

# GENERAL DELIVERY AND PAYMENT CONDITIONS FOR METAL GOODS COMPANIES

General conditions issued by Koninklijke Metaalunie (Dutch Royal Metal Union) (employers' organisation for small and medium-sized businesses in the metal industry) referred to as 'AVVLM', filed at the registry of the Court of the Central Netherlands, location Utrecht on 1 March 2020. Published by Koninklijke Metaalunie, P.O. Box 2600, 3430 GA Nieuwegein, the Netherlands. ©Royal Metal Union

## **Article 1: Applicability**

1.1. These conditions apply to all offers made by a Metal Union member, to all agreements concluded between this member and any agreements arising therefrom, in so far as the Metal Union member is a supplier or contractor.

1.2. The Metal Union member who uses these conditions is referred to as the supplier. The other party is referred to as the buyer.

1.3. In the event of a conflict between the contents of the agreement concluded between the supplier and the buyer and these conditions, the provisions of the agreement will prevail.

1.4. These conditions may only be used by Metal Union members.

## **Article 2: Offers**

2.1. All offers are without obligation. The supplier has the right to withdraw its offer until two working days after the acceptance has reached it.

2.2. If the buyer provides information to the supplier, the supplier may assume its accuracy and completeness and the supplier will base its offer on this information.

2.3. The prices quoted in the offer are expressed in euros, are exclusive of turnover tax and other government levies or taxes. Prices are also exclusive of travel, accommodation, packing, storage and transport costs as well as costs for loading, unloading and assistance with customs formalities.

## **Article 3: Confidentiality**

3.1. All the information provided to the buyer by or on behalf of the supplier (i.e. offers, designs, images, drawings and know-how) of any nature and in any form whatsoever are

confidential and must not be used by the buyer for any purpose other than for the performance of the agreement.

3.2. The information referred to in paragraph 1 of this Article must not be disclosed or reproduced by the buyer.

3.3. If the buyer violates any of the obligations referred to in paragraphs 1 and 2 of this Article, it will owe an immediately payable fine of €25,000 for each violation. This penalty may be claimed in addition to damages pursuant to the law.

3.4. The buyer must return or destroy the information referred to in paragraph 1 of this Article on the supplier's demand, within a period set by the supplier. In the event of a violation of this provision, the buyer is liable to pay the supplier an immediately due and payable penalty of €1,000 per day. This penalty may be claimed in addition to damages pursuant to the law.

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

4.1. The buyer cannot derive any rights from the advice and information provided by the supplier which is not directly related to the assignment.

4.2. If the buyer provides information to the supplier, the supplier may assume the accuracy and completeness of this information for the performance of the agreement.

4.3. The buyer indemnifies the supplier against any claim from third parties relating to the use of advice, drawings, calculations, designs, materials, brands, samples, models, etc. provided by or on behalf of the supplier. The buyer will compensate for all damage to be suffered by the supplier, including full costs incurred for defence against these claims.

#### **Article 5: Delivery time**

5.1. Any delivery time given is indicative.

5.2. The delivery period commences only when agreement has been reached on all commercial and technical details, all information, including final and approved drawings, etc. is in the possession of the supplier, the payment or instalment agreed has been received and the other conditions required for the performance of the order have been met.

5.3. If there is/are any: a. circumstances other than those known to the supplier at the time when the supplier notified the delivery period, the delivery period will be extended by the time the supplier, having regard of its schedule, needs to perform the agreement under these circumstances; b. additional work, the delivery period will be extended by the time the supplier, having regard to its schedule, needs to deliver or have delivered the materials and parts to carry out the additional work; c. suspension of obligations by the supplier, the

delivery period will be extended by the time the supplier, having regard to its schedule, needs to perform the agreement after the reason for suspension has ceased. Subject to the buyer's evidence to the contrary, the term of the extension of the delivery period will be presumed to be required and to be the result of a situation as referred to above under a to c.

5.4 The buyer is obliged to pay all costs or damage incurred by the supplier as a result of a delay in the delivery period as referred to in paragraph 3 of this Article.

5.5. Exceeding the delivery period does not in any case entitle the buyer to compensation or termination. The buyer indemnifies the supplier against any claims from third parties as a result of exceeding the delivery period.

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

6.1. If the supplier produces moulds, model plates, tools, etc. for the performance of the agreement, these are, will become and remain the property of the supplier, even if the buyer has paid for them in full or in part. These auxiliary materials will be stored by the supplier for a period of up to one year after the last order, at the expense and risk of the buyer.

6.2. Moulds, models, model plates, tools, etc. which have been provided to the supplier by the buyer will be stored by the supplier for a period of up to one year after the last order, at the expense and risk of the buyer. If the buyer has not requested the return of its products after the expiry of the above-mentioned period and has not collected these products within one month of the supplier's written request, the supplier will be entitled to freely dispose of the above-mentioned products.

6.3. The costs of change, renewal and/or repair after the wear and tear of the commissioned moulds, models, model plates, tools, etc. are at the expense of the buyer.

#### **Article 7: Quantities**

Upward and downward deviations up to 10% of the agreed number of products are permitted. However, this only applies in those cases where products are not delivered per product, but on the basis of another unit, for example weight. The buyer is obliged to purchase and pay (pro rata) for the quantities delivered within the margins mentioned in the first sentence.

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

8.1. Delivery is deemed to have taken place at the time that the supplier provides the product to the buyer at its business location and informs the buyer that the product is at its disposal.

From that time onwards, the buyer will bear the risk of the product for storage, loading, transport and unloading, among other things.

8.2. The buyer and the supplier may agree that the supplier will arrange for transport. In that case, the risk of storage, loading, transport and unloading, among other things, will also be borne by the buyer. The buyer can insure itself against these risks.

8.3. If there is a trade-in and the buyer retains the product to be traded in while awaiting the delivery of the new product, the risk for the product to be traded in will remain with the buyer until the time the supplier has put it in the supplier's possession. If the buyer cannot deliver the product to be traded in in the condition it was in when the agreement was concluded, the supplier may terminate the agreement.

### **Article 9: Price changes**

The supplier is permitted to pass on to the buyer any increase in cost-determining factors occurring after the agreement has been concluded. The buyer is obliged to pay the price increase on the supplier's demand.

### **Article 10: Force majeure**

10.1. A failure in the performance of its obligations cannot be attributed to the supplier if this failure is the result of force majeure.

10.2. Force majeure will include the circumstance that third parties engaged by the supplier, such as suppliers, sub-suppliers, subcontractors and transporters, or other parties on which the supplier depends, fail to fulfil their obligations at all or in time, weather conditions, acts of nature, terrorism, cybercrime, disruption of the digital infrastructure, fire, power failure, loss, theft or loss of tools, materials or information, road blocks, strikes or work interruptions and import or trade restrictions.

10.3. The supplier is entitled to suspend the fulfilment of its obligations if it is temporarily prevented from fulfilling its obligations towards the buyer due to force majeure. If the situation of force majeure has ceased to exist, the supplier will fulfil its obligations as soon as its schedule permits.

10.4. If there is a situation of force majeure and performance is or becomes permanently impossible, or if the temporary situation of force majeure has lasted for more than six months, the supplier will be authorised to terminate all or part of the agreement with immediate effect. In such cases, the buyer will be authorised to terminate the agreement with immediate effect, but only in respect of the part of the obligations not yet fulfilled by the supplier.

10.5. The parties are not entitled to compensation for damage suffered or to be suffered as a result of the force majeure, suspension or termination within the meaning of this Article.

### **Article 11: Additional work**

11.1. Changes to the work will in any case result in additional work if: a. there is a change to the design, the specifications or the contract documents; b. the information provided by the buyer does not correspond to reality;

11.2. Additional work is calculated on the basis of the price-determining factors applicable at the time when the additional work is performed. The buyer is obliged to pay the price of the additional work on the supplier's demand.

### **Article 12: Liability**

12.1. In the event of an attributable failure, the supplier will be obliged to fulfil its contractual obligations at a later stage with due observance of Article 14.

12.2. The obligation of the supplier to compensate the damage on any grounds whatsoever will be limited to the damage for which the supplier is insured under an insurance policy taken out by or on behalf of the supplier. However, the extent of this obligation will never exceed the amount paid out under this insurance in the relevant case.

12.3. If, for whatever reason, the supplier is unable to invoke paragraph 2 of this Article, the obligation to pay compensation for damages will be limited to a maximum of 15% of the total agreed price (exclusive of VAT). If the agreement consists of parts or partial deliveries, this obligation will be limited to a maximum of 15% (exclusive of VAT) of the total agreed price of that part or the partial delivery. In the case of continuing performance contracts, the obligation to pay compensation for damages will be limited to a maximum of 15% (exclusive of VAT) of the total agreed price payable in the previous twelve months preceding the event causing the damage.

12.4. Not eligible for reimbursement: a. consequential loss. Consequential loss includes business interruption loss, loss of production, loss of profit, 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. The term 'damage to property in the care, custody or control of, but not owned by the insured' includes damage caused, during or by the performance of the work, to objects on which work is being carried out or to objects situated in the vicinity of the work site; c. damage caused by intent or gross negligence on the part of assistants or non-management employees of the supplier. The buyer can insure itself against these types of damage if possible.

12.5. The supplier is not obliged to pay compensation for damage to the material supplied by or on behalf of the buyer as a result of improper processing.

12.6. The buyer indemnifies the supplier against any claims from third parties for product liability as a result of a defect in a product supplied by the buyer to a third party and which the products or materials supplied by the supplier are part of. The buyer is obliged to pay compensation for all damage suffered by the supplier in this connection, including the (full) costs of defence.

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

13.1. Unless otherwise agreed in writing, the supplier will guarantee the reliability of the agreed product for a period of six months after delivery or completion, as set out in the following paragraphs.

13.2. If the parties have agreed on different guarantee conditions, the provisions of this Article will apply in full, unless this is in conflict with these different guarantee conditions.

13.3. If the delivery turned out to be unreliable, the supplier will choose within a reasonable period whether to repair or replace the delivered product or to credit the supplier for a proportionate part of the agreed price. If the supplier chooses to repair or replace it, it will itself determine the manner and time of performance. If the agreement (partly) consists of the processing of the material supplied by the buyer, the buyer must supply new material at its expense and risk.

13.4. Parts or materials which are to be repaired or replaced by the supplier must be sent to it by the buyer.

13.5. The following will be at the expense of the supplier: a. all transport or shipping costs; b. costs for disassembly and assembly; c. travel and accommodation expenses and travelling time.

13.6. In all cases, the buyer must give the supplier the opportunity to repair any defect or reperform the processing.

13.7. The supplier will only be obliged to perform the guarantee if the buyer has fulfilled all its obligations.

13.8. a. The guarantee is excluded for defects that are the result of: - normal wear and tear; – improper use; – maintenance not carried out or carried out incorrectly; – installation, assembly, modification or repair by the buyer or by third parties; – defects in or unsuitability of goods originating from, or prescribed by the buyer; -defects in or unsuitability of the equipment or aids used by the buyer; No guarantee is given on: – products delivered that were not new at the time of delivery; – parts for which a manufacturer’s guarantee has been granted.

13.9. The provisions of paragraphs 3 to 8 of this Article apply accordingly to any claims by the buyer based on violation of contract, non-conformity or any other grounds whatsoever.

#### **Article 14: Duty to complain**

14.1. The buyer may not invoke defects in the performance unless it submits a written complaint to the supplier within fourteen days after the defect was detected or should, within reason, have been detected.

14.2. The buyer must submit complaints about the invoice to the supplier in writing within the payment period, at the risk of forfeiting all rights. If the term of payment is more than thirty days, the buyer must have complained in writing within thirty days of the invoice date.

#### **Article 15: Uncollected products**

15.1. After the delivery period has expired, the buyer is obliged to actually take delivery of the product(s) which is (are) the subject of the agreement at the agreed location.

15.2. The buyer must cooperate in every way, free of charge, to enable the supplier to effect the delivery.

15.3. Uncollected products will be stored at the expense and risk of the buyer.

15.4. In the event of a violation of the provisions of paragraphs 1 or 2 of this Article, the buyer will be liable to pay the supplier, after the supplier has given it notice of default, a penalty of €250 for each day of violation, subject to a maximum of €25,000. This penalty may be claimed in addition to damages pursuant to the law.

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

16.1. Payment is made at the supplier's place of business or into an account designated by the supplier.

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

16.3. If the buyer fails to fulfil its payment obligation, it will be obliged, instead of paying the agreed amount of money, to comply with the supplier's request for payment in instalments.

16.4. The buyer's right to set off 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 has been declared bankrupt or is subject to statutory debt restructuring.

16.5. Regardless of whether the supplier has fully performed the agreed performance, everything that the buyer owes or will owe under the agreement will be immediately due and payable if: a. a payment term has been exceeded; b. the bankruptcy or suspension of

payments of the buyer has been filed for; c. seizure is made of the products or claims of the buyer; d. the buyer (company) is dissolved or liquidated; e. the buyer (natural person) requests that it is admitted to legal debt restructuring, is placed under guardianship, or has died.

16.6. In the event of late payment of a sum of money, the buyer will owe the supplier interest on this sum of money with effect from the day following the date agreed as the last day for payment up to and including the day the buyer has paid the sum of money. If the parties have not agreed on a final date for payment, the interest will be due from 30 days after the due date. The interest rate is 12% per annum, but is equal to the statutory interest rate if this is higher. A part of the month is considered a full month in the interest calculation. At the end of each year, the amount on which interest is calculated will be increased by the interest due for this year.

16.7. The supplier is entitled to set off its debts to the buyer against the amounts due by the buyer to companies affiliated with the supplier. In addition, the supplier is entitled to set off amounts due by the buyer against debts owed to the buyer by companies affiliated with the supplier. Furthermore, the supplier is entitled to set off its debts to the buyer against amounts due by companies affiliated with the buyer. Affiliated companies will mean: all companies belonging to the same group within the meaning of Section 2:24b of the Dutch Civil Code and a participation within the meaning of Section 2:24c of the Dutch Civil Code.

16.8. If payment is not made in time, the buyer is liable to pay to the supplier all extrajudicial costs, with a minimum of €75. These costs are calculated on the basis of the following table (principal sum including interest): on the first € 3.000,- 15% on the excessive over € 6.000,- 10% on the excessive over € 15.000,- 8% on the excessive over € 60.000,- 5% on the excessive over € 60.000,- 3%

The actual extrajudicial costs incurred will be due, if they are higher than those resulting from the above calculation.

16.9. If the supplier wins the case in legal proceedings partly or entirely, all costs incurred by it in connection with these proceedings will be borne by the buyer.

## **Article 17: Securities**

17.1. Regardless of the agreed payment conditions, the buyer will be obliged, on the supplier's demand, to provide sufficient security for payment, at the supplier's discretion. If the buyer fails to do so within the set period, it will be immediately in default. In that case, the supplier will be entitled to terminate the agreement and to recover its losses from the buyer.



17.2. The supplier will remain the owner of the products delivered as long as the buyer: a. has not fulfilled its obligations under any agreement with the supplier; b. has not paid claims arising from the non-fulfilment of the above-mentioned agreements, such as damage or loss, penalties, interest and costs.

17.3. As long as any products delivered are subject to retention of title, the buyer may not encumber or dispose of them other than in the normal course of its business. This clause has effect on the law of property.

17.4. After the supplier has invoked its retention of title, it may take back the products delivered. The buyer will render all assistance in this respect.

17.5. If the supplier has fulfilled its obligations, after the products have been delivered to the supplier in accordance with the agreement, the retention of title in respect of these products will revive if the buyer fails to fulfil its obligations under a subsequent agreement.

17.6. The supplier will have a right of pledge and a right of retention in respect of all products it has or will have in its possession, for whatever reason, and in respect of all claims it has or may have on the buyer.

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

18.1. The supplier is regarded as the maker, designer or inventor of the works, models or inventions created within the scope of the agreement. The supplier therefore has the exclusive right to apply for a patent, trademark or design.

18.2. The supplier will not transfer any intellectual property rights to the buyer during the performance of the agreement.

18.3. If the performance to be delivered by the supplier consists of or includes the supply of computer software, the source code will not be transferred to the buyer. The buyer will acquire a non-exclusive, worldwide and perpetual user's licence to the computer software solely for the purpose of normal use and proper functioning of the product. The buyer is not permitted to transfer the licence or to issue a sublicense. If the buyer sells the product to a third party, the licence will pass to the acquirer of the product by operation of law.

18.4. The supplier is not liable for any damage suffered by the buyer as a result of a violation of intellectual property rights of third parties. The buyer indemnifies the supplier against any claim from third parties in respect of a violation of intellectual property rights.

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

The buyer may not transfer or pledge rights or obligations under any article of these general conditions or the underlying agreement(s), except with the supplier's prior written consent. This clause has effect on the law of property.

#### **Article 20: Termination or cancellation of the agreement**

20.1 The buyer is not authorised to cancel or terminate the agreement, unless with the consent of the supplier. In the event that the supplier agrees, the buyer will owe the supplier an immediately payable fee in the amount of the agreed price, minus the savings resulting from the termination for the supplier. The compensation will amount to at least 20% of the agreed price.

20.2. If the price is made dependent on the costs actually incurred by the supplier (cost-plus basis), the compensation as referred to in the first paragraph of this Article will be estimated at the sum of the costs, working hours and profit the supplier would be expected to incur for the entire order.

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

21.1. Dutch law applies.

21.2. The Vienna Convention on Contracts for the International Sale of Goods (C.I.S.G.) does not apply, nor does any other international regulation which exclusion is permitted.

21.3. The Dutch civil court that has jurisdiction in the supplier's place of business will take cognisance of any disputes. The supplier may deviate from this rule of authority and apply the statutory rules of authority.