

METAALUNIE CONSUMER CONDITIONS

General Consumer Terms and Conditions issued by Koninklijke Metaalunie (Dutch employers' organisation for small and medium-sized enterprises in the metal industry), referred to as

Metaalunie Consumer Conditions, filed with the Registry of the Court of Central Netherlands, Utrecht location, on 1 October 2022.

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Article 1: Definitions

The following definitions apply in these general terms and conditions:

- a. The entrepreneur: the member of Koninklijke Metaalunie.
- b. The consumer: all natural persons who, not acting in the exercise of a profession or business, enter into an agreement with the entrepreneur.
- c. The execution of work: the agreement under which the entrepreneur carries out work against payment and possibly supplies items.
- d. The purchase: the agreement under which the entrepreneur exclusively supplies one or more items, and the consumer pays a price in money for them.
- e. Additional work: work and items which the consumer wishes to add to the agreed work, and which result in additional payment on top of the agreed price.
- f. Less work: work and items which the consumer wishes to omit from the agreed work and, which lead to a reduction in the agreed price.
- g. Koninklijke Metaalunie: Dutch employers' organisation for small and medium-sized enterprises in the metal industry.

Article 2: Applicability

- 2.1 These conditions apply to all offers made by the entrepreneur to the consumer and to all agreements concluded with the consumer for the delivery of items, the performance of work or a combination of such.
- 2.2 In the event of conflict between the content of the agreement entered into by the entrepreneur with the consumer and these conditions, the provisions set out in this agreement prevail.
- 2.3 Only Metaalunie members may use these conditions.

Article 3: The offer

- 3.1 The offer is without engagement. The entrepreneur is entitled to revoke its offer up to two working days after it has received the acceptance.
- 3.2 The entrepreneur makes an offer, which is expected to exceed an amount of € 500, in writing or electronically, unless urgent circumstances prevent this.
- 3.3 The offer contains a description of the item(s) to be delivered, the work to be performed or both. The offer must be sufficiently detailed to allow for a proper assessment of the offer by the consumer.

- 3.4 In the case of execution of work, the offer shall also specify the time or period when the work can be started, contain an indication of the duration of the work and a fixed or probable date of completion.
- 3.5 In the case of execution of work, the offer also provides insight into the price of the materials and the method used to determine the price, there being a choice between a 'contract price' or a price on a 'cost-plus' basis:
- a. When opting for a contract price, the parties agree on a fixed amount for which the work will be carried out.
 - b. When opting a price on a cost-plus basis, the entrepreneur provides an accurate statement of the price factors, such as, among other things, the hourly rate and unit prices of the required materials. At the consumer's request, the entrepreneur can give an indication of the anticipated implementation costs by stating a guide price, unless in the entrepreneur's opinion this is not reasonably possible in the circumstances.

Article 4: Confidentiality

- 4.1 All information that the entrepreneur provides or has provided to the consumer on its behalf (such as offers, designs, images, drawings and know-how) of any nature and in any form is confidential. The consumer will not use this information for any purpose other than for the performance of the agreement.
- 4.2 The consumer shall not disclose or multiply the information referred to in paragraph 1 of this article.
- 4.3 If the consumer breaches an obligation referred to in paragraphs 1 and 2 of this article they will owe an immediately payable penalty of € 500 for each breach. The entrepreneur can claim this penalty in addition to compensation under the law.
- 4.4 The consumer must return or destroy the information referred to in paragraph 1 of this article on first request, within the time limit set by the entrepreneur, at the entrepreneur's discretion. If this provision is breached, the consumer will owe the entrepreneur an immediately due and payable penalty of € 75 per day. The entrepreneur can claim this penalty in addition to compensation under the law.

Article 5: Acceptance of the offer

- 5.1 The consumer accepts the entrepreneur's offer preferably and where possible by written or electronic means.
- 5.2 In case of electronic acceptance by the consumer, the entrepreneur shall confirm the receipt of the acceptance to the consumer by electronic means. If the consumer accepts the offer of the entrepreneur verbally, the entrepreneur will preferably confirm the acceptance in writing or electronically.

Article 6: Obligations of the entrepreneur in the execution of work

- 6.1 The entrepreneur shall perform the work properly, soundly and in accordance with the terms of the agreement. The work is performed within working hours that are customary for the entrepreneur, unless otherwise agreed.
- 6.2 When carrying out the work, the entrepreneur shall observe the legal regulations as they are or will be in force at the time the work is carried out.

Article 7: Warning obligation of the entrepreneur

- 7.1 The entrepreneur will point out the following defects and inaccuracies to the consumer:
- a. inaccuracies in the instructed work.
 - b. inaccuracies in the methods and constructions required by the consumer.
 - c. defects in the movable or immovable property on which the work is performed.
 - d. defects in or unsuitability of materials or aids made available by the consumer.
 - e. inaccuracies in the information provided by or on behalf of the consumer.
- 7.2 The obligation to warn referred to in the previous paragraph does not alter the fact that the entrepreneur is only obliged to point out errors to the consumer if the entrepreneur can reasonably be considered to be aware of them, they are relevant to the execution of the agreement, they become apparent to the entrepreneur before or during the execution of the agreement and the entrepreneur should be deemed an expert with regard to these errors.

Article 8: Damage that is at the consumer's risk

- 8.1 The consumer bears the risk for damage caused by:
- a. inaccuracies in the instructed work.
 - b. inaccuracies in the working methods and constructions required by the consumer.
 - c. defects in the movable or immovable property on which the work is performed.
 - d. defects in materials or aids made available by the consumer.
 - e. inaccuracies in the information provided by or on behalf of the consumer.
- 8.2 The above does not alter the fact that the entrepreneur is obliged to warn the consumer on the basis of Article 7.

Article 9: Obligations of the consumer in the execution of work

- 9.1 The consumer gives the entrepreneur the opportunity to carry out the work.
- 9.2 The consumer ensures that the entrepreneur has timely access to the approvals and data required for the work (such as permits and exemptions).
- 9.3 The consumer shall provide the entrepreneur with the connection facilities available to the entrepreneur for energy, water and internet that are necessary for the work. The costs of electricity, gas, water and internet are for the account of the consumer.
- 9.4 The consumer must ensure that when third parties carry out work or deliver items that do not form part of the entrepreneur's work, they are performed in such a way and in such a timely manner that the execution of the work is not delayed. If a delay nevertheless occurs, the consumer should inform the entrepreneur in item time.
- 9.5 If the start or progress of the work is delayed by circumstances, as referred to in paragraphs 1 to 4 of this article, the consumer should compensate the entrepreneur for the damage/loss and costs associated with this, if these circumstances can be attributed to the consumer.

Article 10: Obligation to take possession

The consumer is obliged to take actual possession of the items that are the subject of the agreement at the agreed location at the end of the delivery or execution period. The consumer must cooperate fully and free of charge to enable the entrepreneur to deliver the items. Goods not taken into possession are stored at the consumer's expense and risk.

Article 11: Guide price, contract variations

- 11.1 If the parties have agreed on a contract price, the consumer can request the entrepreneur for contract variations after the agreement has been concluded. If the entrepreneur accepts the agreement variations, it may extend the date of completion as referred to in article 3 paragraph 4 by the time needed to deliver the materials and parts for such (or have this delivered) and to carry out the work.
- 11.2 If the entrepreneur has stated a guide price, this may be exceeded by a maximum of 10%, unless the entrepreneur has warned the consumer of an exceeding of this price as early as possible to give the consumer the opportunity to reduce or simplify the work. The entrepreneur will have to cooperate with this within the limits of reasonableness.
- 11.3 If the consumer has requested additional work from the entrepreneur, the entrepreneur can only claim an increase in price if it has informed the consumer in item time of the resulting price increase, unless the consumer should already have understood this themselves.
- 11.4 The entrepreneur and the consumer agree in advance in writing on contract variations totalling more than 10% of the price of the work, unless there are urgent circumstances preventing this.
- 11.5 Despite the absence of a written order, the consumer or the entrepreneur may be entitled to claim settlement of contract variations. In that case, the proof of the contract variations rests on the party making the claim.

Article 12: Price changes

- 12.1 If the entrepreneur and the consumer have agreed a completion or delivery period of no more than 3 months and there is an increase in cost-determining factors after the agreement has been concluded, then the entrepreneur has the right to increase the price. If the entrepreneur increases the price, the consumer has the right to terminate ('ontbinden') the agreement.
- 12.2 If the entrepreneur and the consumer have agreed a completion or delivery period of more than 3 months and there is an increase in cost-determining factors after the agreement has been concluded, then the entrepreneur has the right to increase the price. If the entrepreneur increases the price, the consumer does not have the right to terminate ('ontbinden') the agreement.
- 12.3 In the event of termination ('ontbinding') of the agreement as referred to in paragraph 1 of this article, the consumer is not entitled to compensation for any damage/loss.

Article 13: Completion and transfer of risk on execution of the work

13.1 The work is completed when the entrepreneur has notified the consumer that the work has been completed and the consumer has accepted the work.

13.2 The work is deemed to be delivered when:

- no more than 14 days have passed since the entrepreneur notified the consumer in writing or electronically that the work has been completed and the consumer has failed to accept the work within that period, unless the consumer rejects the work in writing, giving reasons, within that period;
- the consumer puts the work into use (again), on the understanding that by putting part of the work into use, that part is considered delivered.
- the consumer does not approve the work on the grounds of minor defects and/or missing parts that can be repaired or redelivered within 30 days and that do not hinder the work being taken into use. The entrepreneur is obliged to repair the defects as soon as possible or to redeliver the parts.

13.3 After delivery, the work is at the risk of the consumer.

Article 14: Delivery term and risk transfer on purchase

14.1 The entrepreneur delivers the items no later than thirty days after the conclusion of the agreement. The parties may make other arrangements in this regard.

14.2 When the entrepreneur delivers the item to the consumer, or has it delivered, the item is at the consumer's risk as soon as the consumer or someone else designated by the consumer who is not the carrier has received the item.

14.3 When the consumer has designated a carrier and the entrepreneur does not offer the choice of this carrier itself, the risk passes to the consumer once the carrier has received the item.

Article 15: Completion file

The entrepreneur is not obliged to submit a completion file to the consumer for the work it performs as referred to in the Wet kwaliteitsborging voor het bouwen [*Building Quality Assurance Act - Wkb*]. The parties may make other arrangements in this regard.

Article 16: Force majeure

16.1 If fulfilment of an obligation under the agreement is temporarily impossible for one of the parties due to a cause that cannot be attributed to it, then this party has the right to suspend fulfilment of their obligations for that period.

16.2 If fulfilment of an obligation under the agreement is permanently impossible for one of the parties due to a cause that cannot be attributed to it, then this party is entitled to terminate ('ontbinden') the agreement against payment to the other party of the reasonable costs incurred.

Article 17: Payment

- 17.1 Payment is made at the entrepreneur's business address or into an account to be designated by the entrepreneur.
- 17.2 The parties can agree that payment will be made in instalments. If payment in instalments has been agreed and the entrepreneur does not fulfil its obligation to continue the delivery/the work to be performed, the consumer has the right to suspend the instalment payment.
- 17.3 On purchase, the entrepreneur has the right to require the consumer to pay up to 50% of the price in advance.

Article 18: Final settlement

- 18.1 In the case of work, the entrepreneur must submit the final settlement statement to the consumer within a reasonable period of time after delivery.
- 18.2 If the parties have agreed on a contract price, the final settlement will contain a clear description of the original order and any instructed contract variations.
- 18.3 If the parties have agreed that work will be carried out on a cost-plus basis, the final settlement will contain a specification of the materials used and their costs, the hours worked and the hourly rates and the other costs.
- 18.4 Unless payment is made in cash, payment of the final settlement will take place within fourteen days of the invoice date.

Article 19: Late payment

- 19.1 If the consumer fails to pay on time, they are in default without any notice of default being required.
- 19.2 The entrepreneur is entitled to charge interest on the payment that has not been made on time from the expiry of the payment term until the day on which the amount due is received. This interest is the same as the statutory interest referred to in Article 6:119 of the Dutch Civil Code.
- 19.3 After the deadline for payment has passed, the entrepreneur will send the consumer a free payment reminder. In this payment reminder, the entrepreneur shall state that the consumer still has the opportunity to pay within fourteen days from the day after the payment reminder is delivered and which amount in collection costs the consumer will owe if (full) payment is not made within that period. The amount of the collection costs must be in accordance with the 'Besluit vergoeding voor buitengerechtelijke incassokosten' [*Extrajudicial Collection Costs (Fees) Decree*].

Article 20: Suspension

If the consumer fails to fulfil their obligations, the entrepreneur is entitled to suspend a proportional part of their corresponding obligations. The entrepreneur may only do so if it has demanded from the consumer in writing or electronically that they as yet fulfil their obligations. The provisions of the previous sentence do not affect the entrepreneur's right to compensation for costs, damage/loss and interest.

Article 21: Retention of title

The entrepreneur remains the owner of delivered items as long as the consumer:

- a. has not fulfilled their obligations under any agreement with the entrepreneur;
- b. has not settled any claims arising from non-fulfilment of the aforementioned agreements, such as damage/loss, penalty, interest and costs.

Article 22: Intellectual property rights

- 22.1 The entrepreneur shall be considered the creator, designer or inventor, respectively, of the works, models or inventions created under the agreement. The entrepreneur therefore has the exclusive right to apply for a patent, trademark or model.
- 22.2 The entrepreneur does not transfer any intellectual property rights to the consumer in the execution of the agreement.
- 22.3 If the performance to be delivered by the entrepreneur (also) includes providing computer software, the source code will not be handed over to the consumer. The consumer 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. The consumer is not permitted to transfer the licence or to issue a sub-licence. When the consumer sells the item to a third party, the licence transfers automatically to the acquirer of the item.

Article 23: Obligation to complain

- 23.1 The consumer should report defects to the entrepreneur within a reasonable time after they have discovered them or should reasonably have discovered them. In the case of purchase, notification must be given within a reasonable time after discovery, with notification within two months of discovery being a reasonable time.
- 23.2 The notification referred to in the first paragraph shall preferably be issued in writing or electronically.

Article 24: Compliance of delivered items with agreement and guarantee

- 24.1 The entrepreneur is obliged to deliver an item that complies with the provisions of the agreement. In addition, the item must:
- a. be suitable for the purposes for which items of the same type are normally used;
 - b. if applicable: correspond to a sample or model made available to the consumer by the entrepreneur before purchase;
 - c. be supplied with the accessories that the consumer can reasonably expect, and
 - d. have the quantity and the characteristics that are normal for the same type of items and which the consumer may reasonably expect in view of the nature of the items;
- unless the parties have validly agreed that the case deviates from the requirements set out in points a to d above.
- 24.2 Should any deviation from what was agreed upon manifest itself within one year after completion (as referred to in article 13 of these conditions) or after delivery (as referred to in article 14 of these terms and conditions), it shall be presumed that the delivered item did not comply with the agreement at the time of completion or delivery. In that case, the entrepreneur will remedy the defect free of charge, unless the entrepreneur can demonstrate that at the time of completion/delivery the product did comply with the agreement. The foregoing does not affect the fact that the entrepreneur can also be liable for any defects after the aforementioned period on the basis of the law.
- 24.3 The guarantee referred to in paragraph 2 shall lapse if:
- the defects are the result of normal wear and tear;
 - the defects have been caused by an error, improper use or omission on the part of the consumer or their legal successor, or there is an external cause;
 - the defects are the result of lack of maintenance or maintenance carried out incorrectly;
 - the defects are the result of installation, assembly, modification or repairs carried out by the consumer or third parties without the prior written consent of the entrepreneur.

Article 25: Applicable law and competent court

25.1 Dutch law applies.

25.2 The consumer may bring proceedings against the entrepreneur either in the courts of the Netherlands or in the courts of the place where the consumer is domiciled. The entrepreneur may bring proceedings against a consumer only in the courts of the country in which the consumer is domiciled.

With the exception of article 25.2, these Terms and Conditions constitute a comprehensive translation of the Dutch version of the Metaalunie Consumer Conditions as filed with the Registry of the Court of Central Netherlands, Utrecht location, on 1 October 2022. With the exclusion of article 25.2, the Dutch version will prevail in the explanation and interpretation of this text.