

General Terms for Installation Work for Consumers

(AVIC)



The following general terms have been translated from Dutch. In case of contradictions between the Dutch and English texts, as well as between the interpretation of these two texts, the Dutch text or interpretation shall prevail over the English text or interpretation. Only the Dutch version is definitive.

These general terms of UNETO-VNI were set out in agreement with the Consumentenbond (Consumers' Association) and Vereniging Eigen Huis (Association of Home Owners) within the framework of the Coordination Group Self-Regulation Consultations of the Social and Economic Council, and they come into force as of 1-1-2006.

I GENERAL CONDITIONS

Article 1 Scope

These general terms are applicable to work agreed on by a consumer and an installer with regard to an installation, with the exception of maintenance and service carried out as part of a maintenance/service subscription.

Article 2 Definitions

1. In these general terms, the following terms are understood to mean:

consumer: client in the form of a natural person, who does not act in the practice of a job or company;

installer: contractor, member of UNETO-VNI, who acts in the practice of a job or company;

work: the total amount of work agreed between the consumer and the installer and the materials provided for this by the installer;

installation: (central) heating installation, air conditioning installation, electro-technical low voltage installation (including lightning protection, overvoltage protection and earthing installation), (warm) water installation, roofing, sewerage, floor heating, sanitary facilities and other facilities intended for the use, distribution, storage or discharge of gas, (rain) water and electricity;

alarm system: an installation, consisting of means for observing, discovering and/or recording and possibly warning and/or reporting through sound, light or other means, intended for protection against and/or prevention of burglary or fire;

more and less work: additions to or decreases in the agreed work required by the consumer, which lead to additional payments to or deductions on the agreed contract sum;

maintenance: all periodic work carried out in order to ensure reliable and safe use of the installation;

service: the whole range of actions carried out in order to discover and/or repair the cause of an unexpected defect, such as breakdowns, blockages or leaks;

maintenance/service subscription: the contract that obliges the installer to regularly carry out maintenance and/or service to an installation;

approximate estimate: a spending goal specified as such in the quotation and/or contract stating an associated sum of money, which is included in the contract sum and is used to pay costs described later in the contract, whereby the sum of money is set at such a level that the spending goal can be realised with said sum of money;

disputes committee: Geschillencommissie Installerende Bedrijven van de Stichting Geschillencommissies voor Consumentenzaken, Postbus 90.600, 2509 LP Den Haag.

2. All the amounts stated in these conditions are inclusive of VAT.

II OFFER

Article 3 Offer from the installer

1. The offer for work that is expected to exceed € 650 will be made in writing in duplicate, or via electronic means, unless urgent circumstances preclude this. The offer will be dated and is irrevocable for 20 days after receipt. The following paragraphs of this Article are applicable to all offers.
2. The offer includes a description of the work to be carried out and the materials to be delivered, in sufficient detail for the consumer to be able to make a good assessment of the offer.

3. The offer states the time or the period when the work can be started and includes a specification of the duration of the work.
4. The offer provides insight into the pricing method used: contract sum or cost-plus.
 - In the case of a contract sum pricing method, parties agree on a fixed amount for which the work is carried out.
 - In the case of a cost-plus pricing method, the installer gives a detailed specification of the price factors (including unit prices per hour of the work to be carried out and unit prices of the materials needed). If desired, the installer, should the situation permit it, will give an indication of the expected execution costs by stating a recommended price.
5. The offer states the method of payment.
6. The drawings, technical descriptions, designs and calculations that make up part of the offer, which have been made by the installer or on his behalf, remain the property of the installer. They may not be given or shown to third parties without the permission of the installer. Neither may they be copied or reproduced in any way without the permission of the installer. If the offer is not accepted, these documents must be returned, postage paid, to the installer within 14 days of his request.
7. If the consumer does not accept the offer, the installer is entitled to charge the costs incurred by drawing up the quotation, provided he has informed the consumer of this obligation and of the amount of these costs in writing immediately on or after requesting the offer. Should the installer make use of the opportunity stated in this paragraph, and should the consumer have paid the costs, ownership of the drawings accompanying the quotation is transferred to the consumer, without prejudice to the intellectual and industrial property rights of the installer.
8. If, in carrying out the work, the installer wishes to make use of the storage space of the consumer, he must state this in the offer.
9. The offer is accompanied by a copy of these general terms.

III CONCLUSION AND IMPLEMENTATION OF THE CONTRACT

Article 4 Conclusion

The contract is concluded by acceptance from the consumer. Acceptance takes place preferably and where possible by written or electronic means. In the case of electronic acceptance by the consumer, the installer will confirm receipt of the order by electronic means.

Article 5 Obligations of the installer

1. The installer will carry out the work well, thoroughly and in accordance with the conditions of the contract. The work will be carried out within the regular working hours of the installer, unless otherwise agreed. If the consumer's order to the installer involves servicing, the installer is obliged to make every effort to discover the cause of the defect and then to repair the defect.
2. In carrying out the work, the installer will observe the regulations applicable to the work that are in force or will be in force at the time of carrying out the work. A price increase as a result of amendments to the regulations may be charged to the consumer, provided

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the installer can demonstrate that he could not have been aware of the amendment at the time of concluding the contract.

3. The installer is obliged to inform the consumer of any:
 - flaws in the assigned tasks;
 - flaws in the working methods and constructions required by the consumer;
 - defects in the movable or immovable property to which the work is carried out;
 - defects in or unsuitability of materials or tools provided by the consumer;
 - flaws in the details provided by or on behalf of the consumer;that are immediately recognisable and relevant to the work, all the above insofar as they are revealed to the installer before or during the work and regarding which the installer should be deemed expert.
4. The installer is liable for damage, unless he cannot be held accountable for this, to a maximum sum of € 500,000 per event.
Contrary to the above, the installer is not liable for damage resulting from the inadequate functioning of an alarm system as a consequence of a culpable deficiency in meeting his obligations, unless the damage is the result of wilful intent or gross negligence on the part of the installer or executives under his management.
5. The installer indemnifies the consumer against claims by third parties for damages, insofar as these are brought about by the execution of his work and can be attributed to the negligence, carelessness or improper actions of the installer himself or of those under his management, or of other assistants employed by him for the execution of the work.

Article 6 Obligations of the consumer

1. The consumer will give the installer the opportunity to carry out the work.
2. The consumer will ensure that the installer possesses the necessary approvals (such as licences and exemptions) and the details to be provided to him for the work in good time. The installer will give instructions for this in his professional capacity, if required.
3. The consumer will provide the connection facilities available to him for the energy necessary for the work. The electricity, gas and water needed are for the account of the consumer.
4. The consumer will ensure uninterrupted use of the storage space referred to in Article 3 paragraph 8 and will act as a good custodian of the things in the storage space.
5. The consumer must ensure that work and/or deliveries to be carried out by third parties, which are not part of the work of the installer, are carried out in such a way and timeliness that it does not delay the execution of the work. If delays in the sense of this paragraph occur nonetheless, the consumer must inform the installer of them in good time.
6. If the commencement or the progress of the work is delayed by circumstances occurring for the risk of the consumer, the consumer shall only pay damages resulting from this for the installer if the consumer can be held accountable.
7. The consumer bears the risk for damage caused by:
 - flaws in the assigned tasks;
 - flaws in the constructions and working methods required by the consumer;
 - defects in the movable or immovable property to which the work is carried out;
 - defects in materials or tools provided by the consumer;
 - flaws in the details provided by or on behalf of the consumer;

all this without prejudice to the obligation of the installer to warn the consumer pursuant to Article 5 paragraph 3.

8. In the case of a deficiency of the installer in the execution of the contract, the consumer will inform the installer of this in writing, with a clear description of the deficiency and stating a reasonable period within which to correct the deficiency, unless the installer is already in default through this one deficiency.

Article 7 Delay in commencement or progress of the work

1. If the installer does not meet his obligations regarding the commencement or progress of the work, the consumer will call upon him in writing to commence or to continue the work as soon as possible. In this, the consumer can point out that he will regard the contract as dissolved without legal intervention, if the installer remains in default 14 days after receipt of the letter. In that case, the consumer is authorised to have the work carried out or continued by a third party.
2. The consumer is entitled, if he has made use of the possibility referred to in the previous paragraph, to compensation, including any reasonable extra costs incurred in order to have the work executed or completed by another party. The consumer may settle this with the amount he still owes the installer.

Article 8 Termination of the work in incomplete state

1. The consumer can terminate the work in whole or in part at any time.
2. Parties will cooperate mutually on a joint record of the actual state of the work at the time of delivery in incomplete state.
3. Until the time of delivery in incomplete state, the installer is obliged, for a fee, to take measures for prevention and restriction of damage.
4. The consumer will pay the installer the contract sum owed, increased by the costs of the fee(s) referred to in paragraph 3, as well as other costs incurred through the termination, and decreased by the costs of that which is not delivered and the costs not incurred.
5. If a pricing method is used in which no contract sum was set, the consumer will pay the installer the wage and material costs paid by the installer for the work, the fee(s) referred to in paragraph 3, the other costs incurred through the termination, as well as the loss of profits that would have been gained by the installer over the whole work.

Article 9 More and less work

1. In the case of the contract sum pricing method, the consumer can give instructions for more or less work after the contract has been concluded, provided the balance of the ensuing settlements does not amount to more than 15% of the contract sum.
2. In the case of the consumer giving instructions for more work, the installer can only claim a price increase, if he has informed the consumer in good time of the resulting price increase, unless the consumer should already have understood that himself.
3. If the sum of the costs for an approximate estimate turn out to be higher or lower than the amount of this approximate estimate, the difference is settled as if it were more or less work.
4. More or less work for an amount of more than € 300 will be recorded in writing before or at the time of the order, except in the case of urgent circumstances.
5. The lack of a document will not prejudice the claims of installer or consumer to settlement of more or less work. In that case, the proof of the order lies with the party making the claim.

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Article 10 Unforeseen circumstances

1. If unforeseen circumstances arise, the installer will inform the consumer of this as soon as possible.
2. If the installer cannot reach the consumer, he must stop the work, except if the unforeseen circumstances demand immediate action.
3. Any extra costs that must be incurred by the installer in connection with unforeseen circumstances that demand immediate action and which are reasonable for the restriction of damage will be paid by the consumer.
4. If the unforeseen circumstances do not demand immediate action, the parties will determine the further execution of the work jointly.

Article 11 Force majeure

If the execution of the work is made impossible for one of the parties by a cause for which he cannot be held accountable, this party is then authorised to terminate the execution of the work (or have it terminated), on payment to the other party of the actual costs already incurred.

Article 12 Delivery

1. The work is delivered when the installer has informed the consumer that the work is finished and the consumer has accepted the work.
2. The work is regarded as delivered when:
 - 8 days have passed since the consumer received notification from the installer that the work is finished and the consumer has omitted to accept the work within that period;
 - the consumer has taken the installation into use (again), on the understanding that by taking part of the work into use, that part is regarded as delivered, unless the result associated with taking into use (delivery) is not legitimate.
3. Should an agreed fixed delivery date be exceeded, the installer is obliged to reimburse the consumer for any damage resulting from this.
4. If the parties have agreed a probable delivery date, the work will be delivered on or around this date.

IV PAYMENT

Article 13 Advance payment/security

1. The installer is authorised to request advance payment to a maximum amount of 25% of the final amount for an order above € 500, if he provides sufficient financial security regarding this.
2. When concluding the contract, the installer can demand security from the consumer.
3. After concluding the contract, the installer can demand security if he has good grounds for doubting that the consumer will be able to meet his payment obligations. In that case, if and so long as the consumer refuses to provide security or is not able to do so, the installer is authorised to stop the execution of the work, insofar as this is legitimate.

Article 14 Payment in instalments

1. Parties can agree to payment taking place in instalments in proportion to the progress of the work. In that case, each payment will take place within 14 days of receipt of the invoice at the latest.
2. If it is agreed that payment should take place in instalments and the installer does not meet his obligations with regard to the progress of the work, the consumer is authorised to defer his payment of an instalment, without prejudice to the provision in Article 8.

Article 15 The final settlement

1. Within a reasonable period after the delivery, the installer must submit the final settlement to the consumer.
2. In the case of applying the contract sum pricing method, the final settlement will contain a clear description of the original order and any more or less work that was instructed.
3. In the case of applying the cost-plus pricing method, the final settlement will contain a specification of the used materials and their cost, of the hours worked and the hourly rates, and of the other costs. If the installer has stated a recommended price, the recommended price may not be exceeded by more than 10%, unless the installer has warned the consumer in good time of a greater excess of the recommended price.
4. Payment of the final settlement takes place within 30 days of receipt of the settlement.

Article 16 Payment obligations that are not met

1. If the consumer does not pay on time, he is legally considered to be in default without any proof of default. Nevertheless, the installer will send one payment reminder after the expiry of the payment date as referred to in Article 14 paragraph 1 and Article 15 paragraph 4, in which he informs the consumer of his default and still gives him the opportunity to pay within 14 days of the receipt of this payment reminder.
2. The installer can charge interest on the payment that is not met on time, from the expiry of the payment date as referred to in Article 14 paragraph 1 and Article 15 paragraph 4 to the date of receipt of the sum owed. This interest is equivalent to the legal interest pursuant to Article 6:119 of the Netherlands Civil Code.
3. On the expiry of the period of 14 days referred to in paragraph 1, the installer is authorised to proceed to recovery of the sum owed to him, without proof of default. If the installer proceeds to do so, any reasonable extrajudicial costs associated with this are for the account of the consumer.
4. The installer remains the owner of the materials that have not yet been processed, until the consumer has met his payment obligations.
5. If the installer does not settle a payment or compensation owed to the consumer on time, the consumer will inform him of his default in a letter. If the installer has not paid within 14 days of receipt of this letter, he is legally considered to be in default without any proof of default. In that case, paragraphs 2 and 3 of this Article apply similarly.

Article 17 Deferral of payment

1. If the delivered work does not meet the terms of the contract, the consumer is entitled to defer payment, on the understanding that the amount to be deferred is in reasonable proportion to the flaw stated.
2. If the deferred amount is not in reasonable proportion to the flaw stated, the installer is entitled to claim the interest referred to in Article 16 paragraph 2 over the excess deferred amount.

V GUARANTEE

Article 18 Guarantee from the installer

1. The installer guarantees that any flaws in the work that come to light within 18 months of delivery will be repaired at no cost.
2. The installer also guarantees that, during a period of 3 years after delivery, the specifications with regard to capacity and temperatures, as stated in the offer, will be achieved.

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3. The guarantee periods as stated in paragraphs 1 and 2 are applicable unless the installer and the consumer have agreed to a longer guarantee period.
4. The guarantee referred to in the previous paragraphs lapses if:
 - flaws in the installation are not reported to the installer in writing as soon as possible after they were discovered or could reasonably have been expected to have been discovered;
 - flaws are caused by a mistake, improper use or default of the consumer who gave the order or his legal successor, or by external causes;
 - the flaw is not a consequence of the work;
 - an order of whatever nature is given to a third party to provide facilities to the installation during the guarantee period without the written permission of the installer, or if such facilities are provided by the consumer himself, on the understanding that the guarantee will not lapse if that should not be justified in view of the nature and scope of the facilities provided;
 - no periodic maintenance is carried out during the guarantee period to equipment that requires maintenance;
 - the consumer has not met his payment obligations, unless he is making use of the right to defer payment in accordance with Article 17, on the understanding that the guarantee will not lapse in the case that no blame can be attached to the consumer as regards not paying on time.
5. The guarantee regulations as set out in the previous paragraphs of this Article will not be applicable with regard to:
 - light bulbs, strip lighting, LED sources, energy-saving bulbs;
 - unclogging a drain.
6. The provisions in this Article do not prejudice the liability of the installer by law.

Article 19 Fulfilment guarantee branch organisation

1. If an installer does not fulfil the obligations set to him in a binding advice with regard to the consumer, UNETO-VNI will take over these obligations to the maximum stated in paragraphs 2 and 3. The takeover of these obligations of the installer by UNETO-VNI will be deferred if and insofar as the binding advice has been submitted for judgement to the court within two months of dating, and will lapse in the case of final judgement by the court whereby the binding advice has been declared non-binding.
2. For the fulfilment guarantee of UNETO-VNI referred to in paragraph 1, there is a maximum amount to be paid of € 5,500 per binding advice, under the condition that the consumer transfers his claim on the installer to UNETO-VNI. If the consumer's claim on the installer amounts to more than € 5,500, the consumer will be paid € 5,500 under the same condition, and the consumer can transfer his claim for the excess for free to UNETO-VNI for collection, in order to be paid to the consumer.
3. In the case of moratorium, debt restructuring, bankruptcy or company closure of the installer, the fulfilment guarantee will apply up to an amount of € 5,500 per binding advice, on the understanding that:
 - in these cases, the fulfilment guarantee will only be applicable if the consumer has instituted proceedings regarding the dispute and has met the formal requirements for the dispute to be handled by the disputes committee (payment of complaints fee, return of completed and signed question form and any necessary security deposit) before the moratorium, debt restructuring, bankruptcy or company closure of the installer, and
 - the total amount to be paid out to consumers by UNETO-VNI on the basis of the fulfilment guarantee in

these cases does not amount to more than € 22,500 per installer, whereby the handling of consumers' appeals to the fulfilment guarantee will take place in order of receipt by UNETO-VNI of the consumer's written appeal to the fulfilment guarantee until the maximum of the total amount to be paid out to consumers per installer of € 22,500 has been reached.

VI DISPUTES

Article 20 Dispute settlement

1. Disputes between the consumer and the installer about the conclusion or execution of the contract can be presented to the disputes committee by either the consumer or the installer.
2. The disputes committee will only handle a dispute if the consumer has first presented his complaint to the installer.
3. When the complaint has been presented to the installer, the dispute must be brought before the disputes committee 3 months after it originated at the latest. A fee is due for handling the dispute.
4. If the consumer presents a dispute to the disputes committee, the installer is bound to this decision.
5. If the installer wishes to present a dispute to the disputes committee, he must first request the consumer in writing to say whether he agrees with this within one month. In this written request, the installer must also announce that after the aforementioned period has elapsed, he considers himself free to present the dispute to the usual courts.
6. The disputes committee pronounces judgement taking account of the conditions of the regulations applicable to it. The decision of the disputes committee takes place in the form of binding advice.
7. Only the usual courts or the aforementioned disputes committee are authorised to take cognizance of disputes.

VII FINAL PROVISIONS

Article 21 Applicable law

Dutch law is applicable to the contracts concluded, amended or supplemented on the basis of these general conditions, unless a different law is applicable on the grounds of binding rules.

Article 22 Appellation

These general terms may be cited as Algemene Voorwaarden voor Installatiewerk voor Consumenten (General Terms for Installation Work for Consumers) and by the abbreviation of AVIC.