

# Terms And Conditions

General delivery and payment conditions issued by the Royal Metaalunie (Dutch organization of entrepreneurs in small and medium-sized enterprises in the metal industry), referred to as METAALUNIE CONDITIONS, formerly known as SMECOMA CONDITIONS, deposited with the registry of the Rotterdam court on January 1, 2008. Published by the Royal Metaalunie, P.O. Box 2600, 3430 GA Nieuwegein. ©Royal Metaalunie

## Article 1: Applicability

- 1.1. These conditions apply to all offers made by members of the Royal Metaalunie, to all agreements they enter into, and to all agreements that may result from them.
- 1.2. The offeror/supplier is the Metaalunie member who uses these conditions. This is referred to as the 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 general terms and conditions, the provisions of the agreement shall prevail.
- 1.4. These conditions may only be used by members of the Royal Metaalunie.

## Article 2: Offers

- 2.1. All offers are non-binding.
- 2.2. If the client provides the contractor with data, drawings, etc., the contractor may assume their accuracy and base their offer on them.
- 2.3. The prices mentioned in the offer are based on delivery ex-factory, "ex works", in accordance with Incoterms 2000. The prices are exclusive of VAT and packaging.
- 2.4. If their offer is not accepted, the contractor has the right to charge the client for all costs incurred in making their offer.

## Article 3: Intellectual property rights

- 3.1. Unless otherwise agreed in writing, the contractor retains the copyrights and all industrial property rights to the offers, designs, images, drawings, (prototype) models, software, etc. made by him.
- 3.2. The rights to the data mentioned in paragraph 1 remain the property of the contractor regardless of whether costs have been charged to the client for their production. These data may not be copied, used or shown to third parties without the prior written consent of the contractor. The client shall be liable to the contractor for a penalty of €25,000 for each violation of this provision. This penalty may be claimed in addition to damages under the law.

3.3. The client must return the data provided to him as referred to in paragraph 1 within the deadline set by the contractor upon first request. In the event of a violation of this provision, the client shall be liable to the contractor for a penalty of €1,000 per day. This penalty may be claimed in addition to damages under the law.

#### Article 4: Advice, designs and materials

4.1. The client cannot derive any rights from advice and information provided by the contractor if they do not directly relate to the assignment.

4.2. The client is responsible for the drawings, calculations, designs made by or on behalf of him, and for the functional suitability of materials prescribed by or on behalf of him.

4.3. The client indemnifies the contractor against any claims by third parties in connection with the use of drawings, calculations, designs, materials, samples, models and the like provided by or on behalf of the client.

4.4. The client may have the materials that the contractor intends to use examined at his own expense before they are processed. If the contractor incurs damage as a result of this, it shall be borne by the client.

#### Article 5: Delivery time

5.1. The delivery time and/or execution period are determined by the contractor approximately.

5.2. In determining the delivery time and/or execution period, the contractor assumes that he can carry out the assignment under the circumstances that are known to him at that time.

5.3. The delivery time and/or execution period only begins when agreement has been reached on all commercial and technical details, all necessary data, final, approved drawings, etc. are in the possession of the contractor, the agreed (periodic) payment has been received, and the necessary conditions for the execution of the assignment have been met.

5.4.

a. If there are other circumstances than those known to the contractor when he determined the delivery time and/or execution period, the contractor may extend the delivery time and/or execution period with the time needed to carry out the assignment under these circumstances. If the work cannot be incorporated into the contractor's schedule, it will be carried out as soon as his schedule permits.

b. If there is additional work, the delivery time and/or execution period will be extended with the time needed to deliver or obtain the necessary materials and parts and to carry out the additional work. If the additional work cannot be incorporated into the contractor's schedule, the work will be carried out as soon as his schedule permits.

c. If there is a suspension of obligations by the contractor, the delivery time and/or execution period will be extended for the duration of the suspension. If resumption of the work cannot be incorporated into the contractor's schedule, the work will be carried out as soon as his schedule permits.

d. If there is inclement weather, the delivery time and/or execution period will be extended by the resulting delay.

5.5. Exceeding the agreed delivery time and/or execution period does not in any case entitle the client to compensation, unless agreed in writing.

#### Article 6: Risk transfer

6.1. Delivery takes place ex-factory, "ex works", in accordance with Incoterms 2000; the risk of the goods passes to the client at the moment when the contractor makes them available.

6.2. Regardless of the provisions of the previous paragraph, the client and the contractor may agree that the contractor will take care of the transportation. The risk of storage, loading, transportation and unloading also rests with the client in that case. The client may insure against these risks.

6.3. If there is an exchange and the client continues to use the item to be exchanged while waiting for the delivery of the new item, the risk of the item to be exchanged remains with the client until he has transferred it to the contractor.

#### Article 7: Price change

7.1. An increase in cost-determining factors that arise after the conclusion of the agreement may be passed on by the contractor to the client if the performance of the agreement has not yet been completed at the time of the increase.

7.2. The client is obliged to pay the price increase referred to in paragraph 1 at the same time as payment of the principal amount or the next agreed payment term.

7.3. If goods are supplied by the client and the contractor is willing to use them, the contractor may charge a maximum of 20% of the market price of the supplied goods.

#### Article 8: Impossibility of the assignment

8.1. The contractor has the right to suspend the performance of his obligations if, due to circumstances that were not foreseeable at the time of concluding the contract and which are beyond his control, he is temporarily prevented from fulfilling his obligations.

8.2. Circumstances that were not foreseeable by the contractor and that are beyond his control include, among others, the circumstance that suppliers and/or subcontractors of the contractor do not or do not timely fulfill their obligations, weather conditions, earthquakes, fire, loss or theft of tools, loss of materials to be processed, roadblocks, strikes or work interruptions, and import or trade restrictions.

8.3. The contractor is no longer authorized to suspend if the temporary impossibility of performance has lasted for more than six months. The contract can only be terminated after the expiry of this period, and only for that part of the obligations that has not yet been

fulfilled. In that case, the parties have no right to compensation for the damage suffered or to be suffered as a result of the termination.

## Article 9: Scope of the work

9.1. The client must ensure that all permits, exemptions and other orders necessary for the execution of the work are obtained in a timely manner.

9.2. The following costs are not included in the price of the work:

- a. the costs for ground, pile, chopping, breaking, foundation, masonry, carpentry, plastering, painting, wallpapering, repair or other construction work;
- b. the costs for connection of gas, water, electricity or other infrastructure facilities;
- c. the costs for the prevention or limitation of damage to items present on or near the work;
- d. the costs for disposal of materials, building materials or waste;
- e. travel and accommodation expenses.

## Article 10: Changes in the work

10.1. Changes in the work result in additional or reduced work if: a. there is a change in the design, specifications or specifications; b. the information provided by the client does not match reality; c. estimated quantities deviate by more than 10%.

10.2. Additional work is calculated based on the value of the price-determining factors that apply at the time the additional work is performed. Reduced work is settled based on the value of the price-determining factors that applied at the time of the conclusion of the contract.

10.3. If the balance of reduced work exceeds that of additional work, the contractor may charge the client 10% of the difference in the balances at the final settlement. This provision does not apply to reduced work that is the result of a request from the contractor.

## Article 11: Execution of the work

11.1. The client ensures that the contractor can carry out his work undisturbed and at the agreed time and that he has access to the necessary facilities during the execution of his work, such as:

- gas, water and electricity;
- heating;
- lockable dry storage space;
- facilities prescribed under the Arbo law and regulations.

11.2. The client is liable for all damage, including loss, theft, burning or damage, to property of the contractor, the client and/or third parties, such as tools and materials intended for the work, located at the place where the work is carried out or at another agreed location.

11.3. If the client fails to fulfill his obligations as described in the preceding paragraphs and as a result, a delay in the execution of the work arises, the work will be carried out as soon as the

client has fulfilled all his obligations and the contractor's planning allows. The client is liable for all damage resulting from the delay for the contractor.

#### Article 12: Delivery of the work

12.1. The work is considered to be delivered when: a. the client has approved the work; b. the client has put the work into use. If the client puts part of the work 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 indicated in writing within 14 days whether or not the work has been approved; d. the client does not approve the work due to minor defects or missing parts that can be repaired or supplied within 30 days and do not prevent the use of the work.

12.2. If the client does not approve the work, they are obliged to inform the contractor in writing of the reasons.

12.3. If the client does not approve the work, they will give the contractor the opportunity to deliver the work again. The provisions of this article shall apply again.

12.4. The client indemnifies the contractor against claims from third parties for damage to parts of the work that have not been delivered caused by the use of parts of the work that have already been delivered.

#### Article 13: Liability

13.1. The contractor is liable for damages suffered by the client that are a direct and exclusive result of a failure attributable to the contractor. However, only those damages for which the contractor is insured or should reasonably have been insured will be considered for compensation.

13.2. If it is not possible or reasonable for the contractor to take out insurance as referred to in paragraph 1 at the time of entering into the agreement or to renew it at reasonable conditions thereafter, the compensation for damages is limited to the amount charged by the contractor for the relevant agreement (excluding VAT).

13.3. Not eligible for compensation are: a. business losses, including, for example, loss of profits due to delays. The client must insure against this damage if desired; b. damage caused by supervision. Supervision damage includes, among other things, damage caused to items being worked on or to items located in the vicinity of the work site during the execution of the work. The client must insure against this damage if desired; c. damage caused by intent or deliberate recklessness of assistants or non-executive subordinates of the contractor.

13.4. The contractor is not liable for damage to material provided by or on behalf of the client as a result of an improperly executed processing. At the request of the client, the contractor will re-execute the processing with new material provided by the client at the client's expense.

13.5 The client indemnifies the contractor against all claims by third parties due to product liability resulting from a defect in a product that was supplied to a third party by the client and that (partly) consisted of products and/or materials supplied by the contractor.

## Article 14: Guarantee

14.1. The contractor guarantees the proper execution of the agreed performance for a period of six months after delivery.

14.2. If the agreed performance consists of contracting work, the contractor guarantees the soundness of the delivered construction and materials used for the period mentioned in paragraph 1, provided that the contractor was free in the choice thereof. If it turns out that the delivered construction and/or materials used are not sound, the contractor will repair or replace them. The parts that are repaired or replaced by the contractor must be sent to the contractor free of charge. The disassembly and assembly of these parts and any travel and accommodation costs incurred are at the expense of the client.

14.3. If the agreed performance includes processing material supplied by the client, the contractor guarantees the soundness of the performed processing for the period mentioned in paragraph 1. If it turns out that a processing has not been properly executed, the contractor will choose whether to:

- perform the processing again. In that case, the client must supply new material at their own expense;
- rectify the defect. In that case, the client must return the material to the contractor free of charge;
- credit the client for a proportionate part of the invoice.

14.4. If the agreed performance consists of delivery of an item, the contractor guarantees the soundness of the delivered item for the period mentioned in paragraph 1. If it turns out that the delivery was not sound, the item must be returned to the contractor free of charge. The contractor will then choose whether to:

- repair the item;
- replace the item;
- credit the client for a proportionate part of the invoice.

14.5. If the agreed performance includes the installation and/or assembly of a delivered item, the contractor guarantees the soundness of the installation and/or assembly for the period mentioned in paragraph 1. If it turns out that the installation and/or assembly has not been properly executed, the contractor will rectify this. Any travel and accommodation costs incurred are at the expense of the client.

14.6. For those parts for which the client and contractor have expressly agreed in writing, the manufacturer's warranty applies. If the client has had the opportunity to become acquainted with the content of the manufacturer's warranty, this will replace the guarantee on the basis of this article.

14.7. In all cases, the client must allow the contractor the opportunity to rectify any defect and/or perform the processing again.

14.8. The client can only invoke the guarantee after fulfilling all obligations towards the contractor.

14.9. a. No guarantee is given if defects are the result of:

- normal wear and tear;
- improper use;
- non- or improper maintenance;
- installation, assembly, modification or repair by the client or third parties.

b. No guarantee is given for delivered items that were not new at the time of delivery or for items prescribed by the client or supplied by or on behalf of the client;

c. No guarantee is given for inspecting and/or repairing items belonging to the client.

#### Article 15: Complaints

The client can no longer rely on a defect in the performance if they have not lodged a written complaint with the contractor within fourteen days of discovering, or ought to have discovered, the defect.

#### Article 16: Goods not accepted

If goods are not accepted after the delivery time has elapsed, they remain available to the client. Goods not accepted will be stored at the client's expense and risk. The contractor may always exercise the authority of Article 6:90 of the Civil Code.

#### Article 17: Payment

17.1. Payment shall be made at the location of the contractor or to a bank account designated by the contractor.

17.2. Unless otherwise agreed, payment shall be made as follows: a. Cash on delivery for counter sales; b. In installments: – 40% of the total price upon placing the order; – 50% of the total price upon delivery of the material or if the delivery of the material is not included in the order, upon commencement of the work; – 10% of the total price upon completion; c. In all other cases, within thirty days of the invoice date.

17.3. Regardless of the agreed payment terms, the client is obliged to provide sufficient security for payment at the request of the contractor. If the client fails to do so within the specified period, the client is immediately in default. In that case, the contractor has the right to terminate the agreement and recover its damages from the client.

17.4. The client's right to set off its claims against the contractor is excluded, unless the contractor is in bankruptcy or judicial debt restructuring is applicable to the contractor.

17.5. The entire claim for payment is immediately due and payable if: a. A payment term is exceeded; b. The client is declared bankrupt or applies for a suspension of payments; c. Attachment is made to the client's assets or claims; d. The client (company) is dissolved or liquidated; e. The client (natural person) requests admission to judicial debt restructuring, is placed under guardianship, or dies.

17.6. If payment has not been made within the agreed payment term, the client is immediately liable to pay interest to the contractor. The interest rate is 12% per annum, but is equal to the legal interest rate if it is higher. In the calculation of interest, a portion of the month is considered a full month.

17.7. If payment has not been made within the agreed payment term, the client is liable to pay all extrajudicial costs to the contractor, with a minimum of €75.

The costs are calculated based on the following table:

over the first €3,000 = 15%

over the excess up to €6,000 = 10%

over the excess up to €15,000 = 8%

over the excess up to €60,000 = 5%

over the excess from €60,000 = 3%

If the actual extrajudicial costs incurred are higher than what follows from the above calculation, the actual costs incurred are due.

17.8. If the contractor is successful in a judicial proceeding, all costs incurred by the contractor in connection with such proceeding shall be borne by the client.

#### Article 18: Retention of Title and Right of Pledge

18.1. After delivery, the contractor remains the owner of the delivered goods as long as the client: a. fails or will fail to fulfill its obligations under this agreement or other similar agreements; b. does not pay or will not pay for work performed or to be performed under such agreements; c. has not paid claims resulting from the non-fulfillment of the aforementioned agreements, such as damages, penalties, interest, and costs.

18.2. As long as a retention of title applies to the delivered goods, the client may not encumber them outside of its normal business operations.

18.3. After invoking its retention of title, the contractor may reclaim the delivered goods. The client permits the contractor to enter the location where these goods are located.

18.4. If the contractor cannot rely on his retention of title because the delivered goods have been mixed, transformed or commingled, the client is obliged to pledge the newly formed goods to the contractor.

#### Article 19: Termination

If the client wishes to terminate the agreement without any default by the contractor and the contractor agrees, the agreement will be terminated by mutual consent. In this case, the contractor is entitled to compensation for all financial damages suffered, including loss incurred, lost profits and expenses incurred.

#### Article 20: Applicable law and jurisdiction

20.1. Dutch law applies.

20.2. The Vienna Sales Convention (CISG) does not apply, nor does any other international agreement from which exclusion is permitted.

20.3. Only the Dutch civil court that is competent in the contractor's place of establishment shall have jurisdiction over disputes, unless this is contrary to mandatory law. The contractor may deviate from this jurisdictional rule and apply the statutory jurisdictional rules.

20.4. The parties may agree on another form of dispute resolution such as arbitration or mediation.

## DROPSHIPKOSTEN NL EN BE/LUX

1 colli	DROPSHIP <b>NEDERLAND</b> ALLEEN LEVEREN PRODUCTEN TOT 120/180	€	25,00
1 colli	DROPSHIP <b>NEDERLAND</b> ALLEEN LEVEREN PRODUCTEN VANAF 120/180	€	50,00
1 colli	DROPSHIP <b>BELGIE/LUX</b> ALLEEN LEVEREN PRODUCTEN TOT 120/180	€	30,00
1 colli	DROPSHIP <b>BELGIE/LUX</b> ALLEEN LEVEREN PRODUCTEN VANAF 120/180	€	60,00
Meer	DROPSHIP <b>NEDERLAND/BELGIE/LUX</b> - PER PAKKET +	€	20,00

**Duitsland en Frankrijk prijs opvragen!**

**Germany and France request price!**

**Deutschland und Frankreich fordern Preis an!**

Let op! Eventuele prijsafspraken en kortingen zijn nooit van toepassing op vervoerskosten

Note! Any price agreements and discounts never apply to transport costs

Anmerkung! Etwaige Preisabsprachen und Rabatte gelten niemals für Transportkosten

## DELIVERY CONDITIONS

Land		Costs
NL	Franco > €450,00	€ 25,00
BE	Franco > €600,00	€ 30,00
DE	Franco > €1000,00 Freightcost will be added when volume is known	?
FR	Franco > €1000,00 Freightcost will be added when volume is known	?
UK	Franco > €1000,00 Freightcost will be added when volume is known	?
CH	Franco > €1000,00 Freightcost will be added when volume is known	?
NO	Franco > €1000,00 Freightcost will be added when volume is known	?
Pick UP	At our warehouse	€ 9,00

Prod. time = 4 - 6 weeks