

METAALUNIE TERMS AND CONDITIONS

General terms and conditions issued by Koninklijke Metaalunie (employers' organisation for small and medium-sized businesses in the metal sector) referred to as METAALUNIE TERMS AND CONDITIONS, filed with the registry of the court of Rotterdam on 1 January 2019. A publication of Koninklijke Metaalunie, Postbus 2600, 3430 GA Nieuwegein. © Koninklijke Metaalunie

Article 1: Applicability

1.1. These terms and conditions apply to all offers made by a Metaalunie member, to all agreements it concludes and to all agreements arising from this, all this insofar as the Metaalunie member is a supplier or contractor.
1.2. The Metaalunie member who uses these terms and conditions will be referred to as contractor. The other party is referred to as the client.
1.3. In the event of a conflict between the content of the agreement concluded between the client and the contractor 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 any obligation. The contractor has the right to revoke its offer up to two working days after receiving the acceptance.
2.2. If the client provides the contractor with information, the contractor may assume this to be correct and complete and will base its offer on this information.
2.3. The prices stated in the offer are expressed in euros, excluding turnover tax and other government levies or taxes. The prices are also exclusive of travel, accommodation, packaging, storage and transport costs, as well as costs for loading, unloading and cooperating with customs formalities.

Article 3: Confidentiality

3.1. All information provided to the client by or on behalf of the contractor (such as offers, designs, images, drawings and know-how), of whatever nature and in whatever form, are confidential and may not be used by the client for any purpose other than for the performance of the agreement.
3.2. The information referred to in paragraph 1 of this article will not be multiplied or made public by the client.
3.3. If the client violates one of the obligations referred to in paragraphs 1 and 2 of this article, it will owe an immediately due and payable fine of €25,000 per violation. This penalty can be claimed in addition to compensation by virtue of the law.
3.4. The client must return or destroy the information referred to in paragraph 1 of this article if the contractor so demands, within a period set by the contractor, at the discretion of the contractor. In the event of a violation of this provision, the client will owe the contractor an immediately due and payable fine 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 client cannot derive any rights from advice and information received from the contractor, if not directly related to the instruction.
4.2. If the client provides the contractor with information, the contractor may assume this to be correct and complete during the performance of the agreement.
4.3. The client indemnifies the contractor against any third-party claim with regard to the use of advice, drawings, calculations, designs, materials, brands, samples, models, etc. provided by or on behalf of the client. The client will compensate all costs incurred by the contractor, including full costs incurred for a defence against these claims.

Article 5: Delivery time/performance period

5.1. A specified delivery time or performance period is indicative.
5.2. The delivery time or performance period does not commence until agreement has been reached on all commercial and technical details, all information, including final and approved drawings, etc. are in the possession of the contractor, the agreed payment (or instalment) has been received and the other conditions for the performance of the instruction have been met.
5.3. In the event of:
a. circumstances other than those known to the contractor when it stated the delivery time or performance period, the delivery time or performance period will be extended by the time needed by the contractor, with due observance of its planning, to perform the instruction under these circumstances;
b. contract extras, the delivery period or performance period will be extended by the time needed by the contractor, with due observance of its planning, to deliver the materials and parts (or have them delivered) and to perform the contract extras;
c. suspension of obligations by the contractor, the delivery time or performance period will be extended by the time needed by the contractor, with due observance of its planning, to perform the instruction after the reason for the suspension has lapsed.
Subject to proof to the contrary by the client, the duration of the extension of the delivery time or performance period is presumed to be necessary and to be the result of a situation as referred to above under a to c.
5.4. The client is obliged to pay all costs incurred or damage suffered by the contractor as a result of a delay in the delivery time or performance period, as stated in paragraph 3 of this article.
5.5. Exceeding the delivery time or performance period does not entitle the client to compensation or dissolution under any circumstances. The client indemnifies the contractor against any third-party claims as a result of exceeding the delivery time or performance period.

Article 6: Delivery and transfer of risk

6.1. Delivery takes place the moment the contractor makes the good available to the client at its business location and the contractor has informed the client that the good is available to the latter. From that moment onwards, the client bears the risk of the goods for storage, loading, transport and unloading, among other things.
6.2. The client and the contractor may agree that the contractor will take care of the transport. In that case too, the risk of, among other things, storage, loading, transport and unloading rests with the client. The client can take out insurance to cover these risks.
6.3. If the event of a trade-in and the client, in anticipation of delivery of the new goods, continues to use the goods to be traded in, the risk of the goods to be traded in remains vested in the client until it has made them available to the contractor. If the client cannot deliver the good to be exchanged in the condition it was in when the agreement was concluded, the contractor can terminate the agreement.

Article 7: Price changes

The contractor may pass an increase in cost-determining factors that occurred after the conclusion of the agreement on to the client. The client is obliged to pay the price increase if the contractor so demands.

Article 8: Force majeure

8.1. A shortcoming in the fulfilment of its obligations cannot be attributed to the contractor if this shortcoming is the result of force majeure.
8.2. Force majeure includes the circumstance that third parties engaged by the contractor, such as suppliers, subcontractors and transporters, or other parties on which the client depends, do not or do not timely comply with their obligations, weather conditions, natural disasters, terrorism, cybercrime, disruption of digital infrastructure, fire, power failure, loss, theft or loss of tools, materials or information, roadblocks, strikes or work stoppages, and import or trade restrictions.
8.3. The contractor has the right to suspend the fulfilment

of its obligations if it is temporarily prevented from fulfilling its obligations towards the Client due to force majeure. If the force majeure situation has lapsed, the contractor will fulfil its obligations as soon as its schedule permits.
8.4. If there is force majeure and compliance is or becomes permanently impossible, or if the temporary force majeure situation has lasted more than six months, the contractor is to dissolve the agreement in whole or in part with immediate effect. In those cases, the client is authorised to dissolve the agreement with immediate effect, but only for that part of the obligations that has not yet been fulfilled by the contractor.
8.5. The parties are not entitled to compensation for damage suffered or to be entitled as a result of the force majeure, suspension or dissolution within the meaning of this article.

Article 9: Scope of the work

9.1. The client must ensure that all permits, exemptions and other decisions needed to carry out the work have been obtained in due time. The client is obliged to send a copy of the aforesaid documents to the contractor if the latter so demands.
9.2. Unless otherwise agreed in writing, the work does not include:
a. earthworks, piling, chopping, breaking, foundations, masonry, carpentry, plastering, painting, wallpapering, repair work or other construction work;
b. realising connections for gas, water, electricity, Internet or other infrastructural facilities;
c. measures to prevent or limit damage to or theft or loss of goods present at or near the workplace;
d. removal of materials, waste materials or waste;
e. vertical and horizontal transport;

Article 10: Contract extras

10.1. Changes in the work will in any case result in contract extras if:
a. there is a change in the design, the specifications or the contract documents;
b. the information provided by the client does not correspond to actual practice;
c. estimated quantities deviate by more than 5%.
10.2. Contract extras are calculated on the basis of the price-determining factors applicable at the time the contract extras are carried out. The client is obliged to pay the price of the contract extras if the contractor so demands.

Article 11: Performance of the work

11.1. The client ensures the contractor can perform its work undisturbed and at the agreed time and that it has access to the necessary facilities during the performance of its work, such as: a. gas, water, electricity and Internet; b. heating; c. lockable dry storage space; d. facilities prescribed under the Working Conditions Act and regulations.
11.2. The client bears the risk and is liable for damage to and theft or loss of property of the contractor, client and third parties, such as tools, materials intended for the work or equipment used for the work, which are located at or near the place where the work is performed or at another agreed place.
11.3. To the extent in prejudice to the provisions of paragraph 2 of this article, the client is obliged to take out adequate insurance against the risks referred to in that paragraph. In addition, the client must ensure insurance of the work risk of equipment to be used. The client must send the contractor a copy of the relevant insurance contract(s) and the certificate of payment of the premium if the contractor so demands. In the event of damage, the client is obliged to report this immediately to its insurer for further processing and settlement.

Article 12: Delivery of the work

12.1. The work is deemed to have been delivered, if:
a. the client has approved the work;
b. the client has put the work into operational service, if the client only puts part of the work into operational service, that part will be deemed delivered;
c. the contractor has notified the client, in writing, that the work has been delivered; or
d. the client rejects the work on the basis of minor defects or missing parts that can be repaired or delivered subsequently, within 30 days, and which do not impede putting the work into operational service.
12.2. If the client rejects the work, it is obliged to notify the contractor thereof, in writing, stating the reasons. The client must give the contractor the opportunity to still complete the work.
12.3. The client indemnifies the contractor against third-party claims for damage to undelivered parts of the work caused by the use of already delivered parts of the work.

Article 13: Liability

13.1. In the event of an attributable shortcoming, the contractor is still obliged to fulfil its contractual obligations, with due observance of Article 14.
13.2. The contractor's obligation to compensate damage, on whatever basis, is limited to the damage against which the contractor is insured under an insurance policy taken out by or on behalf of the contractor. However, the extent of this obligation is not limited to the amount that is paid out under this insurance in the relevant case.
13.3. If for whatever reason, the contractor cannot invoke paragraph 2 of this article, the obligation to compensate damage is limited to a maximum of 15% of the total contract sum (excluding VAT). If the agreement consists of parts, the contractor's obligation to compensate damage is limited to a maximum of 15% (excluding VAT) of the contract sum for that part or partial delivery. In the case of continuing performance contracts, the obligation to compensate damage is limited to a maximum of 15% (excluding VAT) of the contract sum due over the last twelve months prior to the event causing the damage.
13.4. The following do not qualify for compensation: a. consequential damage. Consequential damage includes, among other things, business interruption losses, loss of production, lost profits, penalties, transport costs and travel and accommodation costs; b. damage to property in the care, custody or control of, but not owned by the insured. In those other things, it is understood to mean damage caused during the execution of the work to goods that are being processed or that are in the vicinity of the place where work is carried out; c. damage as a result of intent or willful recklessness by auxiliary staff or non-manual staff of the contractor or its subcontractors. The client can take out insurance against this, if so desired.
13.5. The contractor is not obliged to compensate damage to material supplied by or on behalf of the client as a result of improper processing.
13.6. The client indemnifies the contractor against all third-party claims on account of product liability as a result of a defect in a product supplied by the client to a third party and which comprises the products or materials supplied by the contractor. The client is obliged to compensate the contractor for all damage suffered in this connection, including the (full) costs of the defence.

Article 14: Warranty and other claims

14.1. Unless agreed otherwise in writing, the contractor warrants the proper performance of the agreed deliverable for a period of six months after delivery or completion, as further elaborated in the following paragraph.
14.2. If the parties have agreed on deviating warranty conditions, the provisions of this article will apply in

full, unless this conflicts with those deviating warranty conditions.

14.3. If the agreed deliverable has not been performed properly, the contractor will provide within a reasonable period of time, at no cost to the client, the repair or credit the client for a proportionate part of the contract sum.
14.4. If the contractor opts for proper performance of the deliverable as yet, it will determine the manner and time of performance itself. The client, in all cases offer the contractor the opportunity to do so. If the agreed deliverable (partly) consisted of processing material supplied by the client, the client must supply new material at its own expense and risk.
14.5. Parts or materials that are repaired or replaced by the contractor must be sent to the contractor by the client.
14.6. The following will be borne by the client: a. all transport or shipping costs; b. costs for disassembly and assembly; c. travel and accommodation costs and travel hours.
14.7. The contractor is only obliged to implement the guarantee if the client has fulfilled all its obligations.
14.8. a. No warranty is given if the defects are the result of:
- normal wear and tear;
- improper use;
- lack of or incorrect maintenance;
- installation, assembly, modification or repair by the client or third parties;
- faulty or unsuitable goods originating from or prescribed by the client;
- faulty or unsuitable materials or resources used by the client.
b. No warranty is given in respect of:
- goods delivered that were not new at the time of delivery;
- the client inspecting and repairing the goods;
- parts that are subject to a manufacturer's warranty.
14.9. The provisions of paragraphs 3 to 8 of this article apply by analogy to any claims by the client based on breach of contract, non-conformity or any other basis.

Article 15: Obligation to complain

15.1. The client cannot invoke a defect in the performance if it fails to complain about this to the contractor party in writing within 14 days after it discovered or should in all reasonable ways have discovered the defect.
15.2. The client must submit complaints about the invoice to the contractor in writing within the payment term, under penalty of forfeiture of all rights. If the payment term is longer than thirty days, the client must have submitted a written complaint within thirty days of the invoice date at the latest.
15.3. Failure to take delivery of goods
16.1. The client is obliged to actually take delivery of the good or goods that are the subject of the agreement at the agreed location after the delivery period or payment term has expired.
16.2. The client must provide all cooperation free of charge to enable the contractor to deliver.
16.3. Goods that have not been taken delivery of will be stored at the expense and risk of the client.
16.4. In the event of a violation of the provisions of paragraph 1 or 2 of this article, after the client has given it notice of default, the client will owe the contractor a penalty of €1,250 per day with a maximum of €125,000 per violation. This penalty can be claimed in addition to compensation by virtue of the law.

Article 16: Payment

17.1. Payment is made at the place of business of the contractor or into a bank account to be designated by the contractor.
17.2. Unless agreed otherwise, payment will be made within 30 days of the invoice date.
17.3. If the client does not fulfil its payment obligation, it is obliged, instead of paying the agreed amount, to comply with a request from the contractor for payment.
17.4. The client's right to set off its claims against the contractor or to suspend the fulfilment of its obligations is excluded, unless in the event of a suspension of payment or bankruptcy of the client, or if the statutory debt restructuring applies to the contractor.
17.5. Irrespective of whether the contractor has fully performed the agreed deliverable, everything the client owes or will owe the contractor under the agreement is immediately due and payable if:
a. a payment term has been exceeded;
b. the client does not fulfil its obligations under Article 16; c. the bankruptcy or suspension of payment of the client has been applied for;
d. goods or claims of the client are seized;
e. the client (company) is dissolved or wound up;
f. the client (natural person) is allowed to participate in the statutory debt management scheme, is placed under guardianship or has died.
17.6. In the event of a delay in the payment of a sum of money, the client will owe interest on that sum of money to the contractor from the day following the day agreed on as the final day of payment, up to and including the day on which the client has paid the sum of money. If the parties have not agreed on a final date for payment, the interest is due from 30 days after it became due and payable. The interest stands at 12% per year, yet is equal to the statutory interest rate should that be higher. When calculating the interest rate, part of a month is regarded as a full month. After the end of each year, the amount on which interest is calculated is increased by the interest payable for that year.
17.7. The contractor is entitled to set off debts it owes the client against claims which companies affiliated with the contractor have against the client. In addition, the contractor is entitled to set off its claims against the client against debts owed to the client by companies affiliated with the contractor. Furthermore, the contractor is entitled to set off debts it owes the client against claims against companies affiliated with the client. Affiliated companies are taken to mean all companies that form part of the same group within the meaning of Article 2:24b of the Dutch Civil Code, and of a participating interest within the meaning of Article 2:24c of the Dutch Civil Code.
17.8. If payment is not made in time, the client owes the contractor all judicial and extrajudicial costs, subject to a minimum of €1.75. These costs are calculated on the basis of the following table (principal sum, including interest): on the first €13,000: 15%; on the excess up to €16,000: 10%; on the excess up to €15,000: 8%; on the excess up to €160,000: 5%; on the excess from €160,000: 3%. The extrajudicial costs effectively incurred are owed if these are higher than those resulting from the above calculation.
17.9. If during legal proceedings the decision is made mostly or largely in favour of the contractor, all costs incurred by it in relation to these proceedings will be payable by the client.

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18.1. Regardless of the agreed payment terms, the client, if the contractor so demands and at its discretion, is obliged to provide sufficient security for payment. If the client fails to do so within the set term, it will automatically be in default. In that case, the contractor is entitled to dissolve the agreement and recover any damage incurred from the client.
18.2. The contractor remains the owner of the delivered goods as long as the client: a. has not fulfilled its obligations under any agreement with the contractor, b. has not complied with the above agreements, such as damage, penalty, interest and costs.

Article 18: Securities

18.1. Regardless of the agreed payment terms, the client, if the contractor so demands and at its discretion, is obliged to provide sufficient security for payment. If the client fails to do so within the set term, it will automatically be in default. In that case, the contractor is entitled to dissolve the agreement and recover any damage incurred from the client.
18.2. The contractor remains the owner of the delivered goods as long as the client: a. has not fulfilled its obligations under any agreement with the contractor, b. has not complied with the above agreements, such as damage, penalty, interest and costs.



18.3. As long as the goods delivered are subject to retention of title, the client is not permitted to encumber or sell the goods outside its normal business operations. This clause has effect under property law.

18.4. After the contractor has revoked its retention of title, it is entitled to take repossession of the goods supplied. The client will fully cooperate in this respect.
18.5. If the client has fulfilled its obligations after the goods have been delivered to it by the contractor in accordance with the agreement, the retention of title with regard to these goods will revive if the client fails to fulfil its obligations under an agreement concluded later.
18.6. The contractor has a right of pledge and a right of retention on all goods that it has or will receive from the client for whatever reason and for all claims that it has or may have against the client.

Article 19: Intellectual property rights

19.1. The contractor is regarded as the creator, designer or inventor of the works, models or inventions created within the framework of the agreement. The contractor therefore has the exclusive right to apply for a patent, trademark or design.
19.2. The contractor does not transfer any intellectual property rights to the client during the performance of the agreement.
19.3. If the deliverable to be performed by the contractor (also) consists of the delivery of computer software, the source code will not be transferred to the client. The client will receive a non-exclusive, worldwide and perpetual user licence for the computer software exclusively for the purpose of normal use and proper functioning of the good. The client is not permitted to transfer the licence or to issue a sub-licence. When the client sells the goods to a third party, the licence is transferred by operation of law to the acquirer of the good.
19.4. The contractor is not liable for damage suffered by the client as a result of an infringement of intellectual property rights of third parties. The client indemnifies the contractor against any third-party claim with regard to an infringement of intellectual property rights.

Article 20: Transfer of rights or obligations

The client cannot transfer or pledge rights or obligations under any article of these general terms and conditions or to issue a sub-licence. When the client sells the goods to a third party, the licence is transferred by operation of law to the acquirer of the good.

21.1. The client is not authorised to terminate or cancel the agreement, unless the contractor agrees to this. When the contractor has given its consent, the client owes the contractor an immediately due and payable compensation in the amount of the agreed price, minus the savings resulting for the contractor from the termination. The compensation is at least 20% of the agreed price.
21.2. If the price is made dependent on the actual costs to be incurred by the contractor (cost-based basis), the compensation referred to in the first paragraph of this article is estimated on the sum of the costs, working hours and profit the contractor expected to have achieved for the entire instruction.

Article 22: Applicable law and competent court

22.1. Dutch law applies.
22.2. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply, nor does any other international regulation allowed to be excluded.
22.3. The Dutch civil court with jurisdiction in the contractor's place of business will hear any disputes. The contractor may deviate from this jurisdiction rule and apply the statutory jurisdiction rules.