



MEKUFA TERMS AND CONDITIONS OF TRADE

General terms and conditions of trade of B.V. Metaalwaren- en Kunststoffenfabriek MEKUFA (MEKUFA)

This version shall apply from October 2007 and has been filed with the Office of the Clerk of the Court at Almelo, the Netherlands. It replaces our general terms and conditions of July 1st, 1993.

Article 1: Application

- 1.1. These terms and conditions shall apply to all offers and all contracts for sale, purchase or the undertaking of work entered into by MEKUFA, with its registered offices at Bevert 1, Vroomshoop, the Netherlands.
- 1.2. In these terms and conditions the seller or party making the offer is referred to as "the supplier" and is the party using these terms and conditions, while the other party is referred to as "the customer".
- 1.3. The customer's terms and conditions of trade shall not apply, unless they have been accepted in writing by the supplier.

Article 2: Offers

- 2.1. All offers shall be nonbinding, unless specifically stated otherwise. Offers are based on information, drawings, etc. provided by the customer together with his request, and the supplier may assume these to be correct.
- 2.2. The quoted prices are for delivery ex workshop, factory, yard, warehouse or shop and do not include value-added tax, unless otherwise agreed. The contents of brochures, other printed matter, etc. shall not be binding on the supplier, unless they are specifically referred to in the agreement.

Article 3: Industrial and intellectual property rights

Unless otherwise agreed, the supplier shall continue to hold the copyright and any other intellectual and industrial property rights in any designs, sketches, illustrations, drawings, models, software and quotations provided by him. These documents, etc. shall remain his property and shall, barring his specific permission, not be copied, revealed to third parties or be used in any other way, regardless of whether or not the customer has been charged any costs for them.

Article 4: Packaging

Necessary packaging shall be charged at cost and cannot be returned to the supplier. The supplier shall decide on the need for the use of packaging.

Article 5: Advice, designs and materials

- 5.1. Information and advice provided by the supplier shall always be of a general nature and nonbinding.
- 5.2. Through making the offer the supplier does not accept responsibility for a design made by or behalf of the customer, or for any advice further to such a design. The customer shall have responsibility for the functional suitability of materials specified by him. Here, "functional suitability" refers to the suitability of that material or component for its intended purpose in accordance with the customer's design.
- 5.3. The supplier accepts this responsibility for designs made by him. The responsibilities are referred to the guarantee conditions.
- 5.4. In the event that an order is placed and the design was not made by or on behalf of the supplier, then the supplier shall only accept responsibility for the production in accordance with the order and for the suitability of the materials used, in so far as these materials have not been specified by the customer. The customer shall be permitted to arrange for the third-party inspection of materials not specified by him, before such materials are processed. The customer shall bear the costs associated with this.
After processing of the materials or components, the customer shall not be entitled to claim that the materials used are not functionally suitable or refer to any other defects in the materials which he could reasonably have detected through an inspection.
- 5.5. If at the time of placing an order the customer wants to transfer responsibility for a design made by or on behalf of him to the supplier then the supplier shall not be required to accept such responsibility. The supplier shall be granted adequate time to decide on such a transfer of responsibility. In this event the supplier shall have the opportunity to study and analyse the entire design and the customer shall provide all information and documents necessary or useful for this.
- 5.6. The supplier shall not be required to undertake the assessment referred to in Article 5.5 free of charge, unless the initial inquiry indicated that the customer intended to transfer the responsibility to the supplier.
- 5.7. The supplier shall never accept any responsibility for components issued by the customer.

Article 6: Agreements

- 6.1. Agreements, however they are referred to, shall only come into existence after express acceptance by the supplier. This express acceptance shall be indicated by a written confirmation issued by the supplier or by the fact that the supplier implements the agreement.
- 6.2. Agreements with nonmanagement personnel of the supplier shall not be binding upon the supplier unless confirmed in writing. Here, "nonmanagement personnel" refers to all personnel other than those expressly authorised to represent the company.

Article 7: Time and place of delivery

- 7.1. Delivery shall be ex workshop, factory, yard, warehouse or shop, at the choice of the supplier. All delivery times (periods) quoted shall be approximate.
- 7.2. The delivery time shall commence once all technical details have been agreed on and once all the information, drawings, etc. required for undertaking the work have been received by the supplier.
- 7.3. The delivery time shall be based on the assumption that the supplier shall be able to operate as expected at the time the offer was made and that the required materials will be supplied to him in time. In principle, failure to meet the delivery time shall only lead to compensation if this is agreed in writing. In all other cases, the supplier shall only be required to compensate losses resulting from overdue delivery if the customer has issued a written notice of default granting the supplier a period equal to at least half the originally agreed delivery time to fulfil his obligations.
- 7.4. If the goods have not been taken delivery of by the customer after the delivery time, or cannot be installed on site, then these goods shall be available to the customer and shall be stored at his cost and risk.

Article 8: Inability to fulfil an order

- 8.1. If, after the agreement has been concluded it cannot be fulfilled by the supplier due to circumstances unknown to him at the time of entering into the agreement, then the supplier shall be entitled to demand that the substance of the agreement be amended such that it shall be possible to fulfil it.
- 8.2. The supplier shall also be entitled to suspend the fulfilment of his obligations and shall not be in default if he is temporarily unable to fulfil his obligations due to changes in circumstances which could not reasonably be foreseen at the time the agreement was concluded and are outside his influence.

- 8.3. Circumstances which could not reasonably be foreseen at the time the agreement was concluded and are outside the influence of the supplier shall include, but not be limited to, failure of the supplier's sub-suppliers to fulfil their obligations, fire, strikes or work interruptions, the loss of materials to be processed or import or trading bans.
- 8.4. There shall be no entitlement to suspend the agreement if it is permanently impossible to fulfil the agreement or if the temporary inability to fulfil it continues for more than six months, in which event the agreement between the parties shall be dissolved without either party being entitled to compensation of current or future losses associated with that dissolution.
- 8.5. If the supplier has fulfilled part of his obligations then he shall be entitled to a proportional part of the agreed price, based on the work undertaken and costs incurred.

Article 9: Scope of the contracted work

- 9.1. The customer shall ensure that the licences, permits, exemptions and similar decisions required for undertaking the work shall be obtained in time.
- 9.2. Unless specifically stated otherwise, the agreed price for contracted work shall not include:
 - a. taking measures to prevent damage to goods present at the work site;
 - b. additional disposal costs associated with the nature of the materials to be disposed of, such as in the event of hazardous materials and/or chemical waste.

Article 10: Changes to the contracted work

- 10.1. Any changes to the contracted work, due to special instructions by the customer or due to changes to the design or due to the information provided not matching the implementation, or because of deviations from estimated quantities, shall be considered as a scope extension if they lead to additional costs, and as a scope reduction if they lead to reduced costs.
- 10.2. Scope extensions shall be charged on the basis of the factors determining the price applicable at the time the additional work is undertaken. Scope reductions shall be calculated on the basis of the factors determining the price applicable at the time of concluding the agreement.
- 10.3. If at the time of final settlement of the work it becomes apparent that the total of the scope reductions (settled and yet to be settled), exceeds the total of the scope extensions (settled and yet to be settled), then the supplier shall be entitled to an amount equal to 10% of the difference between the two totals, unless the scope reductions were requested by the supplier.

Article 11: Dies and tooling

- 11.1. Dies and tooling shall be made at the cost and risk of the customer, unless otherwise agreed.
- 11.2. Dies and tooling shall remain the property of the supplier until full payment by the customer (increased by the costs of collection where applicable).
- 11.3. The supplier shall undertake the required minor maintenance of dies and tooling, at his cost, while these are used for production.
- 11.4. When dies and tooling are not used for production the supplier shall be entitled to charge an annual fee for storage and maintenance of at least 5% of the costs which would be charged to the customer if these dies and tooling were to be replaced.
- 11.5. The customer shall bear any unforeseen costs.
- 11.6. The customer shall insure the dies, moulds, auxiliary tooling, etc. held by the supplier against loss and/or damage.

Article 12: Materials issued by the customer

- 12.1. Materials issued by the customer (free issue materials) shall remain at the customer's risk, unless otherwise agreed.
- 12.2. The customer shall ensure that the materials issued by him are packaged to ensure that their quality is maintained.
- 12.3. The supplier shall store the materials issued by the customer such that deterioration or damage is avoided.
- 12.4. For the storage and preservation of materials issued by the customer the supplier shall be entitled to charge an annual fee of at least 5% of the costs which would be charged to the customer if these materials were to be replaced.
- 12.5. The customer shall bear any unforeseen costs.
- 12.6. The customer shall issue 5% more materials than the number required for the order and shall not be entitled to the return of these materials upon termination of the work.

Article 13: Final delivery

- 13.1. An order shall be deemed to be finally delivered if the supplier has delivered the quantities stated in the order confirmation to the customer, with the proviso that the supplier shall always be permitted to supply up to 5% more or fewer units.
- 13.2. Minor defects which can be remedied within 30 days of the handover shall not impede the final delivery.
- 13.3. If the customer fails to approve work, thus preventing final delivery, the customer shall inform the supplier of this in writing, stating the reasons.
- 13.4. If any part cannot be delivered at the time of the handover for reasons outside the control of the supplier then the handover shall still be possible. However, this circumstance may be considered with respect to payment and the guarantee arrangements.
- 13.5. Part deliveries shall always be permitted.

Article 14: Liability

- 14.1. The supplier shall only be liable for losses suffered by the customer which are the direct and exclusive consequence of the fault of the supplier, with the proviso that any compensation shall be limited to losses which the supplier is insured against or should reasonably have been insured against, given the practice in the industry. The following restrictions shall apply:
 - a. Compensation shall not be provided for business losses (business interruptions, demurrage and other costs, loss of revenues, etc.) due to any cause whatsoever. The customer shall take out insurance against such losses if desired.
 - b. The supplier shall not be liable for any damage caused by or during the carrying out of the work or installation of the supplied goods or installations to goods being worked on or goods in the vicinity of the work site.
 - c. The supplier shall not be liable for damage due to the intent or gross negligence of auxiliary personnel.
 - d. The damage to be compensated by the supplier shall be reduced if the price to be paid by the customer is low compared with the extent of the damage suffered by the customer.
- 14.2. The customer shall indemnify the supplier against any claims by third parties for compensation from the supplier related to the use of drawings, samples, models, model plates and other items or information provided by the customer and shall be liable for any costs associated with these.

Article 15: Guarantee

- 15.1. The supplier guarantees the correct implementation of the contracted work in terms of the construction and materials in so far as the supplier had a free choice of these, in that new parts will be supplied free of charge for any part which fails within a period of six months after delivery due to inadequate construction and/or inadequate materials. In that event the supplier shall become the owner of the parts to be replaced. The removal or installation of these parts shall be for the account of the customer.

In the event that the order amounted to the processing of materials issued by the customer, the supplier guarantees the adequacy of the processing undertaken.

If, within a period of six months of the delivery, it appears that the processing was inadequate then the supplier shall, at his choice: undertake the processing again if the customer issues new materials, rectify the defect, or credit the customer for a proportional part of the invoice.

- 15.2. If the delivery or processing were inadequate the supplier shall have the right to credit the customer in full against the return of the inadequate goods, or to repair the inadequate goods, or resupply or reprocess goods. New materials to be processed shall be issued by the customer at his cost.
- 15.3. At all times, the customer shall give the supplier the opportunity to rectify any defects.
- 15.4. Defects caused by normal wear and tear, inappropriate use or inappropriate or incorrect maintenance, or which occur after modification or repair by or on behalf of the customer or by third parties shall not be covered by the guarantee.
In variation to the above, machinery, dies, moulds, model plates, instruments, tooling, installations, machines or items supplied under a manufacturer's guarantee shall be covered by the guarantee conditions of the factory. If the manufacturer does not provide a guarantee then neither shall the supplier provide a guarantee.
No guarantee is given on machinery, dies, moulds, model plates, instruments, tooling, installations, machines and other items supplied which were (as a whole or to a large extent) not new at the time of delivery.
No guarantee is given on machinery, dies, moulds, model plates, instruments, tooling, installations and installation work not installed by the supplier, or those which have been installed by him but not supplied by him.
- 15.5. The guarantee shall only apply if the customer has fulfilled all his obligations towards the supplier, be they financial or otherwise.

Article 16: Transport

- 16.1. From the time of shipping, all items shall be transported at the risk of the customer. Even when delivery free of charge is agreed, the customer shall be liable for any damage related to transport. The customer shall take out adequate insurance against this risk.
- 16.2. Should recourse to the provisions of Article 16.1 fail, then the supplier shall never be required to provide compensation exceeding the amount he may claim from the carrier and/or insurance company further to the loss or damage in transit, and at the request of the customer he will transfer his claim on the carrier or insurance company to the customer.

Article 17: Uncollected items

If the supplier holds any of the customer's goods which have been made available and the customer fails to collect these against payment of the amount due, then one month after making the goods available the supplier shall be entitled to sell them or arrange to have them sold, after giving notice of default, for and on behalf of the customer with the obligation to pay the proceeds to the customer after deduction of the amounts owed to the supplier, including the costs of storage.

Article 18: Payment

- 18.1. The terms of payment shall be decided on the basis of the nature and importance of the delivery or the work to be undertaken. Unless otherwise agreed, the terms of payment shall be:
- Commissioned work to be paid by bank transfer within 30 days of the invoice date.
 - Larger items and contracting projects:
 - 50% of the agreed price at the time of order;
 - 50% of the agreed price at the time of handover.
- 18.2. Expenses for the account of the supplier which are advanced by the customer shall be settled at the time of the final payment.
- 18.3. Before making a delivery or continuing deliveries or continuing with the fulfilment of the order the supplier shall always have to right to demand adequate surety (to be judged by the supplier) for payment by the customer.
This provision shall apply correspondingly if credit is requested. Refusal by the customer to provide the requested surety shall give the supplier the right to consider the agreement as dissolved, without prejudice to the entitlement of the supplier to compensation of costs and foregone profit.
- 18.4. If the customer fails to meet his obligations concerning payment the supplier shall be entitled to suspend the work, even if a fixed delivery date is agreed.
- 18.5. If, with respect to specified delivered goods or work undertaken, the supplier agrees to payment of the principal or part thereof in a number of instalments after the date of delivery or invoicing, then the value-added tax on the full amount of the payment shall be payable at the same time as the first instalment.
- 18.6. Regulations by any authority whatsoever which prohibit the use of the goods delivered or yet to be delivered shall not affect the customer's payment obligations.
- 18.7. The right of the customer to offset any monies owed to him by the supplier is specifically excluded.
- 18.8. The entire purchase price or contract sum shall always be payable in full in the event of failure to pay an agreed instalment by the due date, if the customer enters bankruptcy, applies for a moratorium on payments or his tutelage is applied for, if the customer's possessions or entitlements are seized in any way, or if the customer dies, is liquidated or is dissolved.
- 18.9. If a mailed invoice is not paid within one month of the invoice date the supplier shall be entitled to charge the customer after this date for foregone interest, amounting to interest at the statutory rate in the Netherlands but with a minimum of 10% per annum if the statutory rate is below 10%, whereby the interest over part of a month shall be charged as a full month.
- 18.10. In addition to the principal sum and the interest, the supplier shall also be entitled to recover all extrajudicial costs related to the overdue payment or failure to pay. The customer shall always owe extrajudicial costs if the supplier has engaged a third party for the debt collection. These shall be calculated in accordance with the debt collection fees recommended by the Dutch Bar Association for debt collection work. The single fact that the supplier has engaged a third party leads to the obligation to pay the extrajudicial costs and determines their amount. If the supplier applies for the customer's bankruptcy then the customer shall owe the costs of this application, in addition to the principal sum, interest and extrajudicial costs.

Article 19: Complaints

- 19.1. The customer has no recourse further to a failure to perform if he has not complained in writing about the matter to the supplier within an appropriate period after the time he discovered the defect or should reasonably have discovered the defect.
- 19.2. Here "an appropriate period" means within thirty days from the delivery of an item or, in the event that it has not been handed over or delivered, within eight days of the customer discovering a defect, in which event he shall inform the supplier in writing of the nature of the defect and how and when he discovered the defect.
- 19.3. Complaints about invoices shall be raised in writing within 8 days of receipt of the invoice.

Article 20: Price changes

- 20.1. The agreed prices shall be based on the costs of materials and wages at the date of the quotation.

- 20.2. If the customer has issued materials or raw materials and other items to the supplier for undertaking the work then the supplier shall be entitled to include a maximum of 10% of the cost price of the issued items in the contract amount or his price calculations.

Article 21: Reservation of title and pledges

- 21.1. The customer shall only obtain the title to the goods supplied, or yet to be supplied, by the supplier under a suspensive condition. The supplier shall retain the title to the goods supplied or yet to be supplied as long as the customer has not paid the claims of the supplier further to the performance of the agreement or a similar agreement.
The supplier shall also retain the title to the goods supplied or yet to be supplied as long as the customer has not paid for the work undertaken or yet to be undertaken further to such agreements and as long as the customer has not paid claims further to failure to fulfil such agreements, including claims relating to penalties, interest and costs.
- 21.2. Until the above claims have been paid, the customer shall not be entitled to pledge the goods delivered by the supplier or grant a non-possessory pledge on them and undertakes to inform third parties wishing to establish such right that he is not authorised to grant a pledge, as soon as requested to do so by the supplier. The customer also undertakes not to sign any deed establishing a pledge on the goods, in which event the customer would be guilty of embezzlement.
- 21.3. In the event that the customer fails to meet any obligation to the supplier further to the sold goods or work to be undertaken, the supplier shall be entitled to take back the goods, both those originally delivered and newly created goods, without a notice of default being required. The customer authorizes the supplier to access the location of the goods.
- 21.4. The supplier shall grant the title to the delivered goods to the customer at the time the customer has fulfilled all his obligations to pay further to this and similar agreements, subject to the supplier having a pledge on the goods in respect of any other claims the supplier has on the customer. The customer shall assist the supplier with any related actions required for this, upon first request.

Article 22: Article 22: Dissolution

- 22.1. This agreement may be dissolved in part or in full by a written statement by the party authorised to do so. Before the customer addresses a written statement of dissolution to the supplier, he will always first send the supplier a written notice of default and grant him a reasonable period in which to fulfil his obligations or remedy defects, which defects the customer shall accurately state in writing.
- 22.2. The customer shall not be entitled to dissolve the agreement in part or in full or to suspend his obligations if he himself was also in default with respect to fulfilling his obligations.
- 22.3. If the supplier agrees to the dissolution, without there being any default on his part, he shall always be entitled to compensation of all financial losses such as costs, foregone profits and reasonable costs to determine the losses and liability. In the event of partial dissolution the customer cannot require reversal of any performance undertaken by the supplier and the supplier shall be entitled to payment in full for the performance undertaken by him.

Article 23: Applicable law

- 23.1. Dutch law shall apply to all agreements.
- 23.2. The provisions of the Vienna Sales Convention shall not be applicable and neither shall any further international arrangement concerning the purchase of movable goods whose application can be excluded by the parties be applicable.
- 23.3. Any disputes related to offers and agreements, however they are referred to, shall be brought before the competent civil court for the registered offices of the supplier, unless required otherwise by law.

This translation is provided for information only. The Dutch original text shall be the binding document.