

# **GENERAL TERMS AND CONDITIONS FOR THE MANUFACTURE AND DELIVERY OF METAL PRODUCTS 1 March 2020**

General Terms and Conditions issued by Koninklijke Metaalunie (the employers' organisation for small and medium-sized enterprises in the metal industry), referred to as 'AVVLM', filed with the Registry of the Court of Central Netherlands, Utrecht location, on 1 March 2020.

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## **Article 1: Applicability**

- 1.1. These Terms and Conditions apply to all offers made by a Metaalunie member, to all agreements that it enters into and to all agreements arising from this, all of which insofar as the Metaalunie member is the supplier or the contractor.
- 1.2. The Metaalunie member who applies these Terms and Conditions is referred to as the supplier. The other party is referred to as the purchaser.
- 1.3. In the event of conflicts between the agreement entered into by the supplier and the purchaser and these Terms and Conditions, the provisions of the agreement will prevail.
- 1.4. These Terms and Conditions may only be applied by Metaalunie members.

## **Article 2: Offers**

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

## **Article 3: Confidentiality**

- 3.1. All information provided to the purchaser by or on behalf of the supplier, such as offers, designs, images, drawings and know-how, of whatever nature and in whatever form, are confidential, and the purchaser will not use it for any purpose other than for the implementation of the agreement.
- 3.2. The purchaser will not disclose or reproduce the information referred to in paragraph 1 of this article.
- 3.3. If the purchaser infringes one of the obligations referred to in paragraphs 1 and 2 of this article, it will owe an immediately payable penalty of € 25,000 for each infringement. This penalty can be claimed in addition to compensation by virtue of the law.

- 3.4. The purchaser must return or destroy the information referred to in paragraph 1 of this article immediately on request, within a period set at the discretion of the supplier. If this provision is infringed, the purchaser will owe the supplier an immediately payable penalty of € 1,000 per day. This penalty can be claimed in addition to compensation by virtue of the law.

#### **Article 4: Advice and information provided**

- 4.1. The purchaser cannot derive any rights from advice and information provided by the supplier that is not directly related to the order.
- 4.2. If the purchaser provides the supplier with information, the supplier may assume that it is accurate and complete when implementing the agreement.
- 4.3. The purchaser indemnifies the supplier against any third-party claims related to the use of advice, drawings, calculations, designs, materials, samples, models and the like provided by or on behalf of the purchaser. The purchaser will compensate the supplier for all damage suffered by the supplier, including all costs incurred for defence against these claims.

#### **Article 5: Delivery period**

- 5.1. Delivery periods stated are indicative.
- 5.2. The delivery period only commences once an agreement has been reached on all commercial and technical details, once all the information, including final and approved drawings and the like, is in the possession of the supplier, the agreed payment (or instalment) has been received, and the other conditions for the performance of the order have been met.
- 5.3. If:
  - a. there are circumstances other than those known to the supplier at the time it set the delivery period, the delivery period may be extended by the time the supplier needs – taking into account its planning – to implement the agreement under these circumstances;
  - b. there are contract extras, the delivery period may be extended by the time the supplier needs – taking into account its planning – to have the materials and parts delivered and to carry out the contract extras;
  - c. the supplier suspends its obligations, the delivery period may be extended by the time the supplier needs – taking into account its planning – to implement the agreement after the reason for the suspension no longer applies.

Unless the purchaser has evidence to the contrary, the duration of the extension of the delivery period is presumed to be necessary and to be the result of a situation as referred to above in a to c.

- 5.4. The purchaser is obliged to pay all costs that the supplier incurs or damages that the supplier suffers as a result of a delay in the delivery as stated in paragraph 3 of this article.
- 5.5. Under no circumstances does exceeding the agreed delivery period give the purchaser the right to compensation or to terminate the agreement. The purchaser indemnifies the supplier against any third-party claims due to exceeding the delivery period.

## **Article 6: Moulds, models, model plates, tools, etc.**

- 6.1. If in the performance of the agreement, the supplier produces moulds, models, model plates, tools and such like, they are and remain the property of the supplier, even if these are wholly or partly paid by the purchaser. These resources are kept by the supplier for a period of maximum one year after the last order for the account and at the risk of the purchaser.
- 6.2. Moulds, models, model plates, tools and such like provided by the purchaser to the supplier are kept by the supplier for a period of maximum one year after the last order for the account and at the risk of the purchaser. If after expiry of the abovementioned period the purchaser has not requested the return of its items and in addition has not collected these items within one month after a written request to this end by the supplier, the supplier is entitled to dispose of the above items as it sees fit.
- 6.3. The cost of change, innovation and/or repair after wear and tear of the commissioned moulds, models, models plates, tools and such like are for the account of the purchaser.

## **Article 7: Numbers**

Deviations of plus or minus 10% of the agreed number of goods are permitted. However, this only applies in cases where goods are not delivered per piece, but on the basis of another unit, such as weight. The purchaser is obliged to purchase and pay (pro rata) the quantities delivered within the margins referred to in the first sentence.

## **Article 8: Delivery and risk transfer**

- 8.1. Delivery takes place when the supplier, at its business location, makes the good available to the purchaser and has informed the purchaser that the good is at its disposal. From that time onwards, the purchaser bears, among other things, the risk of the good in terms of storage, loading, transport and unloading.
- 8.2. The purchaser and the supplier may agree that the supplier will be responsible for the transport. In that case too, the purchaser bears the risk of, inter alia, storage, loading, transport and unloading. The purchaser can insure itself against these risks.
- 8.3. If a good is exchanged and the purchaser retains the good to be exchanged pending delivery of the new good, the risk of the good to be exchanged remains with the purchaser until the time that it hands over the good to the supplier. If the purchaser is unable to deliver the good to be exchanged in the condition in which it was when the agreement was concluded, the supplier may terminate the agreement.

## **Article 9: Price changes**

The supplier may pass on to the purchaser an increase in cost-determining factors that occurs after conclusion of the agreement. The purchaser is obliged to pay the price increase immediately on the supplier's request.

## **Article 10: Force majeure**

- 10.1. If the supplier fails to fulfil its obligations, this cannot be attributed to the supplier if this failure is due to force majeure.

- 10.2. Force majeure includes, inter alia, if third parties engaged by the supplier – such as suppliers, subcontractors and transporters, or other parties that the supplier is dependent on – do not meet their obligations or do not do so on time, or circumstances due to weather conditions, natural disasters, terrorism, cybercrime, disruption of digital infrastructure, fire, power failures, loss, theft or loss of tools, materials or information, roadblocks, strikes or work interruptions and import or trade restrictions.
- 10.3. The supplier is entitled to suspend fulfilment of its obligations if it is temporarily prevented from fulfilling its obligations to the purchaser due to force majeure. Once the force majeure circumstances no longer apply, the supplier will fulfil its obligations as soon as its planning permits.
- 10.4. If it concerns force majeure and fulfilment is or becomes permanently impossible, or the temporary force majeure circumstances have lasted for more than six months, the supplier is entitled to terminate the agreement with immediate effect either entirely or in part. In those cases, the purchaser is entitled to terminate the agreement with immediate effect, but only for that part of the obligations that the supplier has not yet fulfilled.
- 10.5. The parties are not entitled to compensation for the damages suffered or to be suffered as a result of the force majeure, suspension or termination as referred to in this article.

#### **Article 11: Contract extras**

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

#### **Article 12: Liability**

- 12.1. In the event of an attributable failure, the supplier is still obliged to fulfil its contractual obligations, with due observance of Article 13.
- 12.2. The supplier's obligation to compensate damages – regardless of the grounds – is limited to the damage against which the supplier is covered under an insurance policy taken out by it or on its behalf. However, the scope of this obligation is never greater than the amount paid out under this insurance in the case in question.
- 12.3. If, for whatever reason, the supplier does not have the right to invoke paragraph 2 of this article, the obligation to compensate damage is limited to a maximum of 15% of the total agreed price (excluding VAT). If the agreement consists of parts or partial deliveries, this obligation is limited to a maximum of 15% (excluding VAT) of the total agreed price for that part or that partial delivery. If it concerns continuing performance contracts, the obligation to compensate damage is limited to a maximum of 15% (excluding VAT) of the total agreed price owed over the last twelve months prior to the loss-causing event.

- 12.4. The following do not qualify for compensation:
- a. consequential damages. Consequential damages include inter alia business interruption losses, loss of production, loss of profit, penalties, transport costs, and travel and subsistence expenses;
  - b. damage to property in the care, custody or control of, but not owned by the insured party. Among other things, this damage includes damage caused by or during the performance of the work to goods that are being worked on or to goods that are located in the vicinity of the place where the work is being carried out;
  - c. damage caused by the intent or wilful recklessness of auxiliary staff or non-managerial subordinates of the supplier.

The purchaser can take out insurance for these damages if possible.

- 12.5. The supplier is not obliged to compensate damage to material supplied by or on behalf of the purchaser as a result of improper processing.
- 12.6. The purchaser indemnifies the supplier against all third-party claims due to product liability as a result of a defect in a product that has been delivered by the purchaser to a third party and of which the products or materials supplied by the supplier are a part. The purchaser is obliged to reimburse all the damages suffered by the supplier in this respect, including the (full) costs of the defence.

### **Article 13: Guarantee and other claims**

- 13.1. Unless otherwise agreed in writing, the supplier guarantees the reliability of the delivered good for a period of six months after delivery or completion, as detailed in the following paragraphs.
- 13.2. If the parties have agreed to deviating guarantee conditions, the provisions of this article will remain in full force, unless this is in conflict with those deviating guarantee conditions.
- 13.3. If it emerges that the delivery has not been reliable, the supplier will decide within a reasonable period whether to repair or replace the delivered good or to credit the purchaser for a proportional part of the agreed price. If the supplier opts to repair or replace, it will determine the way in which this is done and when. If the agreed performance (also) included the processing of material provided by the purchaser, the purchaser must supply new material at its own expense and risk.
- 13.4. Parts or materials that are repaired or replaced by the supplier need to be sent to the supplier by the purchaser.
- 13.5. The following are for the account of the purchaser:
- a. all transport or shipping costs;
  - b. costs for dismantling and assembly;
  - c. travel and subsistence expenses and travel time.
- 13.6. The purchaser must in all cases give the supplier the opportunity to rectify any defect or to carry out the processing again.
- 13.7. The supplier is only obliged to implement the guarantee if the purchaser has fulfilled all its obligations.

- 13.8. a. The guarantee does not cover defects that are the result of:
- normal wear and tear;
  - improper use;
  - lack of or incorrect maintenance;
  - installation, assembly, modification or repairs carried out by the purchaser or third parties;
  - faulty or unsuitable goods originating from or prescribed by the purchaser;
  - faulty or unsuitable materials or tools used by the purchaser.
- b. No warranty is given in respect of:
- goods delivered that were not new at the time of delivery;
  - parts that are subject to a manufacturer's guarantee.
- 13.9. The provisions of paragraphs 3 to 8 of this article apply by analogy to any of the purchaser's claims based on breach of contract, non-conformity or any other basis whatsoever.

#### **Article 14: Obligation to complain**

- 14.1. The purchaser no longer has the right to invoke a defective performance if it has not complained to the supplier in writing within fourteen days after it discovered or should reasonably have discovered the defect.
- 14.2. The purchaser must have filed complaints about the invoice with the supplier in writing and within the payment term, subject to forfeiture of all rights. If the payment term is longer than thirty days, the purchaser must have filed its complaint in writing within thirty days of the invoice date at the latest.

#### **Article 15: Failure to take possession of goods**

- 15.1. The purchaser is obliged to take actual possession of the goods that are the subject of the agreement at the agreed location at the end of the delivery period.
- 15.2. The purchaser must cooperate fully and free of charge to enable the supplier to deliver the goods.
- 15.3. Goods not taken into possession are stored at the purchaser's expense and risk.
- 15.4. If the provisions of paragraph 1 or 2 of this article are infringed, the purchaser will owe the supplier a penalty for each infringement of € 250 per day up to a maximum of € 25,000, after the supplier has given notice of default. This penalty can be claimed in addition to compensation by virtue of the law.

#### **Article 16: Payment**

- 16.1. Payment is made at the supplier's business address or into an account to be designated by the supplier.
- 16.2. Unless otherwise agreed, payments must be made within 30 days of the invoice date.
- 16.3. If the purchaser fails to fulfil its payment obligation, it is obliged to comply with a request from the supplier for a tender of payment instead of payment of the agreed amount.

- 16.4. The purchaser's right to offset its claims against the supplier or to suspend the fulfilment of its obligations is excluded, unless the supplier has been granted a suspension of payments or is bankrupt, or the statutory debt adjustment scheme applies to the supplier.
- 16.5. Irrespective of whether the supplier has fully executed the agreed performance, everything that the purchaser owes or will owe it under the agreement is immediately due and payable if:
- a. a payment term has been exceeded;
  - b. the purchaser has filed for bankruptcy or suspension of payments;
  - c. the purchaser's goods or claims have been attached;
  - d. the purchaser (a company) is dissolved or wound up;
  - e. the purchaser (a natural person) files an application to be admitted to the statutory debt adjustment scheme, is placed under a guardianship order or has died.
- 16.6. If payment is delayed, the purchaser will owe interest on that sum to the supplier with effect from the day following the day agreed as the final day of payment up to and including the day on which the purchaser settles the sum in question. If the parties have not agreed on the final day of payment, the interest is due from 30 days after the sum has become due and payable. The interest is 12% per year, but is equal to the statutory interest if this is higher. For the interest calculation, a part of the month is considered to be a full month. At the end of each year, the amount on which the interest is calculated will be increased by the interest due for that year.
- 16.7. The supplier is entitled to offset its debts to the purchaser against claims that companies affiliated to the supplier have against the purchaser. In addition, the supplier is entitled to offset its claims to the purchaser against debts that companies affiliated to the supplier have against the purchaser. Furthermore, the supplier is entitled to offset its debts to the purchaser against claims against companies affiliated to the purchaser. 'Affiliated companies' means all companies belonging to the same group, within the meaning of Book 2, Article 24b of the Dutch Civil Code, and a participation within the meaning of Book 2, Article 24c of the Dutch Civil Code.
- 16.8. For late payments, the purchaser owes the supplier all extrajudicial costs with a minimum of € 75.

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

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

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

- 16.9. If judgment is rendered in favour of the supplier in legal proceedings, either entirely or for the most part, the purchaser will bear all costs incurred in connection with these proceedings.

## **Article 17: Securities**

- 17.1. Irrespective of the agreed payment terms, the purchaser is obliged to provide sufficient security for payment immediately on the supplier's request and at its discretion. If the purchaser does not comply with this provision within the set time limit, it will immediately be in default. In that case, the supplier has the right to terminate the agreement and to recover its damages from the purchaser.
- 17.2. The supplier remains the owner of delivered goods as long as the purchaser:
  - a. has not fulfilled its obligations under any agreement with the supplier;
  - b. has not settled any claims arising from non-fulfilment of the aforementioned agreements, such as damage, penalty, interest and costs.
- 17.3. As long as the delivered goods are subject to retention of title, the purchaser may not encumber or dispose of these goods other than in the course of its normal business operations. This provision has effect under property law.
- 17.4. After the supplier has invoked its retention of title, it is entitled to take repossession of the delivered goods. The purchaser will cooperate fully with this.
- 17.5. When the purchaser has fulfilled its obligations after the supplier has delivered the goods in accordance with the agreement, the retention of title with regard to these goods is reinstated when the purchaser fails to fulfil its obligations from an agreement concluded later.
- 17.6. The supplier has a right of pledge and a right of retention on all goods that it has or may receive from the purchaser on any grounds whatsoever and for all claims that it has or might have against the purchaser.

## **Article 18: Intellectual property rights**

- 18.1. The supplier is considered to be the maker, designer or inventor of the works, models or inventions created in the context of the agreement. The supplier therefore has the exclusive right to apply for a patent, trademark or model.
- 18.2. The supplier will not transfer any intellectual property rights to the purchaser in the implementation of the agreement.
- 18.3. If the performance to be delivered by the supplier (also) includes providing computer software, the source code will not be handed over to the purchaser. The purchaser will only acquire a non-exclusive, worldwide and perpetual licence for use for the computer software solely for the purpose of the normal use and proper functioning of the good. The purchaser is not permitted to transfer the licence or to issue a sub-licence. When the purchaser sells the good to a third party, the licence transfers by operation of law to the acquirer of the good.
- 18.4. The supplier disclaims liability for damages that the purchaser suffers as a result of an infringement of third-party intellectual property rights. The purchaser indemnifies the supplier against any third-party claims related to an infringement of intellectual property rights.

### **Article 19: Transfer of rights or obligations**

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

### **Article 20: Cancellation or termination of the agreement**

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

### **Article 21: Applicable law and competent court**

- 21.1. Dutch law applies.
- 21.2. The Vienna Sales Convention (CISG) does not apply, nor does any other international regulation that may be excluded.
- 21.3. The Dutch civil court with jurisdiction in the supplier's place of business will hear any disputes. The supplier may depart from this jurisdiction rule and apply the statutory jurisdiction rules.

These Terms and Conditions constitute a comprehensive translation of the Dutch version of the General Terms and Conditions for the Manufacture and Delivery of Metal Products ('AVVLM') as filed with the Registry of the Court of Central Netherlands, Utrecht location, on 1 March 2020. The Dutch version will prevail in the explanation and interpretation of this text.