

Ulamo terms of payment and delivery



These general terms of payment and delivery are intended for and operated by all the companies belonging to the Ulamo Group. These terms have been registered on the 27th of February 2002 at the Court of Justice at Zutphen under number 17/2002.

Article 1. Applicability and definitions

1.1 In these terms the party accepting the order c.q. the supplier is referred to as 'Ulamo' and the other party of Ulamo as '(the) Client'. The terms 'to supply', 'supply', 'the goods supplied' etc. refer to either good(s) supplied or work carried out and considered to be supplied in the sense of article 5, unless it appears otherwise from the provisions concerned.
1.2 These terms are applicable to all offers from and all agreements serving to the carrying out of activities, to the rendering of services or to the selling of goods by Ulamo. These terms are not applicable to offers and agreements, serving to the purchase of goods by Ulamo. In such cases the Ulamo 'Terms of Purchase' are to be applied.
1.3 These terms prevail over terms that might be operated by the Client. Any terms the Client declares to be applicable are not binding for Ulamo, except insofar as they have been explicitly accepted in writing by Ulamo. These terms are to be applied undiminishedly even if Ulamo does not explicitly require strict observance of them.
1.4 The headings introducing the articles have only been mentioned as an indication of their content. Through the mention of the headings the articles have not gained either a broader meaning or a more restricted one.

Article 2. Offers and Agreements

2.1 All offers, advices and quotations from Ulamo are free of obligation, unless it has been explicitly mentioned otherwise in writing. Offers are based on the possible details, drawings etc. provided by the Client, of which the accuracy may be taken for granted by Ulamo. An offer from Ulamo is binding for Ulamo only if that offer has been made in writing and the acceptance of which is effected within the period of time indicated by Ulamo to that purpose.
2.2 The prices stated by Ulamo are in euros and hold good for delivery ex works factory or warehouse of Ulamo, exclusive of Value Added Tax.
2.3 Ulamo has the right, if Ulamo is not given the order, to charge the Client for all the costs Ulamo has incurred to enable itself to make the offer.
2.4 The contents of brochures, printing matter, drawings etc. do not bind Ulamo unless Ulamo explicitly states in writing with the offer or with its confirmation for them to be binding.
2.5 Agreements, no matter how they are named, are entered into only after explicit acceptance by Ulamo. This explicit acceptance solely appears either from a confirmation in writing from or a recording in writing by Ulamo, or from the fact that Ulamo puts the agreement concerned into effect.
2.6 Arrangements or agreements with subordinate members of Ulamo's staff are not binding for Ulamo insofar as they have not been confirmed in writing by Ulamo. Under subordinate members of staff in this matter are understood all the employees and staff members that have no power of attorney.

Article 3. Modifications

3.1 Prices agreed upon are based on cost prices, valid on the day of offer and, subject to explicitly indicated deviation in writing, are exclusive of Value Added Tax.
3.2 If and insofar as the period of time between the date of offer and either the delivery of the finishing of the activities exceeds a period of time of 90 days and the cost price has gone up during that period, the price agreed upon will be changed in proportion. The payment of any possible extra price on the strength of this article will be effected together with the payment of the principal amount or together with its last instalment.
3.3 With a composite offer there is no obligation for Ulamo to a partial supply or carrying out of part of it against payment of a part (either corresponding or not) of the price agreed upon for the lot.

Article 4. Transportation

4.1 All deliveries are effected ex Ulamo warehouse. The transportation, even if Ulamo takes care of that, is done at the expense and risk of the Client. Also, if free delivery has been agreed upon the Client is liable for all damages connected with the transportation. Client is to insure itself reasonably against this risk.
4.2 Without prejudice to what is laid down in article 4.1 Ulamo is never liable to further compensation with regard to damages from transportation than the amount Ulamo obtains from the transporter and/or insurer in connection with losses or damages during transportation.

Article 5. Delivery

5.1 Times of delivery or periods of time agreed upon within which the services or activities are to be rendered or carried out, c.q. undertakings to that effect, are never binding for Ulamo but are always to be considered approximately. Exceeding those periods of time therefore does not involve any rights for the Client to claim for damages or to terminate the agreement, unless such is explicitly agreed upon in writing.
5.2 Work carried out is considered to be supplied:
 a. When Ulamo, either orally or in writing, has brought the finishing of the work to the Client's knowledge and the Client has approved of the work. Small defects cannot be in the way of withholding the Client's approval.
 b. Eight days after Ulamo has informed Client in writing that the work has been finished and Client has failed to inspect the work within that period of time.
 c. When the work or a considerable part of it is made operational by the Client.
5.3 Ulamo has met its obligation to deliver the goods if Ulamo, such at its own discretion, has notified the Client that the goods are either ready to be picked up or transported, or once Ulamo has offered the goods to the Client or have them offered respectively. The report of the transporter containing the refusal of the acceptance, among other things, is considered to be full evidence for the offer to deliver. In such a case the return costs of freight are to be paid by the Client.
5.4 After the expiry of seven days after the delivery of the work, the carrying out of activities or the delivery of the goods, the risk of all direct and indirect damages to them, coming into existence through whatever cause and by whose doing whatsoever, is on the account of the Client.

Article 6. Intellectual property

6.1 Unless explicitly agreed upon otherwise in writing Ulamo remains the owner of copy-rights and all other rights as well of intellectual or industrial property on the designs, sketchings, illustrations, drawings, models, software and offers made or supplied by Ulamo.
6.2 The designs, sketchings, illustrations, drawings, models software (inclusive of the carriers of it) and offers remain the property of Ulamo. Without the explicit consent in writing from Ulamo they are not to be multiplied by the Client and/or shown or handed over to (a) third party/ies and are to be returned to Ulamo at its first request, under penalty of € 4,500.00 per infringement, and also of € 450,00 for every day the infringement is continued without prejudice tot the right of Ulamo to claim full compensation.

Article 7. Reservation of title

7.1 Ulamo reserves the ownership to the goods delivered until the Client has met with all its obligations on account of any agreement with Ulamo. This reservations of title will last if the Client delays the fulfillment of its obligations on account of deficiencies of Ulamo in the compliance of an agreement.
7.2 Without prejudice to the other rights falling to Ulamo, Ulamo is irrevocably authorized by the Client, if the latter does not meet his obligations towards Ulamo to pay on time, to take back the delivered goods without any notification. Then Ulamo and its staff are irrevocably entitled to entering the premises of the Client and to supply themselves with the actual possession of

the goods. After the taking back the Client will be credited for the market value of the goods, which on no account can be higher than the original purchase price, less the costs incurred by the taking back and other claims for damages from Ulamo.
7.3 Insofar as (a) third party/ies detain(s) any goods of which the propriety has not yet been transferred to the Client, the latter will notify Ulamo of the detain at once in writing. The Client is liable towards Ulamo for all the expenses Ulamo is to make for the security of its properties.
7.4 As long as the ownership of the goods sold by Ulamo has not yet been transferred to the Client, the latter has the obligation to keep the goods in custody with due care and separately. As long as the ownership has not yet been transferred tot the client the latter is under the obligation to insure the goods against damages.

Article 8. Payment

8.1 Ulamo is entitled at all times, before delivering or to continue delivering or the fulfillment of an order, to demand from the Client sufficient security, to Ulamo's own discretion, for the fulfillment of the obligations of the Client to pay. This provision also holds good if credit has been agreed upon. Refusal by the Client to give the security requested entitles Ulamo to consider the agreement as dissolved, without prejudice to the right of Ulamo to claim compensation for expenses and loss of profit.
8.2 Payment is to be effected at the offices of Ulamo without any discount or claim to clearance and inclusive of Value Added Tax within thirty days after date of invoice, without prejudice to the right of Ulamo, this to its own discretion, to demand payment at once of the amount due by the Client. Assigned activities are invoiced per month.
8.3 If the payment of an invoice sent has not been effected within thirty days after the date of invoice Ulamo is entitled to charge the Client with a compensation for loss of interest equal to the legal interest, to be increased by 2%, at which interest over part of a month will be charged over a full month.
8.4 Additionally Ulamo is entitled, beside the main claim and the interest, to claim from the Client all extrajudicial collecting charges caused by not paying (in time). Extrajudicial charges are due by the Client, especially when Ulamo has called in the help of (a) third party/ies for the recovery. They will be charged in accordance with the recovery rates advised by the Dutch Bar in recovery cases with a minimum of € 450.00.
8.5 The entire claim, in any case, is withdraw able at call at no prompt payment within the period of time agreed upon, or when the Client gets into a state of bankruptcy; applies for a moratorium, makes a petition on the force of the debt rescheduling act for natural persons, or its placement under guardianship has been applied for, or when any distraint and attachment on goods or receivables from the Client is levied, and/or when the Client passes away, enters into liquidation, or is dissolved.
8.6 Payments to Ulamo serve in the first place for deduction from the costs, then from the interest and then from the principal amount. Payments on the principal amount are written off from the earliest invoice in the first place.

Article 9.

9.1 Ulamo is not responsible for those designs supplied or goods delivered by or on behalf of the Client that have to undergo some processing or ways of processing as required by the Client. The Client itself bears the responsibility for the materials required or supplied by Client for the processing to be effected on them by Ulamo. The Client has the authority to have any material required for processing tested with regard to it being fit to be applied to other goods supplied by the Client or suggested by Ulamo until within four weeks prior to the commencement of the activities. The costs attached to that are to be paid by the Client.
9.2 When Ulamo has carried out its processing activities the Client cannot claim that the materials used by Ulamo were not fit to be applied to the materials required or supplied by the Client or suggested by Ulamo. Additionally, the Client, after the carrying out of a process by Ulamo can no longer claim that the materials applied during processing were not fit for the processing.
9.3 Ulamo never takes any responsibility or is never liable for materials made available by the Client or having been required by Client.

Article 10. Complaints

10.1 The Client can no longer claim a default in the performance if Client has not lodged a complaint about the matter in writing with Ulamo within eight days after delivery of the goods or, in the case of carried out activities or the accomplishment of any work, within eight days after Client has discovered the default or reasonably should have discovered it.
10.2 The Client may return any goods solely after an approval in writing by Ulamo.
10.3 Complaints on invoices are to be lodged in writing within eight days after receipt of the invoice(s) and received by Ulamo.
10.4 Any discovered default with reference to a part of the goods supplied or a part of the work carried out does not entitle to the rejection of the entire supply or the work as a whole.
10.5 Complaints do not entitle to the delay of the obligations of the Client to pay.

Article 11. Warrantees

11.1 A warrantee obligation by Ulamo towards a client is valid only if it has been agreed upon explicitly in writing and for a fixed period of time.
11.2 At faulty deliveries Ulamo has the right, at its own discretion, either to rectify the work carried out or, after returning the supplied faulty good(s), free of charge, to fully credit the Client or to rectify the faulty good(s), or to proceed to additional supply. The Client is under the obligation to enable Ulamo at all times to rectify any possible default.
11.3 Defaults, coming into existence by normal wastage, incompetent handling or incompetent or improper maintenance, or occurring after modification or rectification by or on behalf of the Client itself or by (a) third party/ies are excluded from warrantee. For items with a factory warrantee the warrantee issued by the factory prevails, this in deviation from the above. If the factory does not issue warrantees then no warrantees are issued by Ulamo either. No warrantee is given on items that were (in the main) not new at the time of delivery.
11.4 The warrantee holds good only if the Client either has met all its obligations towards Ulamo (both financially and otherwise) or has given sufficient security for them.
11.5 Warrantees given by Ulamo hold good only for the Client itself and not for (a) third party/ies.

Article 12. Liability

12.1 Ulamo is liable only for damages sustained by the Client being directly and explicitly in consequence of a deficiency imputable to Ulamo, on the understanding that only those damages are eligible for compensation against which Ulamo is either insured or reasonably should have been insured against considering the common practices in the branch of trade. The following restrictions prevail herewith:
 a. Not eligible for compensation are loss of profit and bodily injuries of Client or employees of Client, caused in which way whatsoever.
 b. Ulamo is not liable for damages caused intentionally or through gross negligence of assisting persons.

c. The compensation by Ulamo will be reduced if the price to be paid by the Client is low in proportion to the extent of the damages suffered from by the Client.

12.2 The Client will indemnify Ulamo against any claim from (a) third party /ies for compensation towards Ulamo in the matter of the use of the designs, sketching(s), pictures, drawings, samples, models or model plates, software or other goods or data respectively supplied by the Client and is liable for all the costs ensuing from that.
12.3 Additionally, the Client will indemnify Ulamo against any claims from (a) third party/ies, among whom, but not restricted to, (legal) entities to whom the Client has resold any goods sold by Ulamo, for damages in the broadest sense of the word.

Article 13. Force majeure

13.1 Ulamo is not liable if and insofar as it is not able to meet its obligations by force majeure. Under force majeure is understood any odd cause and any circumstance as well that is not reasonably supposed to be for the risk of Ulamo. Force majeure exists, among other things, in the following cases: delay by or deficiency from suppliers and/or subcontractors of Ulamo, failures in power supply, problems at transportation, fire, labour strikes or work stoppages import embargoes or trade embargoes and any change of circumstances not foreseen by and beyond control of Ulamo at the time of entering the agreement.

Article 14 Delay and dissolution

14.1 If Ulamo, to its discretion, is no longer able to perform, at least not adequately, it is entitled to delay its performance partially or to the full or to terminate the agreement or to dissolve it without being liable to compensation.
14.2 Full or partial dissolution of the agreement is effected through a statement in writing from the one in authority. A statement of dissolution from the client addressed to Ulamo is valid only if the client has first put Ulamo in default in writing and has granted the latter a reasonable period of time either to still meet its obligations or to remedy its defaults. The Client is to report in writing punctually which defaults are being dealt with.
14.3 The Client is not entitled to dissolve the agreement to the full or partially or to delay the fulfillment of its obligations if the Client itself was already in default with the fulfillment of its obligations.
14.4 In the case of dissolution Ulamo has the unimpaired right to be paid for performances already made by Ulamo.
14.5 If Ulamo agrees to dissolution without there being a default from its side Ulamo is always entitled to compensation for all losses of capital such as costs, loss of profit and reasonable costs for the determination of damages and liabilities.

Article 15. Packing

15.1 Necessary packing is charged for at cost price and not taken back. The necessity of the use of packing is to the sole discretion of Ulamo.
15.2 If and insofar as packing is indeed taken back by Ulamo this is effected at the price being charged, provided the packing concerned is in good condition within a month after receipt of the goods and is returned free of freight charges.

Article 16. Conversion

If a provision from these general terms and conditions proves to be null and void a valid provision will replace the one being null and void, the valid one complying as much as is possible with the intention of the one being null and void. The parties are under the obligation to enter into reasonable consultation with each other, if necessary, about the wording of that new provision.

Article 17. Disputes

In deviation from the legal rules on the competence of the civil judge any dispute between Ulamo and the Client will be tried by an absolutely competent judge in the district of Zutphen. Ulamo, however remains authorized to summon the Client before the judge competent according to the law or to the applicable international treaty. Disputes falling under the jurisdiction of the court of justice, Sector Canton, will be put before the proper judge, Sector Canton, in compliance with the rules of the Dutch Code of Civil Law.

Article 18. Applicable law

18.1 To any agreement between Ulamo and the Client, with preclusion of the rights of other states, Dutch law is applicable.
18.2 Current and future international arrangements with regard to purchase, the effect of which can be excluded by the parties, and among which is the Vienna Purchase. Act, are not and will not be applicable.

Article 19. Modification of the terms and conditions

19.1 Ulamo has the power to introduce modifications in these terms and conditions. Ulamo will send the modified terms and conditions to the Client on time. If no point in time of coming into force has been notified modifications concerning the Client will come into effect as soon as the modifications have been notified to the Client.