantee, the Client can only claim repair of the work carried out.
4. As long as the Client has not fulfilled its obligations under the Contract, it cannot invoke any guarantee arrangement.
5. The Counterparty must in all cases offer ProNed the opportunity to repair any defect.

Article 14 - Dissolution of the Agreement

1. ProNed's claims on the client shall be immediately due and payable in the following cases:
 1. if Client does not fulfill, does not fulfill properly, or does not fulfill on time any obligation arising for him from the Agreement;
 2. if after the conclusion of the Agreement ProNed learns of circumstances giving good ground to fear that Client will not comply with his obligations; if upon the conclusion of the Agreement ProNed has requested Client to furnish security for compliance and this security is not provided or is insufficient.
2. In the aforementioned cases, ProNed shall be entitled to suspend further performance of the Agreement or to rescind the Agreement and to claim compensation for costs, damage and interest, as well as to reclaim any goods not yet paid for but delivered in performance of these Agreements.

Article 15 - Property and copyright

1. Without prejudice to the provisions of these general terms and conditions, ProNed reserves the rights and powers vested in it according to the Copyright Act and intellectual property law, unless otherwise agreed in writing.
2. The rights referred to in paragraph 1 of this article shall remain the property of ProNed irrespective of whether costs have been charged to the Client for the production of the items to which they relate. They may not be reproduced or shown to third parties without ProNed's express written permission. If this provision is breached, the Client shall owe ProNed an immediately due and payable penalty of € 25,000 per breach. This penalty may be claimed in addition to damages under the law.
3. The Client must return the data (items) provided to it as referred to in paragraph 2 on first demand within the period set by ProNed. If this is breached, the Counterparty shall owe ProNed an immediately due and payable penalty of € 1,000.00 for each day or part of a day on which the breach continues. This penalty may be claimed in addition to damages under the law.
4. ProNed shall retain the right to use any knowledge gained in the course of carrying out the work for other purposes, provided that no confidential information is brought to the notice of third parties in the process.

Article 16 - Confidentiality

1. Both parties shall be bound to secrecy of all confidential information they have obtained from each other or another source in the context of the Agreement. Information shall be considered to be confidential if one party has indicated this or if this follows from the nature of the information.
2. If ProNed is required based on a statutory provision or a judicial decision to disclose confidential information to third parties designated by law or the competent court and ProNed cannot in this respect invoke a legal right to refuse to give evidence or one recognized or permitted by the competent court, ProNed shall be released from its confidentiality obligation without the Client being able to attach any consequence thereto.

Article 17 - Retention of title

1. All goods delivered by ProNed shall remain its full property until all payment obligations arising from the Agreement or other Agreements between the parties or related to such Agreements have been fulfilled by the Client.
2. Until the Client has fulfilled all its payment obligations it will hold the delivered goods for ProNed and is not authorized to dispose of them.
3. The Client is obliged at ProNed's first request to surrender goods that are subject to retention of title to ProNed. The costs thereof shall be for the account of the Counterparty.

Article 18 - Applicable law and settlement of disputes

1. Any Agreement between ProNed and Client shall be governed by Dutch law unless the parties expressly agree otherwise in writing.
2. Disputes shall be submitted to the Dutch courts unless the parties expressly agree otherwise in writing.