

GENERAL TERMS AND CONDITIONS OF SUPPLY AND PAYMENT FOR METALWARE COMPANIES 2015

Filed at the Registry of the Rotterdam District Court on 1 September 2015.
Issued by Koninklijke Metaalunie, P.O. Box 2600, 3430 GA Nieuwegein, the Netherlands.
©Koninklijke Metaalunie

Article 1: Applicability

- 1.1. These Terms and Conditions apply to all offers and agreements to which they have been declared applicable by members of Koninklijke Metaalunie and to all agreements that may result therefrom, all this in so far as the Metaalunie member is offeror or supplier.
- 1.2. A Metaalunie member using these Terms and Conditions is referred to as the Contractor. The other party is referred to as the Client.
- 1.3. In the event of any conflict between the substance of the agreement concluded between the Contractor and the Client and these Terms and Conditions, the provisions of the agreement will prevail.
- 1.4. These Terms and Conditions may only be used by Metaalunie members.

Article 2: Offers

- 2.1. All offers are without obligation.
- 2.2. If the Client provides the Contractor with data, drawings and the like, the Contractor may rely on their accuracy and completeness and will base its offer on the same.
- 2.3. The prices stated in the offer are based on delivery ex works, Contractor's place of establishment, in accordance with the Incoterms 2010. Prices are exclusive of VAT and packaging.
- 2.4. If the Client does not accept the Contractor's offer, the Contractor is entitled to charge the Client for all costs incurred by the Contractor in making the offer to the Client.

Article 3: Intellectual property rights

- 3.1. Unless otherwise agreed in writing, the Contractor retains the copyright and all industrial property rights in the offers made by it and in the designs, pictures, drawings, models (including trial models), software and the like provided by it.
- 3.2. The rights in the data referred to in paragraph 1 of this article will remain the property of the Contractor irrespective of whether the costs of their production have been charged to the Client. These data may not be copied, used or shown to third parties without the Contractor's prior express written consent. The Client will owe the Contractor an immediately payable penalty of € 25,000 for each breach of this provision. This penalty may be claimed in addition to damages pursuant to the law.

- 3.3. On the Contractor's first demand, the Client must return the data provided to it as referred to in paragraph 1 of this Article within the time limit set by the Contractor. Upon breach of this provision, the Client will owe the Contractor an immediately payable penalty of € 1,000 per day. This penalty may be claimed in addition to damages pursuant to the law.

Article 4: Advice and information provided

- 4.1. The Client cannot derive any rights from advice or information it obtains from the Contractor if this does not relate to the assignment.
- 4.2. If the Client provides the Contractor with data, drawings and the like, the Contractor may rely on their accuracy and completeness in the performance of the agreement.
- 4.3. The Client indemnifies the Contractor from and against all liability to third parties relating to use of the advice, drawings, calculations, designs, materials, samples, models and the like provided by or on behalf of the Client.

Article 5: Delivery period / performance period

- 5.1. The delivery period and/or performance period will be set by the Contractor on an approximate basis.
- 5.2. In setting the delivery period and/or performance period, the Contractor will assume that it will be able to perform the assignment under the conditions known to it at that time.
- 5.3. The delivery period and/or performance period will only commence once agreement has been reached on all commercial and technical details, all necessary data, final and approved drawings and the like are in the Contractor's possession, the agreed payment or instalment has been received *and* the necessary conditions for performance of the assignment have been satisfied.
- 5.4.
 - a. In the event of circumstances that differ from those that were known to the Contractor when it set the delivery period and/or performance period, it may extend the delivery period and/or performance period by such period as it needs to perform the assignment under such circumstances. If the work cannot be incorporated into the Contractor's schedule, it will be performed as soon as the Contractor's schedule so permits.
 - b. In the event of any contract addition, the delivery period and/or performance period will be extended by such period as the Contractor needs to (cause to) supply the materials and parts for such work and to perform the contract addition. If the contract addition cannot be incorporated into the Contractor's schedule, the work will be performed as soon as the Contractor's schedule so permits.
 - c. If the Contractor suspends its obligations, the delivery period and/or performance period will be extended by the duration of the suspension. If the continuation of the work cannot be incorporated into the Contractor's schedule, the work will be performed as soon as the Contractor's schedule so permits.
- 5.5. The Client is required to pay all costs incurred by the Contractor as a result of delay affecting the delivery period and/or performance period as referred to in paragraph 4 of this article.
- 5.6. In no event will the Client be entitled to damages or termination of the agreement if the delivery period and/or performance period is/are exceeded.

Article 6: Risk and costs of making one or more prototypes

- 6.1. The costs associated with the development of one or more prototypes will be borne by the Client.
- 6.2. The proper functioning of one or more prototypes of a particular product made at the Client's request cannot be warranted by the Contractor.

Article 7: Moulds, models, model plates, tools, etc.

- 7.1. Moulds, models, model plates, tools and the like made by the Contractor remain the property of the Contractor even when the Client has paid for them in full or in part. These auxiliary materials will be kept by the Contractor at the Client's expense and risk for a maximum period of one year after the last order.
- 7.2. Moulds, models, model plates, tools and the like intended for long-term use that are made available to the Contractor by the Client or that become the Client's property, will be kept by the Contractor at the Client's expense and risk for a maximum period of one year after the last order. If the Client does not request the return of its goods by the expiry of the period stated above, and also fails to collect these goods within one month of a written request by the Contractor, the Contractor will be entitled to make free use of the aforementioned goods.
- 7.3. The costs of modifying or modernising moulds, models, model plates, tools and the like that have been made on assignment, or of repairing wear and tear of the same, will be borne by the Client.

Article 8: Quantities

Upward and downward deviations of up to 10% of the quantity assigned are permitted. The Client is obliged to purchase and pay (pro rata) for the quantities delivered within these margins.

Article 9: Transfer of risk

- 9.1 Delivery will be made ex works, Contractor's place of establishment, in accordance with the Incoterms 2010. The risk attached to the good passes to the Client at the time the Contractor makes the good available to the Client.
- 9.2 Notwithstanding the provisions in paragraph 1 of this article, the Client and Contractor may agree that the Contractor will arrange for transport. In that event, the risk of storage, loading, transport and unloading will be borne by the Client. The Client may insure itself against these risks.

Article 10: Price change

- 10.1 The Contractor may pass on to the Client any increase in costing factors occurring after conclusion of the agreement.

- 10.2 The Client will be obliged to pay the price increase as referred to in paragraph 1 of this article on any of the occasions below, such at the discretion of the Contractor:
- a. upon the occurrence of the price increase;
 - b. at the same time as payment of the principal sum;
 - c. on the next agreed payment deadline.

Article 11: Force majeure

- 11.1 The Contractor is entitled to suspend performance of its obligations if it is temporarily prevented from performing its contractual obligations to the Client due to force majeure.
- 11.2 Force majeure is understood to mean, inter alia, the circumstance of failure by suppliers, the Contractor's subcontractors or transport companies engaged by the Contractor to perform their obligations or perform them in good time, weather conditions, earthquakes, fire, power failure, loss, theft or destruction of tools or materials, road blocks, strikes or work stoppages and import or trade restrictions.
- 11.3 If the Contractor's temporary inability to perform lasts for more than six months, it will no longer be entitled to suspend performance. On expiry of this deadline, the Client and the Contractor may terminate the agreement with immediate effect, but only as regards such part of the obligations that has not yet been performed.
- 11.4 In the event of force majeure where performance is or becomes permanently impossible, both parties are entitled to terminate the agreement with immediate effect as regards such part of the obligations that has not yet been performed.
- 11.5 The parties will not be entitled to compensation for damage suffered or to be suffered as a result of suspension or termination as referred to in this article.

Article 12: Changes to the work

- 12.1 Changes to the work will in any event result in contract variations if:
- a. the design, specifications or contract documents are changed;
 - b. the information provided by the Client is not factually accurate;
 - c. quantities diverge by more than 10% from the estimates.
- 12.2 Contract additions will be charged on the basis of the pricing factors applicable at the time the contract addition is performed.
Contract deductions will be charged on the basis of the pricing factors applicable at the time the agreement was concluded.
- 12.3 The Client will be obliged to pay the price of the contract addition as referred to in paragraph 1 of this article on any of the occasions below, such at the discretion of the Contractor:
- a. when the contract addition arises;
 - b. at the same time as payment of the principal sum;
 - c. on the next agreed payment deadline.
- 12.4 If the sum of the contract deduction exceeds that of the contract addition, in the final settlement the Contractor may charge the Client 10% of the difference. This provision does not apply to contract deductions that result from a request by the Contractor.

Article 13: Liability

- 13.1 In the event of an attributable failure, the Contractor is obliged to perform its contractual obligations as yet.
- 13.2 The Contractor's obligation to pay damages, irrespective of the legal basis, is limited to damage for which the Contractor is insured under an insurance policy taken out by it or on its behalf, but will never exceed the amount paid out under this insurance in the relevant case.
- 13.3 If, for any reason whatsoever, the Contractor cannot invoke the limitation in paragraph 2 of this article, the obligation to pay damages will be limited to a maximum of 15% of the total assignment amount (excluding VAT). If the agreement comprises parts or partial deliveries, the obligation to pay damages is limited to a maximum of 15% (excluding VAT) of the assignment amount of that part or that partial delivery.
- 13.4 The following do not qualify for compensation:
- a. consequential loss. Consequential loss is understood to include, inter alia, business interruption loss, production loss, loss of profit, transport costs and travel and accommodation expenses. The Client may insure itself against this damage if possible;
 - b. damage to goods in or under its care, custody or control. Such damage includes damage caused as a result of or during the performance of the work to goods on which work is being performed or to goods situated in the vicinity of the work site. The Client may insure itself against such damage if it so desires;
 - c. damage caused by the intent or wilful recklessness of agents or non-management employees of the Contractor.
- 13.5 The Contractor is not liable for damage to material provided by or on behalf of the Client where that damage is the result of improper processing.
- 13.6 The Client indemnifies the Contractor from and against all claims by third parties on account of product liability as a result of a defect in a product supplied by the Client to a third party and that consisted, entirely or partially, of products and/or materials supplied by the Contractor. The Client is obliged to compensate all damage suffered by the Contractor in this respect, including the full costs of defence.

Article 14: Claims in the event of any defects and warranty

- 14.1. The Contractor only gives a warranty where such has been explicitly agreed in writing.
- 14.2. When the Contractor has given a warranty, the Contractor guarantees the soundness of the goods delivered for the agreed warranty period. If it transpires that the agreed performance was not properly executed, the Contractor will decide whether to properly execute it as yet or to credit the Client for a proportionate part of the invoice amount. If the Contractor chooses to properly execute the performance as yet, it will determine the manner and time of execution itself. If the agreed performance consisted (entirely or partially) of the processing of material provided by the Client, the Client must provide new material at its own risk and expense.
- 14.3. Parts or materials that are repaired or replaced by the Contractor must be sent to the Contractor by the Client.

- 14.4. The Client bears the expense of:
- a. all costs of transport or dispatch;
 - b. costs of disassembly and assembly;
 - c. travel and accommodation expenses.
- 14.5. The Client must in all cases offer the Contractor the opportunity to remedy any defect or to perform the processing again.
- 14.6. The Client may only invoke any agreed warranty and/or entitlement to repair once it has satisfied all its obligations to the Contractor.
- 14.7. a. If any warranty is agreed upon, no warranty is given for defects resulting from:
- normal wear and tear;
 - improper use;
 - lack of maintenance or improper maintenance;
 - installation, fitting, modification or repair by the Client or third parties;
 - defects in or unsuitability of goods originating from, or prescribed by, the Client;
 - defects in or unsuitability of materials or auxiliary materials used by the Client.
- b. No warranty is given in respect of:
- goods supplied that were not new at the time of delivery;
 - parts for which a manufacturer's warranty has been provided.
- 14.8. The provisions of paragraphs 2 to 7 of this article apply mutatis mutandis to any claims by the Client based on breach of contract, non-conformity, any agreed warranty or on any other basis whatsoever.
- 14.9. The Client may not transfer any agreed warranty rights or other entitlements to repair.

Article 15: Obligation to complain

- 15.1 The Client can no longer invoke a defect in performance if it does not make a written complaint to the Contractor in respect thereof within fourteen days of the date it discovered, or should reasonably have discovered, the defect.
- 15.2 On pain of forfeiture of all rights, the Client must submit complaints regarding the amount invoiced to the Contractor in writing within the payment deadline. If the payment deadline is longer than thirty days, the Client must complain no later than thirty days after the date of the invoice.

Article 16: Failure to take delivery of goods

- 16.1 Upon expiry of the delivery period, the Client is obliged to take delivery of the good or goods forming the subject of the agreement at the agreed location.
- 16.2 The Client must lend all cooperation that can be reasonably expected from it to enable the Contractor to make the delivery.
- 16.3 If the Client does not take delivery of goods, such goods will be stored at the risk and expense of the Client.
- 16.4 Upon breach of the provisions in paragraphs 1 and/or 2 of this article, the Client will owe the Contractor a penalty of € 250 per day, to a maximum of € 25,000. This penalty may be claimed in addition to damages pursuant to the law.

Article 17: Payment

- 17.1. Payment will be made at the Contractor's place of establishment or to an account to be designated by the Contractor.
- 17.2. Unless agreed otherwise, payment will be made as follows:
 - a. in cash where sale is at the service desk;
 - b. in the case of larger objects, projects or transactions in instalments:
 - 40% of the total price upon assignment;
 - 50% of the total price after supply of the material or, if delivery of the material is not included in the assignment, after commencement of the work;
 - 10% of the total price upon completion;
 - c. in all other cases, within fourteen days of the date of the invoice.
- 17.3. If the Client fails to comply with its payment obligation, instead of paying the sum of money agreed it will be obliged to comply with a request by the Contractor for tender of payment.
- 17.4. The right of the Client to set off or suspend amounts it is owed by the Contractor is excluded, save in the event of the Contractor's bankruptcy or if statutory debt rescheduling applies to the Contractor.
- 17.5. Irrespective of whether the Contractor has fully executed the agreed performance, everything that is or will be owed to it by the Client under the agreement is immediately due and payable if:
 - a. a deadline for payment has been exceeded;
 - b. an application has been made for the Client's bankruptcy or suspension of payments;
 - c. attachment is levied on the Client's goods or claims;
 - d. the Client (a company) is dissolved or wound up;
 - e. the Client (a natural person) requests to be admitted to statutory debt rescheduling, is placed under guardianship or dies.
- 17.6. If payment is not made within the agreed payment deadline, the Client will immediately owe interest to the Contractor. The interest rate is 12% per annum, but is equal to the statutory interest rate if the latter rate is higher. When calculating interest, part of a month is regarded as a whole month.
- 17.7. The Contractor is authorised to set off its debts to the Client against amounts owed by the Client to companies affiliated with the Contractor. In addition, the Contractor is authorised to set off amounts owed to it by the Client against debts to the Client of companies affiliated with the Contractor. Further, the Contractor is authorised to set off its debts to the Client against amounts owed to the Contractor by companies affiliated with the Client. Affiliated companies are understood to mean the companies belonging to the same group, within the meaning of Article 2:24b Dutch Civil Code, and participating interests within the meaning of Article 2:24c Dutch Civil Code.

17.8. If payment is not made within the agreed payment deadline, the Client will owe the Contractor all extrajudicial costs, with a minimum of € 75.

These costs will be calculated on the basis of the following table (principal sum plus interest):

on the first € 3,000	15%
on any additional amount up to € 6,000	10%
on any additional amount up to € 15,000	8%
on any additional amount up to € 60,000	5%
on any additional amount from € 60,000	3%

The extrajudicial costs actually incurred will be owed if these are higher than they would be according to the above calculation.

17.9. If judgment is rendered in favour of the Contractor in legal proceedings, all costs that it has incurred in relation to these proceedings will be borne by the Client.

Article 18: Security

18.1. Irrespective of the agreed payment conditions, upon the first demand of the Contractor the Client is obliged to provide such security for payment as the Contractor deems sufficient. If the Client does not comply with such demand within the period set, it will immediately be in default. In that event, the Contractor is entitled to terminate the agreement and to recover its damage from the Client.

18.2. The Contractor will retain ownership of any goods delivered as long as the Client:
a. fails or will fail in the performance of its obligations under this agreement or other agreements;
b. has not paid debts that have arisen due to non-performance of the aforementioned agreements, such as damage, penalties, interest and costs.

18.3. As long as the goods delivered are subject to retention of title, the Client may not encumber or alienate the same other than in the ordinary course of its business.

18.4. Once the Contractor has invoked its retention of title, it may take possession of the goods delivered. The Client will lend its full cooperation to this end.

18.5. The Contractor has a right of pledge and a right of retention in respect of all goods that are or will be held by it for any reason whatsoever and for all claims it has or might acquire against the Client in respect of anyone seeking their surrender.

18.6. If, after the goods have been delivered to the Client by the Contractor in accordance with the agreement, the Client has met its obligations, the retention of title will be revived with regard to such goods if the Client does not meet its obligations under any agreement subsequently concluded.

Article 19: Termination of the agreement

If the Client wishes to terminate the agreement without the Contractor being in default, and the Contractor agrees to this, the agreement will be terminated by mutual consent. In that case, the Contractor is entitled to compensation for all financial loss, such as loss suffered, loss of profit and costs incurred.

Article 20: Applicable law and competent court

- 20.1. Dutch law applies.
- 20.2. The Vienna Sales Convention (C.I.S.G.) does not apply, nor do any other international regulations the exclusion of which is permitted.
- 20.3. Disputes will be heard exclusively by the Dutch civil court with jurisdiction over the Contractor's place of establishment, unless this is contrary to mandatory law. The Contractor may deviate from this rule of jurisdiction and apply the statutory rules of jurisdiction.

These conditions are a full translation of the Dutch version of the 'ALGEMENE LEVERINGS- EN BETALINGVOORWAARDEN VOOR METAALWARENBEDRIJVEN 2015' as deposited with the Registry of the District Court in Rotterdam on 1 September 2015. Explanation and interpretation of the text of these Conditions shall be based on the Dutch text.