

## Dutch Form Terms and Conditions 2020

General Terms and Conditions issued by Koninklijke Metaalunie (the Dutch organization for small and medium-sized enterprises in the metal industry) for use by Dutch Form, referred to as the Dutch Form Terms and Conditions. The Dutch version is filed at the Registry of the Midden Nederland Utrecht District Court on January 16, 2020 under number 26/2020. Issued by Koninklijke Metaalunie, P.O. Box 2600, 3430 GA Nieuwegein, The Netherlands.

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### Article 1: Applicability

- 1.1. These Terms and Conditions apply to all offers made by members of Dutch Form, all agreements they conclude and all agreements that may result therefrom, all this in so far as the Dutch Form Member is offeror or supplier.
- 1.2. A Dutch Form Member using these Terms and Conditions is referred to as the Contractor. The other party is referred to as the Client.
- 1.3. In the event of any conflict between the substance of the agreement concluded between the Contractor and the Client and these Terms and Conditions, the provisions of the agreement will prevail.
- 1.4. These Terms and Conditions may only be used by Dutch Form Members.

### Article 2: Offers

- 2.1. All offers are without obligation. The Contractor is entitled to withdraw its offer up to two working days after it has received the acceptance.
- 2.2. If the Client provides the Contractor with information, the Contractor may assume that it is accurate and complete and will base its offer hereon.
- 2.3. The prices stated in the offer are quoted in euros, exclusive of VAT and other government levies or taxes. Furthermore, prices are exclusive of travel, accommodation, packaging, storage and transport costs as well as the costs of loading and unloading and assistance with customs formalities.

### 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 or whatever form, is confidential and shall not be used by the Client for any other purpose than the implementation of the agreement.
- 3.2. The information mentioned in paragraph 1 of this article shall not be made public by the Client and no copies shall be made.
- 3.3. If the Client fails to fulfil one of the obligations referred to in paragraph 1 and 2 of this article, it will owe an immediately payable penalty of € 25,000.00 for each breach. This penalty may be claimed in addition to damages pursuant to the law.
- 3.4. Should the Contractor so demand, the Client must immediately return or destroy, according to the wishes of the Contractor, the information provided to it as referred to in paragraph 1 of this article within the time limit set by the Contractor. Upon breach of this provision, the Client will owe the Contractor an immediately payable penalty of € 1,000.00 per day. This penalty may be claimed in addition to damages pursuant to the law.

### Article 4: Advice and information provided

- 4.1. The Client cannot derive any rights from advice or information it obtains from the Contractor if this does not relate to the assignment.
- 4.2. If the Client provides the Contractor with information, the Contractor may assume that it is accurate and complete for the performance of the agreement.
- 4.3. The Client indemnifies the Contractor against all claims from third parties relating to the use of advice, drawings, calculations, designs, materials, trademarks, samples, models and the like provided by or on behalf of the Client. The Client shall compensate the Contractor for all damage suffered, including the full costs incurred for defence against these claims.

### Article 5: Delivery period / performance period

- 5.1. 5.1. Notice given of the delivery time or performance period is indicative.
- 5.2. The delivery time or performance period will only commence once agreement has been reached on all commercial and technical details, all information, including final and approved drawings and the like are in the Contractor's possession, the agreed payment or instalment has been received and the other conditions for performance of the assignment have been satisfied.
- 5.3. In the event of:
  - a. other circumstances that differ from those that were known to the Contractor when it gave notice of the delivery time or performance period, the delivery time or performance period will be extended by the amount of time needed to perform the assignment under such circumstances, taking into consideration the Contractor's schedule.
  - b. any additional work, the delivery time or performance period will be extended by the amount of time needed to deliver or have delivered the materials and parts for such work and to perform the additional work, taking into consideration the Contractor's schedule.
  - c. A suspension of obligations by the Contractor, the delivery time or performance period will be extended by the amount of time needed to perform the work after the reason for the suspension has ceased to apply.

- Unless the contrary is proved by the Client, the duration of the extension of the delivery time or performance period will be assumed to be necessary and the result of a situation as referred to above in a to c.
- 5.4. The Client is required to pay all costs incurred or loss suffered by the Contractor as a result of delay affecting the delivery time or performance period as referred to in paragraph 3 of this article.
  - 5.5. If the delivery time or performance period is exceeded, this will in no event entitle the Client to damages or termination. The Client shall indemnify the Contractor against any claims by third parties as a result of exceeding the delivery time or performance period.

### Article 6: Delivery and Risk Transfer

- 6.1. Delivery will take place when the Contractor makes the goods available to the Client at its business location and it has informed the Client that the goods have been made available to it. From that moment, the Client will bear the risk for storage, loading, transport and unloading of the goods. Also in the event that the Contractor installs or assembles the goods, the risk attached to the goods will be transferred when the Contractor makes them available to the Client.
- 6.2. The Client and Contractor may agree that the Contractor will arrange for transport. In that event, the risk of storage, loading, transport and unloading will also be borne by the Client. The Client can insure itself against these risks.
- 6.3. In the event of exchange, where the Client retains the goods to be exchanged pending delivery of the new goods, the risk attached to the goods to be exchanged remains with the Client until it has placed these goods in the possession of the Contractor. If the Client cannot deliver the goods to be exchanged in the condition that they were in when the agreement was concluded, the Contractor may terminate the agreement.
- 6.4. If the goods are transported at the expense and risk of the Client, the Contractor is not liable for any damage or defects that may be discovered on arrival and that have not been entered on the consignment note to be returned.

### Article 7: Price change

If the performance of the agreement has not been fully completed, the Contractor may pass on to the Client any increase in cost-determining factors occurring more than four months after conclusion of the agreement. The Client is required to pay the price increase immediately should the Contractor so demand.

### Article 8: Force majeure

- 8.1. If the Contractor fails to fulfil its obligations, this cannot be attributed to it if this failure is a result of force majeure.
- 8.2. Force majeure is understood to mean, inter alia, a situation where third parties engaged by the Contractor such as suppliers, subcontractors or transport companies, or other parties upon whom the Contractor is dependent, fail to fulfil their obligations or fulfil them in good time, weather conditions, natural disaster, terrorism, cybercrime, disruption of digital infrastructure, fire, power failure, loss, theft or destruction of tools, materials or information, road blocks, strikes or work stoppages and import or trade restrictions.
- 8.3. If the Contractor is temporarily unable to fulfil its obligations to the Client due to force majeure, then the Contractor is entitled to suspend the fulfilment of its obligations. Once the force majeure situation ceases to apply, the Contractor will fulfil its obligations as soon as its schedule permits.
- 8.4. In the event of force majeure, where fulfilment is or becomes permanently impossible, or the temporary force majeure situation has lasted for more than six months, the Contractor is entitled to partly or fully terminate the agreement with immediate effect. The Client is in these cases entitled to terminate the agreement with immediate effect, but only for that part of the obligations that have not yet been fulfilled by the Contractor.
- 8.5. The parties will not be entitled to compensation for damage suffered or to be suffered as a result of force majeure, suspension or termination as referred to in this article.

### Article 9: Scope of the work

- 9.1. The Client must ensure that all licences, exemptions and other administrative decisions necessary to carry out the work are obtained in good time. Should the Contractor so demand, the Client is required to send him a copy of the documents mentioned above.
- 9.2. Unless otherwise agreed in writing, the work does not include:
  - a. earthworks, pile driving, cutting, breaking, foundation work, brickwork, carpentry, plastering, painting, wallpapering, repair work or other construction work;
  - b. the connection of gas, water, compressed air, electricity, internet or other infrastructural facilities;

- c. measures to prevent or restrict damage to, or theft or loss of any goods located on or near the work site;
- d. the removal of materials, building materials or waste;
- e. vertical and horizontal transport;
- f. assistance in moving those parts that are not to be dealt with by the Contractor itself and the deployment and use of the equipment needed for this purpose;
- g. the performance of duties outside the usual working hours of the Contractor.
- 9.3. Any materials that may be released when the goods to be delivered are tested will be removed by the Client at the Client's expense.

### Article 10: Additional work

- 10.1. Changes to the work will in any event result in additional work if:
  - a. the design, specifications or contract documents are changed;
  - b. the information provided by the Client is not factually accurate;
  - c. estimated quantities deviate by more than 5%.
- 10.2. Additional work will be calculated on the basis of the cost-determining factors applicable at the time the additional work was performed. The Client is required to pay the price of the additional work immediately should the Contractor so demand.

### Article 11: Performance of the work

- 11.1. The Client will ensure that the Contractor can carry out its activities without interruption and at the agreed time and that the requisite facilities are made available to it when carrying out its activities, such as:
  - a. gas, water, compressed air, electricity and internet;
  - b. heating;
  - c. lockable and dry storage space;
  - d. facilities required pursuant to the Working Conditions Act and Working Conditions Regulations;
  - e. staff and materials to be made available by the Client.
- 11.2. The Client bears the risk of and is liable for any damage to, or theft or loss of goods belonging to the Contractor, the Client and third parties, such as tools, materials intended for the work or material used in the work, that are located at or near the work site or at another agreed location.
- 11.3. As regards installation work, including test spraying, test stamping and service or maintenance work, the Contractor will restrict itself to assembling the material that is to be delivered by it.
- 11.4. If the Contractor cannot perform installation, service or maintenance work regularly and without interruption due to circumstances that cannot be attributed to it, it is entitled to charge the Client for additional costs arising therefrom.
- 11.5. Without prejudice to paragraph 2 of this article, the Client is obliged to adequately insure itself against the risks referred to in that paragraph. In addition, the Client must arrange for the insurance of work-related damage as regards the material to be used. The Client must send a copy of the relevant insurance policy/policies and proof of payment of the premium immediately should the Contractor so demand. In the event of any damage, the Client is required to report this to its insurer without delay for further processing and settlement.

### Article 12: Completion of the work

- 12.1. The work is deemed to be completed in the following cases:
  - a. when the Client has approved the work;
  - b. when the work has been taken into commission by the Client. If the Client takes part of the work into commission, that part will be deemed to be completed;
  - c. if the Contractor has notified the Client in writing that the work has been completed and the Client has not informed it in writing within 14 days after the date of the notification that the work has not been approved;
  - d. if the Client does not approve the work due to minor defects or missing parts that can be rectified or subsequently delivered within 30 days and that do not prevent the work from being taken into commission.
- 12.2. If the Client does not approve the work, it is required to inform the Contractor of this in writing, stating reasons. The Client must nonetheless provide the Contractor with the opportunity to complete the work.
- 12.3. The Client indemnifies the Contractor against any claims by third parties for damage to non-completed parts of the work caused by use of parts of the work that have already been completed.

### Article 13: Liability

- 13.1. In the event of an attributable failure, the Contractor is still obliged to perform its contractual obligations in accordance with article 14.
- 13.2. The Contractor's obligation to pay compensation, irrespective of the basis, is limited to damage for which the Contractor is insured under an insurance policy taken out by it or on its behalf. However, the extent of this obligation will never be greater than the amount paid out under this insurance in the relevant case.

13.3. If, for any reason whatsoever, the Contractor cannot rely on paragraph 2 of this article, the obligation to pay compensation will be limited to a maximum of 15% of the total assignment amount (excluding VAT). If the agreement comprises parts or partial deliveries, this obligation is limited to a maximum of 15% (excluding VAT) of the assignment amount of that part or that partial delivery. In the case of continuing performance contracts, the obligation to pay compensation will be limited to a maximum of 15% (excluding VAT) of the assignment amount owed over the last twelve months prior to the damage-causing event.

13.4. The following do not qualify for compensation:

- a. consequential loss. Consequential loss is understood to include business interruption loss, production loss, loss of profit, penalties, transport costs and travel and accommodation expenses;
  - b. damage to goods in or under the care, custody or control of, but not owned by the insured. Such damage includes damage caused as a result of or during the performance of the work to goods on which work is being performed or to goods situated in the vicinity of the work site;
  - c. damage caused by the intent or wilful recklessness of agents or non-management employees of the Contractor. If possible, the Client can insure himself against these types of damage.
- 13.5. The Contractor is not obliged to pay compensation for damage to material provided by or on behalf of the Client where that damage is the result of improper processing.
- 13.6. As regards measurements, shrinkage rates, drafts and machining allowances, the tolerances indicated by the Client apply; if such tolerances have not been provided, the Contractor's customary tolerances will apply. In either case, the Contractor accepts no liability whatsoever in this regard.
- 13.7. The Client indemnifies the Contractor against all claims by third parties on account of product liability as a result of a defect in a product supplied by the Client to a third party and that consisted of products and/or materials supplied by the Contractor. The Client is obliged to compensate all damage suffered by the Contractor in this respect, including the full costs of defence.

#### Article 14: Warranty and other claims

- 14.1. 14.1. Unless otherwise agreed in writing, the Contractor warrants the proper execution of the agreed performance for a period of six months after delivery/completion, as further specified in the following paragraphs.
- 14.2. If the parties agreed to varying warranty conditions, this article will continue to apply, unless this conflicts with these varying warranty conditions.
- 14.3. If the agreed work has not been properly performed, the Contractor shall decide within a reasonable period of time whether he can still perform this properly or whether to credit the Client for a proportional part of the assignment amount.
- 14.4. Should the Contractor choose to perform the work properly at a later date, it will determine how and when it will perform this itself. The Client should in all cases offer the Contractor the opportunity to do this. If the agreed work included (partly) the processing of material supplied by the Client, then the Client should supply new material at its own expense and risk.
- 14.5. Materials or parts that are to be repaired or replaced by the Contractor must be sent to it by the Client.
- 14.6. The Client bears the expense of:
- a. all costs of transport or dispatch;
  - b. costs of disassembly and assembly;
  - c. travel and accommodation expenses and hours travelled.
- 14.7. The Contractor is only obliged to implement the warranty if the Client has fulfilled all his obligations.
- 14.8. a. No warranty is given if the defects result from:
- normal wear and tear;
  - improper use;
  - lack of maintenance or improper maintenance;
  - installation, assembly, modification or repair by the Client or third parties;
  - defects in or unsuitability of goods originating from, or prescribed by, the Client;
  - defects in or unsuitability of materials or auxiliary materials used by the Client.
- b. No warranty is given in respect of:
- goods supplied that were not new at the time of delivery;
  - the inspection and repair of goods of the Client;
  - parts for which a manufacturer's warranty has been provided.
- 14.9. The provisions of paragraphs 3 to 8 of this article apply equally to any claims by the Client based on breach of contract, non-conformity or on any other basis whatsoever.
- 14.10. After expiry of the warranty period, the Client can no longer hold the Contractor liable for any defect or shortcoming in its performance.

#### Article 15: Obligation to complain

- 15.1. Immediately upon delivery/completion, the Client must inspect the goods to be delivered or work to be completed for visible defects or shortcomings. If any visible defects or shortcomings are discovered, the Client must inform the Contractor of such immediately, failing which the Client can no longer invoke these defects or shortcomings.

- 15.2. The Client can no longer invoke defects or shortcomings that are not immediately visible on delivery or completion if it does not make a written complaint to the Contractor in respect thereof within fourteen days of the date it discovered, or should reasonably have discovered, the defect.
- 15.3. At the risk of forfeiting all rights, the Client must submit complaints regarding the invoice to the Contractor in writing within the payment deadline. If the payment deadline is longer than thirty days, the Client must have complained within thirty days at the most after the date of the invoice.

#### Article 16: Failure to take delivery of goods

- 16.1. Upon expiry of the delivery time or performance period, the Client is obliged to actually take delivery of the work or goods which is or are the subject matter of the agreement at the agreed location.
- 16.2. The Client must offer his cooperation free of charge to enable the Contractor to make the delivery.
- 16.3. If the Client does not take delivery of the goods, such goods will be stored at the risk and expense of the Client.
- 16.4. Upon breach of the provisions in paragraph 1 or 2 of this article, after the Contractor has given the Client notice of default, the Client will owe the Contractor per breach a penalty of € 250.00 per day, up to a maximum of € 25,000.00. This penalty may be claimed in addition to damages pursuant to the law.

#### Article 17: Payment

- 17.1. Payment will be made at the Contractor's business address or to an account to be designated by the Contractor.
- 17.2. Unless agreed otherwise, payment will be made within 30 days after the date of the invoice.
- 17.3. If the Client fails to comply with its payment obligation, instead of paying the sum of money agreed it will be obliged to comply with a request by the Contractor for a tender of payment.
- 17.4. The right of the Client to set off its claims against the Contractor or to suspend performance of an obligation is excluded unless there is evidence of a suspension of payment or the bankruptcy of the Contractor or if statutory debt rescheduling applies to the Contractor.
- 17.5. Irrespective of whether the Contractor has fully executed the agreed performance, everything that is or will be owed to it by the Client under the agreement is immediately due and payable if:
- a. a deadline for payment has been exceeded;
  - b. the Client has not fulfilled its obligations in article 16;
  - c. the Client has filed for bankruptcy or applied for a suspension of payment;
  - d. attachment is levied on the goods or claims of the Client;
  - e. the Client (a company) is dissolved or wound up;
  - f. the Client (a natural person) requests to be admitted to statutory debt rescheduling, is placed under guardianship or dies.
- 17.6. In the case of a delay in payment of a sum of money, the Client will owe interest to the Contractor on that sum of money with effect from the day following the day that has been agreed as the payment deadline until the day on which the Client pays the sum of money. If the parties have not agreed upon a payment deadline, interest will be owed from 30 days after becoming due and payable. The interest rate is 12% per annum, but is equal to the statutory interest rate if the latter rate is higher. When calculating interest, part of a month is regarded as a whole month. Following the expiry of each year, the amount on which the interest is calculated is increased by the interest due for that year.
- 17.7. The Contractor is authorised to set off its debts to the Client with amounts owed by the Client to companies affiliated with the Contractor. In addition, the Contractor is authorised to set off amounts owed to it by the Client with debts that the companies affiliated with the Contractor have with the Client. Further, the Contractor is authorised to set off its debts to the Client with amounts owed to the Contractor by companies affiliated with the Client. Affiliated companies are understood to mean the companies belonging to the same group, within the meaning of Article 2:24b of the Dutch Civil Code, and participating interests within the meaning of Article 2:24c of the Dutch Civil Code.
- 17.8. If payment is not made within the agreed payment deadline, the Client will owe the Contractor all extrajudicial costs, with a minimum of € 75.00. These costs will be calculated on the basis of the following table (principal sum plus interest):
- |  |     |
|--|-----|
| on the first € 3,000.00                    | 15% |
| on any additional amount up to € 6,000.00  | 10% |
| on any additional amount up to € 15,000.00 | 8%  |
| on any additional amount up to € 60,000.00 | 5%  |
| on any additional amount from € 60,000.00  | 3%  |
- The extrajudicial costs actually incurred will be owed if these are higher than they would be according to the above calculation.
- 17.9. If judgment is rendered, wholly or largely, in favour of the Contractor in legal proceedings, all costs that it has incurred in relation to these proceedings will be borne by the Client.

#### Article 18: Security

- 18.1 Irrespective of the agreed payment conditions, the Client is obliged, should the Contractor so demand, to provide immediately such security for payment as the

Contractor deems sufficient. If the Client does not comply with this within the period set, it will immediately be in default. In that event, the Contractor is entitled to terminate the agreement and to recover its losses from the Client.

- 18.2. The Contractor will retain ownership of any goods delivered as long as the Client:
- a. has not fulfilled its obligations under any agreement with the Contractor;
  - b. has not paid debts that have arisen due to non-performance of the aforementioned agreements, such as damage, penalties, interest and costs.
- 18.3. As long as the goods delivered are subject to retention of title, the Client may not encumber or alienate these other than in the ordinary course of its business and it is required to mark the goods as the Contractor's property. This stipulation is effective under property law.
- 18.4. Once the Contractor has invoked its retention of title, it may take back the goods delivered. The Client will lend its full cooperation to this end.
- 18.5. If, after the goods have been delivered to the Client by the Contractor in accordance with the agreement, the Client has fulfilled his obligations, the retention of title will be revived with respect to these goods if the Client does not fulfil his obligations under any agreement subsequently concluded.
- 18.6. The Contractor has a right of pledge and a right of retention in respect of all goods that are or will be held by it for any reason whatsoever and for all claims it has or might acquire against the Client.
- 18.7. The Client is required to insure and keep insured the goods delivered under retention of title against loss or damage and to transfer all of the Client's insurance claims regarding these goods to the Contractor.

#### Article 19: Intellectual Property Rights

- 19.1. The Contractor is regarded respectively as the maker, designer or inventor of the work, models or inventions created within the framework of the agreement. The Contractor therefore has the exclusive right to apply for a patent, trademark or model.
- 19.2. The Contractor will not transfer any intellectual property rights to the Client in the execution of the agreement.
- 19.3. If the work to be delivered by the Contractor comprises or partly comprises the delivery of computer software, the source code will not be transferred to the Client. The Client will only receive a non-exclusive, worldwide and perpetual user licence for the software for the normal use and proper operation of the goods. The Client is not permitted to transfer the licence or to issue a sublicense. Upon the sale of the goods to a third party by the Client, the licence will pass to the recipient by law.
- 19.4. The Contractor is not liable for damage suffered by the Client as a result of an infringement of the intellectual property rights of third parties. The Client indemnifies the Contractor against every claim from third parties with regard to an infringement of intellectual property rights.

#### Article 20: Transfer of rights or obligations

The Client may not transfer or pledge rights or obligations under any article from these terms and conditions or the underlying agreement or agreements, except with the prior written permission of the Contractor. This stipulation is effective under property law.

#### Article 21: Termination or cancellation of the agreement

- 21.1. The Client is not authorised to terminate or cancel the agreement unless the Contractor agrees to this. Upon the agreement of the Contractor, the Client will owe the Contractor compensation which is immediately due and payable at the agreed price, minus the savings arising from the termination for the Contractor. The compensation will amount to at least 20% of the agreed price.
- 21.2. If the price is set dependent on the actual costs incurred by the Contractor on a cost-plus basis, the compensation as referred to in the first paragraph of this article will be estimated on the sum of the costs, working hours and profit that the Contractor may have expected to make on the entire assignment.

#### Article 22: Applicable law and the competent court

- 22.1. Dutch law applies.
- 22.2. The Vienna Sales Convention (C.I.S.G.) does not apply, nor do any other international regulations, the exclusion of which is permitted.
- 22.3. Disputes will be heard by the competent Dutch civil court with jurisdiction over the Contractor's business address. The Contractor may deviate from this rule of jurisdiction and apply the statutory rules of jurisdiction.
- 22.4. These terms and conditions constitute a comprehensive translation of the Dutch version of the Terms and Conditions of Dutch Form as filed with the Registry of the District Court Midden-Nederland, location Utrecht, on January 16, 2020 under number 26/2020. The Dutch version will prevail in the explanation and interpretation of this text.