

ARTICLE 1 → APPLICATION

1.1 These Terms and Conditions apply to all offers made by members of Koninklijke Metaalunie, all agreements they conclude and all results 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 provisions 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. The Contractor's offer is subject to the conditions 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 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 Contractor's production has been charged to the Client. These data may not be copied, used or shown to third parties without the Contractor's prior 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 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 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 €500 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 form part of the agreement.
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 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 be extended so permitted if the Contractor and the Client have reached an agreement on all commercial and technical details, all necessary data, final and approved drawings, materials, samples, models and the like which 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 In the event of circumstances that differ from those that were known to the Contractor when 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 is able to do so.
5.5 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 procure and 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 is able to do so.
5.6 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 is able to do so.
5.7 In the event of inclement weather, the delivery period and/or performance period will be extended by the resulting delay.
5.8 The Client is required to pay all costs incurred by the Contractor as a result of a delay or non-performance of the work and/or performance period as referred to in article 5.4-5.7.
5.9 If the delivery period and/or performance period is extended, the Client will in no event entitle to damages or termination.

ARTICLE 6 → TRANSFER OF RISK

6.1 Delivery will be made ex works, Contractor's place of establishment, in accordance with the Incoterms 2010. The risk remains with the Client until the Client at the time the Contractor makes the good available to the Client.
6.2 Notwithstanding the provisions in paragraph 6.1, the Contractor and the Client may agree that the Contractor will arrange for transport. In that event, the risk of storage, loading, unloading, transport and the like will be borne by the Client. The Client may insure itself against these risks.
6.3 In the event of a purchase in which a good is exchanged, the Client and the Client retains the good to be exchanged pending delivery of the new good, the risk attached to the good to be exchanged remains with the Client until the Client has placed this good in the possession of the Contractor. If the Client cannot deliver the good to be exchanged in the conditions set by the Client, the agreement was concluded, the Contractor may terminate the agreement.

ARTICLE 7 → PRICE CHANGE

7.1 The Contractor may pass on to the Client any increase in costing factors occurring after conclusion of the agreement.
7.2 The Client will be notified of 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 price;
c) on the next agreed payment deadline.

ARTICLE 8 → FORCE MAJEURE

8.1 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.
8.2 Force majeure is understood to mean, inter alia, the circumstance of failure by suppliers, the Contractor's subcontractors or other parties engaged by the Contractor to perform their obligations or perform them in good time, weather conditions, earthquakes, fire, pollution, failure of machinery or destruction of tools or materials, road blocks, strikes or work stoppages and import or trade restrictions.
8.3 The Contractor is temporarily unable 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.
8.4 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.
8.5 The Contractor 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 9 → SCOPE OF THE WORK

9.1 The Client must ensure that all licences, exemptions and other administrative or regulatory measures necessary to carry out the work are obtained in good time. The Client is required upon the Contractor's first demand to send the Contractor a copy of the documents mentioned above.
9.2 The price of the work does not include:
a) the costs of earthwork, pile driving, cutting, breaking, foundation work, concrete, masonry, painting, repair work or other construction work;
b) the costs of connecting gas, water, electricity or other infrastructural facilities;
c) the costs of preventing or limiting damage to any goods present on or near the work site;
d) the costs of removal of materials, building materials or waste;
e) travel and accommodation expenses.

ARTICLE 10 → CHANGES TO THE WORK

10.1 Changes to the work will in any event result in contract variations work if:
a) the design specifications or contract documents are changed;
b) the information provided by the Client is not actually accurate;
c) quantities diverge by more than 10% from the estimates.
10.2 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.
10.3 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.
10.4 In the event of a contract addition that exceeds that of the contract addition, in the final settlement the Contractor may charge the Client 10% of the difference between the contract addition and contract deductions that result from a request by the Contractor.

ARTICLE 11 → PERFORMANCE OF THE WORK

11.1 The Client will ensure that the Contractor can carry out its activities without interruption and at the agreed time. The Contractor's activities are made available to it when carrying out its activities, such as:
a) gas water and electricity;
b) lockable and dry storage space;
c) facilities required pursuant to the Working Conditions Act and Working Hours Act.
11.2 The Client bears the risk of and is liable for any damage connected with loss, theft, burning and damage to goods belonging to the Contractor or other third parties, such as tools, materials intended for the work or material used in the work, that are located on the work site or in the Contractor's possession.
11.3 The Client is obliged to adequately insure itself against the risks referred to in paragraph 2 of this article. In addition, the Client must procure insurance of work-related damage as regards the material to be used. Upon the Contractor's first demand the Client must submit a copy of the relevant insurance policy/policies and proof of payment of the premium. In the event of any damage, the Client is required to reimburse this to the Contractor for further processing and settlement.
11.4 If the Client fails to perform its obligations as described in the previous paragraph, the Contractor's delayed performance of the activities, the activities will be carried out as soon as the Client performs its obligations as referred to in this article, the Client is liable for all damage suffered by the Contractor as a result of the delay.

ARTICLE 12 → COMPLETION OF THE WORK

12.1 The work is deemed to be completed in the following events:
a) when the work is approved by the Client;
b) when the work is taken into commission by the Client. If the Client takes part of the work into commission, that part will be deemed to be completed.
12.2 If the Contractor notifies the Client in writing that the work has been completed and the Client does not inform the Contractor of its objection within 14 days of such notification having been made;
12.3 If the Client does not approve the work or does not refer to missing parts that can be rectified or subsequently delivered within 30 days and that do not prevent the work from being taken into commission.

13.1 If the Client does not approve the work, it is required to inform the Contractor of this in writing, stating reasons. The Client must provide the Contractor with the opportunity to complete the work as yet.
13.2 The Client indemnifies the Contractor from and against any claims by third parties for obligations as not completed parts of the work caused by use of parts of the work that have already been completed.

ARTICLE 13 → LIABILITY

13.1 In the event of an attributable failure, the Contractor is obliged to perform its obligations to the Client.
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 The Contractor's obligation to pay damages is limited to a maximum of 10% of the assignment amount (excluding VAT). If the agreement comprises parts or partial deliveries, the obligation to pay damages is limited to a maximum of 10% of the assignment amount of that part or that partial delivery.
13.4 The following does not qualify for compensation:
a) consequential loss, including business interruption loss, production loss, loss of profit, transport costs or travel and accommodation costs;
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 a warehouse on the work site. The Client may insure itself against such damage if it so desires;
c) damage caused by the intent or willful recklessness of the Contractor or its management employees of the Contractor.
13.5 The Contractor is not liable for damage to material provided by or on behalf of the Client. Such 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 work performed 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 → WARRANTY AND OTHER CLAIMS

14.1 Unless otherwise agreed in writing, the Contractor warrants the quality of the execution of the agreed performance for a period of six months after delivery/completion. In the event that a defect in the work is agreed in the other paragraphs of this article are also applicable.
14.2 If 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 doing so. 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) the 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 process against payment.
14.6 The Client may only invoke the warranty once it has satisfied all its obligations to the Contractor.
14.7 The warranty is given if the defects result from:
- normal wear and tear;
- improper use;
- lack of maintenance or improper maintenance;
- installation, fitting, modification or repair by the Client or third party;
- defects in or unsuitability of goods originating from, or prescribed by, the Client;
- missing or unsuitability of materials or auxiliary materials used by the Client.
14.8 No warranty is given in respect of:
- defects that were not new at the time of delivery;
- the inspection and repair of goods of the Client;
- goods for which a manufacturer's warranty has been provided.
14.9 The provisions of paragraphs 2 to 7 of this article apply mutatis mutandis to any claims by the Client based on breach of contract, nonconformity or on any other basis whatsoever.
14.10 The Client cannot assign any rights under this article.

ARTICLE 15 → OBLIGATION TO COMPLAIN

15.1 The Client can no longer invoke a defect in the performance if it does not make a written complaint to the Contractor in respect thereof within fourteen days of the date that discovered, or should have been 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 If the Client fails to take delivery of the goods during the delivery period and/or performance period, the Client is obliged to take delivery of the good or goods, forming the subject of the agreement.
16.2 The Client must lend all cooperation that can be reasonably expected from it to enable the Contractor to make the goods available to the Client.
16.3 If the Client does not take delivery of goods, such goods will be stored at the Client's risk and expense of the Client.
16.4 The Contractor's obligation 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 €10,000. This penalty is 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 otherwise agreed, payment will be made as follows:
a) in cash where sale is at the service desk;
b) in the case of payments in instalments:
- 40% of the total price upon assignment;
- 50% of the total price after supply of material;
- 10% of the total price after supply of material is not included in the assignment, after commencement of the work;
- 40% of the total price upon completion;
c) in all other cases, within thirty 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 payment in kind (Inbetalingsgeving).
17.4 The Client to set off or suspend amounts it is owed by the Contractor, save in the event of the Contractor's bankruptcy or if statutory provisions resccheduling applies to the Contractor.
17.5 Irrespective of whether the Contractor has fully executed the agreed performance, the Client will be obliged to pay to it by the Client under the agreement is immediately due and payable if:
a) deadline for payment has been exceeded;
b) an application has been made for the Client's bankruptcy or suspension of payments;

17.6 If an account is levied on the Client's goods or claims;
17.7 If the Client (a company) is dissolved or wound up.
17.8 If the Client (a natural person) requests to be admitted to statutory debt rescheduling, is placed under guardianship or dies.
17.9 If the Client is within the agreed payment deadline, the Client will immediately owe interest to the Contractor. The interest rate is 12% per annum, but is limited to the statutory interest rate if the latter rate is higher. When calculating interest, part of a month is regarded as a whole month.
17.10 The Contractor is authorised to set off its debts to the Client with 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 with debts to the Client of companies affiliated with the Contractor. The Contractor is authorised to set off its debts to the Client with 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 within the meaning of Article 2:24c Dutch Civil Code.
17.11 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 in the first column):
- on the first €3,000 → 15%;
- on any additional amount up to €6,000 → 8%;
- 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 paid if these are higher than they would be according to the above calculation.
17.12 If judgment is rendered in favour of the Contractor, the Client will be liable for 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 Client the Contractor is obliged to provide such security for payment as the Contractor deems sufficient. If the Client does not comply with such demand, the Contractor will be in default. In that event, the Contractor is entitled to terminate the agreement and to recover its costs.
18.2 The Contractor will retain ownership of any goods delivered as long as the Client:
a) has not paid debts that have arisen due to the performance of the mentioned 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 If 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 the goods have been delivered to the Client by the Contractor in accordance with the agreement, the Client has met its obligations in respect of the goods. The Contractor's place of establishment, the agreement will be terminated by mutual consent. In that case, the Contractor is entitled to compensation for all costs incurred and for all costs incurred. Loss of profit and costs incurred.

ARTICLE 19 → TERMINATION OF THE AGREEMENT

19.1 If the Client wishes to terminate the agreement without the Contractor being in default, the Contractor agrees to this, the agreement will be terminated by mutual consent. In that case, the Contractor is entitled to compensation for all costs incurred and for all costs incurred. Loss of profit and costs incurred.
19.2 Dutch Law applies.
19.3 The Vienna Sales Convention (C.I.S.G.) does not apply, nor do any other international agreements, unless the exclusion of which is permitted.
19.4 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.

ARTICLE 20 → APPLICABLE LAW AND CHOSEN COURT

20.1 Dutch Law applies.
20.2 The Vienna Sales Convention (C.I.S.G.) does not apply, nor do any other international agreements, unless 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.

