

General terms and conditions of delivery and payment issued by the Vereniging Metalen Ramen en Gevelbranche (VMRG), Association for the Metal Door and Façade Industry, filed at the Registry of the District Court in Utrecht on 19 February 2020 / registration number 51/2020

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Article 1: Applicability

- 1.1. These terms and conditions apply to all offers made by a member of the Vereniging Metalen Ramen en Gevelbranche (hereinafter referred to as VMRG), to all agreements a member concludes and to all agreements that result from it, all in so far as the VMRG member is a provider or supplier. The VMRG member that uses these terms and conditions, is called contractor or seller. The other party is called customer or buyer.
- 1.2. The VMRG member shall perform all work entirely in accordance with the VMRG Kwaliteitseisen en Adviezen® [quality requirements and recommendations] as they apply at the time the offer is drawn up, and shall meet all requirements set out in the VMRG Keurmerk [quality mark].
- 1.3. These terms and conditions may only be used by VMRG members.
- 1.4. In the event of any conflict between the content of the agreement concluded between the customer and the contractor and these terms and conditions, the provisions of the agreement shall prevail.
- 1.5. Any deviations from these terms and conditions shall only apply if the contractor has confirmed them in writing to the customer.

Article 2: Offers

- 2.1. All offers are made without engagement.
- 2.2. In the event that the customer provides the contractor with data, drawings or other information, the contractor may assume that these are correct and complete thereof and shall base its offer on this.

Article 3: Intellectual property rights and obligation of confidentiality

- 3.1. Unless explicitly agreed otherwise in writing, the contractor retains the copyrights and industrial property rights to the offers made, designs, images, drawings, calculations, (trial) models, software, etc. provided by the contractor, even if the customer has been charged for their creation.
- 3.2. The customer has an obligation of confidentiality in respect of everything included in paragraph 1 of this article. Without the contractor's explicit prior written consent, the customer may not reproduce or disclose any information and data on the matter.
- 3.3. In the event of violation of the provisions in paragraphs 1 and 2 of this article, the customer shall owe the contractor an immediately due and payable penalty of €25,000 (exclusive of VAT) for each violation. This penalty may be claimed in addition to damages under the law.

Article 4: Advice, designs and materials

- 4.1. The customer cannot derive any rights from advice and information obtained from the contractor if this does not relate directly to the actual order.
- 4.2. The customer shall be responsible for the drawings and calculations made by it or on its behalf, any other information provided by it, the functional suitability of the materials, application method and surface treatment prescribed by it or on its behalf.
- 4.3. The customer shall indemnify the contractor against any claim by third parties relating to the use of advice, drawings, calculations, designs, materials, brands, samples, models and so forth supplied by or on behalf of the customer.
- 4.4. The customer may, at its own expense, inspect the materials that the contractor wishes to use before these are processed, or have them inspected. If this causes the contractor to incur damage, this damage shall be for the customer's account.

Article 5: Delivery time and/or execution period

- 5.1. The contractor shall provide an approximate indication of the delivery time and/or the execution period, the entire work, part of the work or partial deliveries.

5.2. In setting the delivery time and/or the execution period, the contractor shall assume that it can execute the order in the circumstances known to it at that time.

5.3. The delivery time and/or execution period starts when agreement has been reached between the customer and the contractor on all commercial and technical details, all necessary data, final and approved drawings etc. are in the possession of the contractor, the agreed payment or instalment has been received and the necessary conditions for execution of the order have been fulfilled.

5.4. In the event of:

- a. circumstances other than those known to the contractor when determining the delivery time and/or execution period, the contractor may extend the delivery time and/or execution period by the time that the contractor, taking into account its schedule, needs to perform the assignment under these circumstances;
- b. additional work, the delivery time and/or execution period shall be extended by the time that the contractor needs to deliver, either directly or by a third party, the materials and parts required for the execution of the additional work and to perform the additional work;
- c. suspension of obligations by the contractor, the delivery time and/or execution period shall be extended by the time required by the contractor to carry out the assignment with due observance of its schedule after the reason for the suspension has lapsed.

If occurrence of a situation under a, b and/or c above makes it impossible for the contractor to fit the work into its schedule, the work will be carried out as soon as the contractor's schedule permits it.

5.5. The customer shall be obliged to pay all costs that the contractor incurs or damage that the contractor suffers or will suffer as a result of a delay in the delivery time and/or execution period due to the circumstances as stated in paragraph 4 of this article.

5.6. Exceeding the delivery time and/or execution period will under no circumstances entitle the customer to compensation or dissolution. The customer shall indemnify the contractor against any third-party claims as a result of exceeding the delivery time and/or execution period.

Article 6: Risk transfer

6.1. In the event of purchase (without assembly), delivery shall be ex works, in accordance with the Incoterms as they read three months before entering into the agreement; the risk to the goods transfers at the time the seller makes them available to the buyer. Nevertheless, the buyer and the seller may agree that the seller arranges transport. The risk of storage, loading, transport and unloading also rests with the buyer in that case. The buyer can take out insurance for these risks.

6.2. In the event of contracting work, the risk of the work is transferred to the customer after completion.

Article 7: Price change

7.1. The contractor shall be entitled to pass on to the customer any price increases that occur after the date on which the agreement is concluded - for example as a result of amended legislation - and before the contractor has completed performance of the agreement.

7.2. The customer shall be obliged to pay the price increase as referred to in paragraph 1 of this article at one of the following moments, at the contractor's discretion:

- a. as soon as the price increase occurs;
- b. together with payment of the principal sum;
- c. together with the next agreed instalment.

7.3. The price increase referred to in paragraph 1 is calculated on the basis of the increase in the "manufacturers' prices for 2512 doors and windows, of metal" index most recently adopted by Statistics Netherlands.

Article 8: Force majeure

- 8.1. The contractor has the right to suspend fulfilment of its obligations if, due to force majeure, it is temporarily prevented from fulfilling its contractual obligations towards the customer.
- 8.2. Force majeure is understood to mean, among other things, the fact that suppliers and subcontractors of the contractor or carriers engaged by the contractor or other parties on which the contractor depends do not or not timely fulfil their obligations due to earthquakes, natural disasters, war, terrorism, cyber crime, disruption of the digital infrastructure, fire, power outages, weather conditions, loss, theft or missing tools or materials or information, road blocks, strikes or work interruptions and import or trade restrictions.
- 8.3. The contractor shall no longer be authorised to suspend if the temporary impossibility to fulfil has lasted more than six months. The customer and the contractor can terminate the agreement with immediate effect after the expiry of this period, but only for that part of the obligations that has not been fulfilled yet.
- 8.4. If there is force majeure and compliance is or becomes permanently impossible, both parties shall be entitled to terminate the agreement with immediate effect for that part of the obligations that has not been fulfilled yet.
- 8.5. The parties are not entitled to compensation for the damage suffered or to be suffered as a result of the force majeure, the suspension or the termination within the meaning of this article.

Article 9: Scope of the work

- 9.1. The contractor shall ensure that the private and public law permits, including all licences, exemptions and other decisions that are necessary in order to carry out the work, are obtained in good time.
- 9.2. The work does not include the costs of the following:
 - a. groundwork, pile-driving, wrecking, concrete work, foundation work, bricklaying, carpentry, tiling, plasterwork, painting, wallpapering, scaffolding, repair or other building work and work on central heating, etc;
 - b. gas, water, electricity or other infrastructure facilities;
 - c. work to prevent or limit damage to, in or in respect of goods present at the work;
 - d. removal of materials, building materials or waste;
 - e. vertical transport on the construction site.
- 9.3. Nor does the price include the delivery and installation of any means of attachment, such as anchor rails, screw caps, adjusting laths and other provisions required for mounting purposes.

Article 10: Changes in the work

- 10.1. Changes in the work may result in contract variations if:
 - a. it concerns a change in the design or the specifications;
 - b. the information provided by the customer does not correspond with reality;
 - c. the tolerances measured in the work do not comply with the agreed specifications.
- 10.2. Contract extras shall be calculated on the basis of the value of the price-determining factors that apply at the time the additional work is performed. Contract reductions shall be settled on the basis of the value of the price-determining factors that applied at the time of conclusion of the agreement.
- 10.3. The customer shall be obliged to pay the price increase as referred to in paragraph 1 of this article at one of the following moments, at the contractor's discretion:
 - a. at the time the additional work occurs;
 - b. together with payment of the principal sum;
 - c. together with the next agreed instalment.
- 10.4. If the sum of the contract reductions exceeds that of the contract extras, the contractor may charge the client 10% of the difference in the final settlement. This provision does not apply to contract reductions that result from a request by the contractor.

Article 11: Execution of the work

- 11.1. The customer shall ensure that:
 - a. in accordance with the requirements of national and any international legislation and regulations regarding working conditions at the start of the work, all necessary safety provisions - including but not limited to, safety nets, edge guards, anchorage points, fencing of underlying sites or work floors - have been taken and are maintained during the work. This ensures safe and healthy working conditions for the fitters;
 - b. the fitters are given the opportunity to start work immediately upon arrival on the construction site;
 - c. the work can be performed during normal working hours;

- d. the access roads to the construction site or the delivery location are accessible to the contractor's vehicles;
 - e. the designated construction site is suitable for assembly and, in the contractor's opinion, there is sufficient room for storage on the site and within any fencing;
 - f. there is a suitable, passable road around the relevant building or property that is accessible to mobile cranes, as well as a levelled strip of land with a minimum width of 5 metres;
 - g. there are sufficient water, lighting and electrical connections with sufficient power within a 50-m radius of the work site. The mains connection should be 230/380 V and of sufficient load;
 - h. pure and clearly visible modular and level dimensions are indicated in a sufficient number of locations in the building;
 - i. there are sufficient appropriate accommodations or facilities such as sanitary facilities available on the construction site for the contractor's personnel and any other installation personnel employed by the contractor, all to the contractor's satisfaction and in accordance with the Working Conditions Act.
- 11.2. In the event of circumstances that impede work, the contractor's delivery time and/or execution period shall be extended by a period equal to the delay in question.
 - a. Work-impeding circumstances are understood to include: All circumstances, including inclement weather (such as precipitation, wind and frost), resulting in an unsafe work situation that does not meet the requirements of the VMRG V&G-plan Gevelbouw or prevents work being completed in accordance with the VMRG Kwaliteitseisen en Adviezen®. Days on which work-impeding circumstances arise shall be regarded by the contractor as days on which no work can be performed.
 - b. Days on which no work can be performed are understood to mean: working days and half working days on which, due to circumstances beyond the contractor's control, no work can be performed by the majority of staff or machines for at least five and two hours, respectively.
 - 11.3. The contractor does not accept any liability for facilities, resources, materials, auxiliary materials, machines, scaffolding, platforms, vehicles, lifts, ladders and the like that are made available by the customer. The customer guarantees that these provisions meet the (building) safety requirements prescribed by the government and shall indemnify the contractor against any claims from third parties with regard to damage as a result of the use of the aforementioned provisions.
 - 11.4. The customer bears the risk and is liable for damage in connection with loss, theft, incineration and damage to property of the contractor, customer and third parties, such as tools, materials intended for the work or equipment used for the work, which are at the location where the work is being carried out or in another agreed location.
 - 11.5. The customer is obliged to take out adequate insurance against the risks mentioned in paragraph 2 of this article. The client must also ensure that the work-related risk of the equipment to be used is insured. The customer must send the contractor, upon first request, a copy of the relevant insurance policy or policies and proof of payment of the premium. The customer shall be obliged to immediately report any damage that occurs to its insurer for further treatment and settlement.
 - 11.6. If the customer fails to meet its obligations as described in the previous paragraphs and this causes a delay in the execution of the work, the work will be carried out as soon as the customer meets all its obligations and the contractor's schedule permits it. The customer shall be liable for all damage resulting from the delay for the contractor.

Article 12: Completion of the work

- 12.1. In this article, completion means the complete or partial delivery of the work to the customer or the principal by the contractor in accordance with paragraph 2 of this article, all in accordance with what has been agreed between the customer and the contractor.
- 12.2. The work, or, in accordance with the specifications, part of the work, shall be deemed to have been completed when:
 - a. the customer has approved the work in whole or the part of the work in question;
 - b. the work has been used by the customer;
 - c. the contractor gives written notice to the customer that the work has been completed and the customer does not indicate in writing within fourteen days of the notice whether or not the work has been approved;
 - d. the customer does not approve the work on account of minor defects or missing parts that can be remedied or supplied within thirty days and do not impede use of the work.
- 12.3. If the customer does not approve the work, or a part or parts thereof, it shall be obliged to give written notice of this to the contractor, specifying the reasons, within the said period as stated in article 12, paragraph 2, under c.

- 12.4. If the customer does not approve the work, or a part or parts thereof, with good reason, it shall give the contractor the opportunity to complete the work anew. The provisions of this article shall then apply once again.

Article 13: Liability

- 13.1. In the event of an attributable shortcoming, the contractor shall still be required to fulfil its contractual obligations.
- 13.2. The contractor's obligation to compensate damage on any basis whatsoever is limited to that damage against which the contractor is insured on the basis of insurance taken out by in or on its behalf. However, the scope of this obligation shall never be greater than the amount that is paid out under this insurance in the case in question.
- 13.3. If, for whatever reason, the contractor is not entitled to invoke the provisions of paragraph 2 of this article, its obligation to compensate damage is limited to a maximum of 15% of the total contract sum (exclusive of VAT). If the agreement consists of parts or partial deliveries, the obligation to pay compensation shall be limited to a maximum of 15% (exclusive of VAT) of the order sum for that part or that partial delivery.
- 13.4. The following do not qualify for compensation:
- consequential damage and loss. Consequential damage and loss include business interruption loss, lost profit, transport costs, and travel and accommodation expenses. If possible, the customer can take out insurance against such damage and loss;
 - damage to goods in custody. Damage to goods in custody is understood to mean damage to goods which are being worked on or to goods which are in the vicinity of the place where the work is being carried out. If desired, the customer can take out insurance against such damage and loss;
 - damage caused by intent or deliberate recklessness of auxiliary persons or non-managerial subordinates of the contractor.

Article 14: Guarantee

- 14.1. Unless otherwise agreed in writing, the contractor guarantees the performance for a period of five years after delivery/completion. If a different guarantee period has been agreed, the other paragraphs of this article also apply.
- 14.2. Contrary to the five-year period stipulated in paragraph 1, ventilation grilles and door and window furniture shall be guaranteed for a period of one year.
- 14.3. If the contractor uses any third-party materials or services in the performance of the work, the contractor's warranty to the customer shall under no circumstances extend beyond the warranty given to the contractor by these third parties.
- 14.4. If the agreed performance consists of contracting work, the contractor guarantees the soundness of the delivered construction and the materials used for the period referred to in paragraph 1, provided that it was free to choose it. If it appears that the supplied construction or the materials used are not sound, the contractor shall, at its discretion, repair or replace them.
- 14.5. If the agreed performance consists solely in the delivery of goods, the contractor shall warrant the soundness of the goods delivered during the period referred to in paragraph 1 or paragraph 2. If it transpires that the delivery has not been sound, the customer must return the goods to the contractor free of charge and within a reasonable term. Thereafter the contractor shall choose whether:
- to repair the object;
 - to replace the object;
 - to credit the customer for a proportionate part of the invoice.

The contractor determines the method and time of execution. The customer shall bear any travel, accommodation, shipping and/or transport expenses, as well as the costs of assembly and disassembly. If the agreed performance included the processing of material supplied by the customer, the customer will have to supply new material at its own expense and risk.

- 14.6. If the costs of replacement or repair are to be borne by the contractor, the part to be paid by the contractor will be limited to that part of the invoice amount (exclusive of VAT) that pertains to the manufacturing and installation costs of the part that is to be repaired or replaced.

Unless agreed otherwise, the value of the manufacturing and installation costs of the parts shall be calculated as a percentage of the contract sum as follows:

a. sections and sheet-metalwork	30%
b. surface treatment	10%
c. sealing	5%
d. glass and panels	20%
e. door and window furniture, etc.	10%

The costs of installation shall be invoiced at a fixed rate of 10% of the invoice amount. In other words, the above invoice amount percentages shall be decreased by 10% each.

- 14.7. The customer must at all times give the contractor the opportunity to repair any defect or replace any defective part. The customer shall allow the contractor to use any available electrical connections, hoisting, lifting and transport equipment, scaffolding, window-cleaning systems, etc., free of charge.
- 14.8. The warranty shall not take effect until the customer has met all its obligations towards the contractor. Any postponement of the effective date of the warranty shall not change the end date of the warranty.
- 14.9. The warranty period shall not be extended or renewed by any redelivery, replacement or repair.
- 14.10. No warranty is given for defects that are a result of:
- weathering and/or normal wear and tear;
 - injudicious or abnormal use;
 - failure to perform maintenance or cleaning in accordance with the requirements of the VMRG Kwaliteitseisen en Adviezen® applicable three months before conclusion of the agreement;
 - installation, assembly, modification, repair or additions by the customer or third parties;
 - minor finishing defects that do not affect quality;
 - ny damage resulting from changes in the form of architectural constructions, improperly performed construction, repair, cleaning or other work or use of materials that are not suited for the purpose;
 - any damage resulting from any unforeseen, temporary or permanent, detrimental environmental impact;
 - goods, materials, working methods or constructions that do not comply with the regulations, requirements and recommendations provided in the VMRG Kwaliteitseisen en Adviezen®, in so far as they have been applied on the customer's express instructions;
 - defects in or unsuitability of goods originating from or prescribed by the customer or defects in or unsuitability of materials or resources used by the customer;
 - filiform corrosion;
 - colour differences and/or loss of gloss in accordance with the relevant requirements of the provisions of the VMRG Kwaliteitseisen en Adviezen® applicable three months before conclusion of the agreement;
 - any defects that could have been detected upon delivery/completion;
 - any damage and/or defects arising during or after delivery/completion due to external influences;
 - sunblinds, window-cleaning systems, ladders, etc.;
 - (thermal) glass breakage or the use of (mirror) wired glass;
 - damage resulting from a thermal load exceeding 70 °C;
 - sealing, except with regard to waterproofness.
- 14.11. The provisions of paragraphs 3 to 10 of this article apply accordingly to any claims from the customer on the grounds of breach of contract, non-conformity or any other basis.
- 14.12. The customer cannot transfer the rights under this article.

Article 15: Customer's obligation

- 15.1. The customer may no longer invoke an instance of non-performance if it does not lodge a written claim about this with the contractor within fourteen days of the date on which it discovers the defect or could reasonably be expected to discover it.
- 15.2. The customer must have submitted complaints about the amount of the invoice to the contractor in writing within the payment period, on penalty of forfeiting all rights. If the payment period is longer than thirty days, the customer must have submitted a written complaint within thirty days after the invoice date.

Article 16: Obligations not fulfilled by the customer

- 16.1. If the contractor is willing and able to fulfil its obligations under the agreement, but fulfillment is prevented by a cause that falls within the customer's control and that can be attributed to the customer - which explicitly includes the customer's failure to meet the schedule of the (sub) project agreed by the customer with the contractor - the customer shall be liable for the costs incurred by the contractor, loss of interest and damage suffered.
- 16.2. The customer is obliged to purchase the goods that are the subject of the agreement after the delivery time and/or execution period.
- 16.3. The customer must provide all cooperation that can reasonably be expected of it in order to enable the contractor to deliver.
- 16.4. Goods that have not been taken delivery of shall be stored for the account and risk of the customer.

16.5. In the event of violation of the provisions of paragraphs 2 and/or 3 of this article, the customer shall owe the contractor a penalty of €250 for each day, with a maximum of €25,000. This penalty may be claimed in addition to damages under the law.

Article 17: Payment

17.1. Payment shall be made at the contractor's place of business or into an account to be designated by the contractor.

17.2. Unless agreed otherwise, payment shall be made as follows:

- a. in case of counter sales, in cash;
- b. if payment in instalments has been agreed:
 - 30% of the total price at the time the order is placed;
 - 30% of the total price upon commencement of production;
 - 30% of the total price after the material is supplied;
 - 10% of the total price upon completion;
- c. in all other cases: within thirty days of the date of the invoice.

17.3. If the customer does not meet its payment obligation, it shall be obliged, instead of paying the agreed sum of money, to comply with a request from the contractor for tendering in payment.

17.4. Regardless of the agreed terms of payment, the customer shall be obliged, at the contractor's first request, to provide such security for the payment as the contractor deems sufficient for payment. If the customer fails to do so within the specified period, it shall be deemed to be immediately in default. The contractor shall in that case have the right to terminate the agreement and recover its loss or damage from the customer.

17.5. The customer's right to offset its claims against the contractor or to suspend is excluded, unless the contractor is declared bankrupt or statutory debt restructuring applies to the contractor.

17.6. Regardless of whether the contractor has fully provided the agreed performance, everything that the customer owes the contractor under the agreement shall be immediately due and payable if:

- a. a payment period has been exceeded;
- b. the customer's bankruptcy or suspension of payment has been applied for;
- c. the property or claims of the customer are seized;
- d. the customer (company) is dissolved or wound up;
- e. the customer (natural person) requests admission to statutory debt rescheduling, is placed under guardianship, or has died.

17.7. If payment has not been made within the agreed period for payment, the customer shall immediately owe the contractor interest. The interest shall be 12% per year or the statutory rate of interest, whichever is the higher. For the purpose of calculating the interest, part of a month shall be treated as a full month.

17.8. The contractor shall be authorised to set off debts to the customer with claims from companies affiliated with the contractor against the customer. In addition, the contractor shall be authorised to set off its claims against the customer against the debts of companies affiliated with the contractor to the customer. The contractor shall furthermore be authorised to set off its debts to the customer against claims against companies affiliated with the customer. Affiliated companies are those companies that belong to the same group, within the meaning of Section 2:24b of the Netherlands Civil Code, and a participation within the meaning of Section 2:24c of the Netherlands Civil Code.

17.9. If payment has not been made within the agreed period for payment, the customer shall owe the contractor all extrajudicial costs of recovery, subject to a minimum of €75.

The costs shall be calculated on the basis of the following table (principal inclusive of interest):

- on the first €3,000	15%
- on any additional amount up to €6,000	10%
- on any additional amount up to €15,000	8%
- on any additional amount up to €60,000	5%
- on any additional amount over €60,000	3%

The actually incurred extrajudicial costs are due if they are higher than follows from the above calculation.

17.10. If the contractor is held to be in the right in legal proceedings, all costs it has incurred in connection with the proceedings shall be borne by the customer.

Article 18: Retention of title and right of pledge

18.1. After delivery of the goods the contractor shall retain the title to them as long as the customer:

- a. fails or will fail to perform its obligations under this agreement or other agreements;
- b. fails or will fail to pay for activities performed or yet to be performed under such agreements;
- c. has not paid claims that result from the non-observance of the above-mentioned agreements such as damage, penalties, interest and costs.

18.2. As long as the title to delivered goods is retained by the contractor, the customer may not encumber them other than in the normal course of business.

18.3. After the contractor has invoked its reservation of title, it may retake possession of the delivered goods. The customer will fully cooperate in this regard.

18.4. If the contractor is unable to invoke its reservation of title because the delivered goods have been mingled, distorted or copied, the customer shall be obliged to pledge or mortgage the newly created goods to the contractor.

18.5. If the customer, after the goods have been delivered to it by the contractor in accordance with the agreement, has fulfilled its obligations, the retention of title with regard to these goods will be revived if the customer does not fulfil its obligations under an agreement concluded subsequently.

Article 19: Termination of the agreement

If the customer wishes to terminate the agreement without there being a short-coming on the part of the contractor and the contractor agrees, the agreement shall be terminated by mutual consent. In that case, the contractor shall be entitled to compensation for all financial loss, such as loss suffered, loss of profit and costs incurred.

Article 20: Applicable law and choice of forum

20.1. In terms of applicable law and exclusion, the following conditions apply:

- a. All agreements to which these terms and conditions apply in whole or in part are governed by Netherlands law.
- b. the Vienna Sales Convention (C.I.S.G.) does not apply, nor do any other international regulations the exclusion of which is permitted.

20.2. Undisputed monetary claims arising from an agreement to which these conditions apply shall be submitted for collection to the civil court within whose jurisdiction the contractor has its principal place of business, unless mandatory law dictates otherwise. The contractor shall be allowed to disregard this competence rule and abide by the statutory regulations of competence.

20.3. Any other disputes arising from an agreement to which these conditions apply shall be brought before an arbitration tribunal to the exclusion of an ordinary court of law.

20.4. The arbitration tribunal referred to in paragraph 3 of this article shall be appointed in accordance with the bye-laws of the Stichting Raad van Arbitrage voor de Bouw (Board of Arbitration for the Construction Industry), and shall give a decision in accordance with the Board's bye-laws.