Terms and conditions of Metaalunie

1 January 2025

General terms and conditions of delivery issued by Koninklijke Metaalunie, filed with the Registry of the Court of Rotterdam.

Article 1: Applicability

1.1. The Metaalunie member who applies these terms and conditions is referred to as the contractor. The other party is referred to as the client.

1.2. 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 in-sofar as the Metaalunie member is the contractor.

1.3. In the event of a conflict between a provision of the concluded agreement and these terms and conditions, the provision of the agreement shall prevail.

1.4. Only Metaalunie members may use these terms and conditions.

Article 2: Offers

2.1. All offers made by the contractor are without obligation and revocable, including offers that include a term for acceptance. The contractor is entitled to revoke its offer up to two working days after it has received the acceptance.

2.2. The prices stated by the contractor in the offer are expressed in euros, excluding VAT and other government levies or taxes. In addition, the prices do not include travel, accommodation, packaging, storage and transport costs or costs for loading, unloading and cooperating with customs formalities.

2.3. Unless otherwise specified, the offer does not include::
   a. groundwork, pile driving, cutting, breaking, foundation work, masonry, carpentry, plastering, painting, wallpapering, repair work or any other construction work;
   b. making connections to gas, water, electricity, internet or other infrastructural facilities;
   c. measures to prevent or limit damage to, of theft or loss of, goods present at or near the workplace;
   d. removal of materials, soil, building materials or waste;
   e. vertical and horizontal transport.

Article 3: Confidentiality

3.1. All information provided by or on behalf of the contractor to the client (such as offers, designs, images, drawings and know-how) of whatever nature and in whatever form is confidential. The client will only use this information for the execution of the agreement. The client will not disclose or reproduce the information.

3.2. If the client breaches an obligation under paragraph 1, it will owe an immediately payable penalty of € 25,000 per breach. The contractor may claim this penalty in ad-dition to damages under the law.

3.3. The client must return the information referred to in paragraph 1 upon first request, within a period set by the contractor, at the contractor's discretion, or destroy it in a manner to be determined by the contractor, without being allowed to retain a copy in any form whatsoever. In the event of a breach of this provision, the client shall owe the contractor an immediately payable penalty of € 1,000 per day. The client can claim this penalty in addition to compensation under the law.

Article 4: Advice and information provided

4.1. The client cannot derive any rights from advice and information provided by the con-tractor that is not related to the contract.

4.2. If the client provides information to the contractor, the contractor may assume the accuracy and completeness of this information when making an offer and performing the agreement.

4.3. The contractor is not obliged to warn of, or to independently investigate, any inaccuracies in the order, defects and unsuitability of goods originating from the client and errors or defects in plans, drawings, calculations, specifications or implementation instructions provided by the client.

4.4. The client indemnifies the contractor against any third-party claim in connection with (the use of) information provided by or on behalf of the client. This includes advice, instructions, drawings, calculations, designs, materials, brands, samples and models. The client shall compensate the contractor for all damage suffered. This includes the full cost of legal defence.

Article 5: Delivery time

5.1. All delivery times, which includes in these conditions a delivery date, week, month, term or implementation period, are indicative. If these are exceeded, the client must issue the contractor at all times with a notice of default.

5.2. The delivery time shall apply only when the client and the contractor have reached timely agreement on all commercial and technical details, all information, including final and approved drawings and the like, is in the possession of the contractor, all items to be made available by the client have been received by the contractor, the agreed (instalment) payment has been received in time and the other conditions for the execution of the order have been fulfilled. If the delivery time no longer applies, the contractor may determine a new delivery time taking into account the contrac-tor's schedule.

5.3. The delivery time no longer applies if there are circumstances other than those known to the contractor when it specified the delivery time and those circumstances are at the expense and risk of the client, including changes to the order, contract variations or suspension by the contractor. If the delivery time no longer applies, the contractor may determine a new delivery time taking into account the contractor's schedule.

5.4. The client must reimburse the contractor for all costs, damage and loss incurred or suffered by the contractor as a result of a change in the delivery time as referred to in paragraphs 2 and 3, without the need for a notice of default.

5.5. Exceeding the delivery time does not entitle the client to compensation or full or partial termination. The client indemnifies the contractor against claims from third parties as a result of exceeding the delivery time.

Article 6: Delivery and risk transfer

6.1. Delivery takes place at the time the contractor makes the item available to the client at its premises and has notified the client accordingly. From that moment on, the item is at the client's risk.

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6.2. If, after the conclusion of the agreement, the contractor nevertheless arranges the transport in whole or in part at the request of the client or assists the client in this regard (such as storage, loading, stowage or unloading), this will be at the expense and risk of the client. The client can insure itself against these risks.

6.3. If after delivery, transport is carried out by or on behalf of the client and the contractor must have access to (transport) documents that are in the client's possession, the client must make those documents available to the contractor free of charge upon first request.

6.4. If an item is exchanged and the client retains the item to be exchanged pending delivery of the new item, the risk of the item to be exchanged remains with the client until the time that it hands over the item to the contractor. If the client is unable to deliver the item to be exchanged in the condition in which it was when the agreement was concluded, the contractor may terminate the agreement wholly or in part.

Article 7: Price change

The contractor may pass on to the client any increase in cost-determining factors that occurred after the conclusion of the agreement. The client must pay the price increase at the contractor's first request.

Article 8: Force majeure

8.1. If the contractor cannot fulfil its obligations due to a circumstance beyond its actual control, this cannot be attributed to the contractors and results in force majeure. In that event, the contractor shall not be liable for any damage suffered by the client as a result. Except as provided in the fourth paragraph of this article, the client is in that event also not entitled to terminate the agreement in whole or in part.

8.2. The circumstances referred to in the first paragraph of this article include in any case (civil) war (threat), terrorism, riots, outbreaks of infectious diseases and the resulting government measures or advice, natural disasters, extreme weather conditions, import or trade restrictions, explosion, fire, water damage, sabotage, cybercrime, disruption of digital infrastructure, disruptions in the supply of energy, (partial) loss, theft or loss of tools, materials or information, defects in machines, roadblocks, blockades of railways and waterways or airports, strikes or work stoppages, staff shortages and the circumstance that third parties engaged by the contractor, such as suppliers, subcontractors and transporters, or other parties on which the contractor is dependent, do not or do not timely fulfil their obligations.

8.3. The contractor is entitled to suspend fulfilment of its obligations if it is temporarily prevented from fulfilling its obligations to the client due to force majeure. Once the force majeure situation has ended, the contractor shall fulfil its obligations as soon as its schedule permits.

8.4. If there is force majeure and compliance is or becomes permanently impossible, or the temporary force majeure situation has lasted for more than six months, the contractor is authorised to terminate the agreement wholly or in part with immediate effect. In those cases, the client is entitled to terminate the agreement with immediate effect, but only for that part of the obligations that the contractor has not yet fulfilled.

8.5. The parties are not entitled to compensation for the damage suffered or to be suffered as a result of the force majeure, suspension or termination as referred to in this article.

Article 9: Contract extras

Contract extras are calculated on the basis of the prices applicable at the contractor at the time the additional work is carried out. The client must pay the price for the contract extras on the contractor's first request.

Article 10: Execution of the work

10.1. The client shall ensure that the contractor can perform its work safely, undisturbed, uninterrupted and at the agreed time. The client shall ensure at its own expense and risk that:
   a. all permits, exemptions and other decisions necessary to carry out the work have been obtained in a timely manner. The client is obliged to provide the contractor with a copy of the aforementioned documents on the contractor's first request;
   b. the client informs the contractor in writing and in a timely manner of all (safety) regulations applicable at the location;
   c. the contractor is provided with the necessary auxiliary personnel, tools and facilities (such as gas, water, electricity, internet, suitable access roads for any neces-sary transport, lifting and hoisting cranes, sanitary facilities and a lockable dry storage space) when carrying out its work;
   d. all activities necessary for the execution of the work and not included in the agreement have been carried out on time.

10.2. The client bears the risk and is liable for damage to and theft or loss of all items located at or near the place where the work is carried out or at any other agreed place, such as the item delivered or to be delivered, tools, materials intended for the work or equipment used in the performance of the work. This does not apply if the client proves that the damage, theft or loss was caused by the contractor itself.

10.3. Without prejudice to the provisions of paragraph 2 of this article, the client must take out adequate insurance against the risks mentioned in that paragraph. In the event of damage, the client is obliged to report this immediately to its insurer for further processing and settlement.

Article 11: Delivery of the work

11.1. The work is deemed to be delivered if:
   a. the client has approved the work;
   b. the work has been put into use. If part of the work has been put into use, that part is considered to be delivered;
   c. the contractor has notified the client in writing that the work has been completed and the client has not notified the contractor in writing within 14 days of the date of such notification that the work has not been approved;
   d. the client does not approve the work on the grounds of minor defects or missing parts that can be repaired or delivered within 30 days and that do not prevent the work from being put into use.

11.2. The contractor is not obliged to provide the client with a document within the mean-ing of Section 7:757a of the Dutch Civil Code regarding the construction work that has been completed and is to be delivered (a 'transfer or delivery file').

11.3. If the client does not approve the work, it is obliged to inform the contractor of this in writing, stating the reasons. The client must give the contractor the opportunity to deliver the work at a later date

Article 12: Liability

12.1. If the contractor is liable for whatever reason, such liability shall at all times be limited as stipulated in the following paragraphs.

12.2. If the contractor has any insurance taken out by it or on its behalf that provides cover, the contractor's obligation to compensate for damage shall be limited to the amount paid out under such insurance in the relevant case.

12.3. If the contractor has no insurance as referred to in the previous paragraph or no amount is paid out under such insurance for whatever reason, the obligation to compensate for damage is limited to a maximum of 15% of the order 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 order price of the part or partial delivery in connection with which the contractor's liability has arisen. If it concerns continuing performance contracts, the obligation to compensate for damage is limited to a maximum of 15% (excluding VAT) of the contract price owed over the last twelve months prior to the damage-causing event.

12.4. The following do not qualify for compensation:
   a. consequential damage. Consequential damage includes, but is not limited to: business interruption loss, loss of production, loss of profit, missed savings and subsidies, tax disadvantages, costs incurred in vain, internal costs of the client, reduced goodwill and damage to reputation, penalties, damage resulting from liability of the client towards third parties, loss in connection with damage, destruction or loss of data or documents, transport costs and travel and accommodation expenses, storage costs, costs for replacement equipment and labour and costs in connection with recall actions;

b. damage to goods 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 (opzichtschade);
c. damage to or caused by or with equipment provided to the contractor;
d. damage as a result of intent or wilful recklessness by the contractor's auxiliary staff or non-managerial subordinates.
e. damage to material supplied by or on behalf of the client, including as a result of improperly executed processing, assembly, mounting or installation.

The client may insure itself against these types of damage if possible.

12.5. The client indemnifies the contractor against all claims from third parties resulting from a defect in a product supplied by the client to a third party and of which the products or materials supplied by the contractor form part. The client must compensate for all damage suffered by the contractor in this regard, including the full costs of legal defence.

12.6. Any claim for damages by the client shall lapse after a period of twenty-four months from the date it arose unless the client has brought the claim before the competent court before the expiry of that period.

Article 13: Guarantee and other claims

13.1. Unless otherwise agreed in writing, the contractor guarantees the proper execution of the agreed performance 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 and insofar as this is in conflict with those deviating guarantee conditions.

13.3. The client must lend all cooperation free of charge to the investigation by or on behalf of the contractor of a complaint by the client about the performance carried out, failing which all rights of the client in connection with that complaint shall lapse.

13.4. If the contractor has rejected a complaint about the performed service on good grounds, the client must reimburse all costs reasonably incurred in connection with investigating the complaint.

13.5. If the agreed performance has not been properly executed, the contractor will choose whether to perform it properly, replace the delivered item in whole or in part, or credit the client for a reasonable part of the order amount.

13.6. If the contractor chooses to properly perform the service or to replace the delivered item in whole or in part, the client will in all cases offer the contractor the opportunity to do so. The contractor determines the method and time of execution. If the agreed performance (also) included the processing of material provided by the client, the client must supply new material at its own expense and risk.

13.7. Items to be repaired or replaced by the contractor must be sent to the contractor by the client. Transport, shipping, disassembly and assembly are at the expense and risk of the client. In addition, travel, accommodation and travel hours are for the account of the client. The contractor is authorised to require security or advance payment for these costs.

13.8. The contractor is not required to implement the guarantee until the client has fulfilled all its obligations.

13.9. a. The guarantee does not cover defects that are the result of:
- normal wear and tear;
- improper use;
- lack of maintenance, or incorrectly performed maintenance;
- installation, assembly, disassembly, change or repair by the client or by third parties;
- defects in or unsuitability of items, materials or tools originating from, or prescribed by, the client.

b. No guarantee is given for:
- items delivered that were not new at the time of delivery;
- inspecting, repairing and overhauling items;
- items under manufacturer's warranty;
- items for which a guarantee has been granted to the client by third parties.

13.10. The provisions of paragraphs 3 to 8 of this article apply by analogy to any of the client's claims based on breach of contract, non-conformity or any other basis whatsoever.

Article 14: Obligation to complain

14.1. In any case, the client no longer has the right to invoke a defective performance if it has not complained to the contractor in writing within fourteen days after it discovered or should reasonably have discovered the defect.

14.2. The client must have submitted complaints about the invoice with the contractor in writing and within the payment term, subject to forfeiture of all rights. If the payment term is longer than thirty days, the client must have submitted 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 client 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 client must cooperate fully and free of charge to enable the contractor to deliver the goods.

15.3. Goods not taken into possession are stored at the client's expense and risk.

15.4. In the event of a breach of the provisions of paragraph 1 or 2 of this article, the client shall, after the contractor has given notice of default, owe the contractor a penalty of € 250 per day for each breach, with a maximum of € 25,000. This penalty can be claimed in addition to damages by virtue of the law.

Article 16: Payment

16.1. Payment is made at the contractor's business address or into an account to be designated by the contractor.

16.2. Unless otherwise agreed, payment is made within 30 days of the invoice date.

16.3. If the client fails to fulfil its payment obligation, it is obliged to comply with a request from the contractor for a benefit in kind instead of the agreed amount.

16.4. The client's right to offset its claims against the contractor or to suspend the fulfilment of its obligations is excluded unless the contractor has been granted a suspension of payments or is bankrupt or the statutory debt adjustment scheme applies to the contractor.

16.5. Irrespective of whether the contractor has fully executed the agreed performance, everything that the client owes or will owe it under the agreement is immediately due and payable if:
a. a payment term has been exceeded;
b. the client fails to fulfil its obligations under article 15;
c. the client has not provided security upon first request under Article 17 of these terms and conditions;
d. the client has filed for bankruptcy or suspension of payments;
e. attachment is levied on goods or claims of the client;
f. the client (company) is dissolved or wound up;
g. the client (a natural person) files an application to be admitted to the statutory debt adjustment scheme, is placed under a guardianship order or has passed away.

16.6. In the event of late payment, the client shall owe interest on the amount payable to the contractor from the day following the day agreed as the final day for payment un-til and including the day on which the client makes payment. 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 will be 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 in-terest is calculated will be increased by the interest due for that year.

16.7. The contractor is entitled to offset its debts to the client against claims that companies affiliated to the contractor have against the client. In addition, the contractor is entitled to offset its claims to the client against debts that companies affiliated to the contractor have against the client. Furthermore, the contractor is entitled to offset its debts to the client against claims on companies affiliated with the client. Affiliated companies are all companies that belong to the same group within the meaning of Section 2:24b of the Dutch Civil Code and a participation within the meaning of Sec-tion 2:24c of the Dutch Civil Code.

16.8. In the event of late payments, the client owes the contractor all extrajudicial costs with a minimum of € 75.

These costs are calculated on the principal amount based on the following table:

- 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 the contractor is wholly or largely vindicated in legal proceedings, all costs incurred in connection with such proceedings shall be borne by the client.

Article 17: Securities

17.1. The client is obliged to provide adequate security, at the contractor's first request, at the contractor's discretion, for all payments owed by the client to the contractor under the agreement. If the client fails to comply with this provision within the set time limit, it shall immediately be in default. In that case, the contractor has the right to terminate the agreement and to recover its loss from the client.

17.2. The contractor shall remain the owner of delivered goods until the client has fulfilled its obligations under any agreement with the contractor, including claims for damages, penalties, interest and costs.

17.3. If the client has fulfilled its obligations after the contractor has delivered the goods to it in accordance with the agreement, the retention of title with respect to these goods is revived if the client does not fulfil its obligations under an agreement entered into subsequently.

17.4. As long as the delivered goods are subject to retention of title, the client 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.

17.5. After the contractor has invoked its retention of title, it may recover the delivered goods. The client will cooperate fully with this.

17.6. In the event of a breach of the provisions of paragraph 5 of this article, the client shall, after the contractor has issued notice of default, owe the contractor a penalty of € 250 per day for each breach, with a maximum of € 25,000. This penalty can be claimed in addition to damages by virtue of the law.

17.7. The contractor has a right of pledge and a right of retention on all goods that it has or may receive from the client on any grounds whatsoever and for all claims that it has or might have against the client.

Article 18: Intellectual Property Rights

18.1. The contractor shall be regarded as creator, designer, deviser or inventor, respectively, of the works, models, signs or inventions created under the agreement. The contractor has the exclusive right to apply for a patent, trademark or model.

18.2. The contractor will not transfer any intellectual property rights to the client in the performance of the agreement.

18.3. If the performance to be delivered by the contractor (also) includes providing computer software, the source code will not be handed over to the client. The client 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 item.

18.4. The client is not permitted to transfer the licence or to issue a sub-licence. This provision has effect under property law. Only in the event of resale of the item in connection with which the contractor has supplied the computer software shall the licence pass to the acquirer of the item under the same conditions and restrictions as set out in this article, provided that the purchaser of the item has accepted these conditions in writing.

18.5. The contractor is not liable for damage that the client suffers as a result of an infringement of third-party intellectual property rights.

18.6. The client indemnifies the contractor against any third-party claims related to an infringement of intellectual property rights.

Article 19: Transfer of rights or obligations

The client 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 contractor. This provision has effect under property law.

Article 20: Termination or cancellation of the agreement

20.1. The client is not entitled to terminate or cancel the agreement in whole or in part.

20.2. The contractor may agree to a request to terminate the agreement. In that case, the client shall owe a payment of at least 20% of the agreed or budgeted price. The contractor is entitled to demand a higher payment or to impose further conditions for its consent.

Article 21: Applicable law and competent court

21.1. Dutch law applies. The Vienna Sales Convention (C.I.S.G.) or any other international regulation, the exclusion of which is permitted, shall not apply.

21.2. The Dutch civil court with jurisdiction in the place of establishment of the contractor shall have exclusive jurisdiction over disputes arising from or related to the agreement.

These terms and conditions constitute an integral translation of the Dutch version of the Metaalunie terms and conditions as filed with the Registry of the Court of Rotterdam on 1 January 2025. The Dutch version will prevail in the explanation and interpretation of this text.

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