

**GENERAL PURCHASING CONDITIONS FOR METALS**  
of  
**HKS Dordrecht B.V**  
**HKS Scrap Metals B.V.**  
**resp. Hoogovens Klöckner Scrap Metals B.V.**  
**resp. HKS Metals B.V.**

registered at the Chamber of Commerce and Industry for Zuid-Holland in Dordrecht on 17 August 2000 under number 23070691.

**1. GENERAL**

- 1.1 All requests for quotation, contracts and the performance thereof by HKS Dordrecht B.V. and HKS Scrap Metals B.V., resp. Hoogovens Klöckner Scrap Metals B.V., resp. HKS Metals B.V., which are hereinafter referred to as “HKS”, shall be governed exclusively by these General Purchasing Conditions.
- 1.2 When concluding a contract, the parties are free to deviate, or deviate in part, from these General Purchasing Conditions, provided that the deviating conditions have been confirmed in writing by HKS. Any deviating conditions agreed upon shall be deemed to be valid only for a specific contract, unlike these General Purchasing Conditions which also apply to subsequent contracts between the parties.
- 1.3 In these General Purchasing Conditions, every person or legal person who has entered into, or wishes to enter into, a contract for the delivery of goods to HKS, as well as his/her/its representative(s), authorised representative(s), successor(s) in title and heirs, is hereinafter referred to as the “Supplier”.
- 1.4 The conditions of the Supplier shall remain unaffected, on the understanding that in the event of a conflict these General Purchasing Conditions shall always prevail over any conditions stipulated by the Supplier.

**2. CONCLUSION/CHANGES**

- 2.1 A contract shall only be concluded once an order has been confirmed to the Supplier in writing by HKS.
- 2.2 The substance of a contract shall be proven by a confirmation sent by HKS, which is not disputed in writing within two working days.
- 2.3 Any changes or additions to an existing contract shall not be binding on HKS unless and insofar as confirmed in writing by HKS.
- 2.4 The execution of verbal contracts may be suspended until such time as confirmed in writing by HKS.
- 2.5 Within the context of a framework contract, a contract shall be concluded in each case once an order for a delivery, or partial delivery, is sent by HKS. Our General Purchasing Conditions shall remain in full force and effect with regard to these deliveries or partial deliveries.
- 2.6 HKS is authorised to require a change in the size and/or quality of the goods to be delivered. HKS is authorised to make modifications to the instructions, specifications, etc. relating to the goods to be delivered.

2.7 If the Supplier is of the opinion that the aforesaid change(s) has/have consequences with regard to the agreed fixed price, the Supplier shall inform HKS in writing of its opinion as soon as possible before complying with the changes, but no later than eight days after notification of the required change. If, in the opinion of HKS, the consequences with regard to the price and delivery period are unreasonable in relation to the nature and size of the change, HKS shall be entitled to terminate the contract by giving written notice to the vendor, unless this would be manifestly unreasonable in view of the circumstances. Termination of the contract on the aforementioned grounds does not give either party any right to compensation for any damage.

### **3. PRICES AND PAYMENT**

3.1 Unless expressly agreed otherwise, the agreed prices are fixed and may therefore not be subject to revision; the agreed prices are in euros, excluding VAT, and they are based on the delivery conditions 'Delivery Duty Paid' (DDP) at the agreed place of delivery.

3.2 Unless agreed otherwise in writing, payment shall be made within 30 days of receipt of the invoice, provided that the invoiced amount and all accompanying documentation, weighing-in and inspection certificates, etc. have been received in good condition and approved by HKS.

3.3 If the Supplier delivers more than agreed, HKS shall be entitled to:

- A. either settle the excess quantity delivered against the relevant contract price;
- B. or settle the excess quantity delivered at the daily price.

3.4 The payment obligation shall be suspended:

- A. as long as the delivery has not been approved, in accordance with the provisions of Article 5;
- B. if HKS has previously objected to the manner in which the Supplier executes the contract.

3.5 For each payment, HKS is entitled to set off the amount it owes the Supplier against all of the outstanding claims of HKS against the Supplier at that time. The Supplier is not permitted to set off any debt of HKS against any claim against HKS.

3.6 Payment shall not be construed as any acknowledgement by HKS of the soundness of the condition of the goods upon delivery and shall not release the Supplier from any liability in this respect.

3.7 Payment shall release HKS from any obligation arising from the contract in question and shall not be regarded by the Supplier as payment of any other claim the Supplier may have against HKS.

### **4. DELIVERY**

4.1 The most recent edition of the 'I.C.C. Incoterms', as published by the International Chamber of Commerce, shall apply to the interpretation of the delivery conditions.

4.2 Delivery shall take place DDP at the agreed place of delivery, punctually at the agreed time or within the agreed period.

4.3 Unless expressly agreed otherwise, the Supplier is always obliged to take care of all documents relating to transit, cross-border traffic and environmental regulations and to provide them to HKS in good time. HKS is entitled to suspend its obligations immediately if the Supplier does not comply with this condition.

4.4 At such time as circumstances arise or are foreseeable and which result in the Supplier being unable to fulfil his/her/its obligations to HKS, or being unable to fulfil them on time or properly, the Supplier shall immediately inform HKS in writing, stating the nature of the circumstances which give rise to the failure to fulfil his/her/its obligations or

the measures taken and the probable duration of the delay, failing which the Supplier shall be fully liable for the damage caused by the failure to fulfil his/her/its obligations, without prejudice to the right of HKS to demand performance of the contract.

- 4.5 With regard to the agreed quantities, the following provisions shall apply unless explicitly agreed otherwise:
- A. In the case of ferrous scrap deliveries, a deviation of +/- 5% is permitted if a certain quantity is stated and is preceded by an approximate indication.
  - B. In the case of non-ferrous scrap deliveries, a deviation of +/- 2% is permitted if a certain quantity is stated and if the statement is preceded by an approximate indication then a deviation of 5% is permitted.
- 4.6 The net weight of the delivery shall be determined by HKS and stated in a weighing-in document. This weight forms the basis of the invoices. Insofar as this weight differs from the weight stated by the Supplier in the transport documents, the following shall apply between the parties.
- A. If the difference in weight is less than 1% for ferrous scrap deliveries in 25 mt units and 0.2% for non-ferrous scrap deliveries in 25 mt units, the Supplier shall invoice HKS in accordance with the weighing-in documents drawn up by HKS, without the Supplier being entitled to a re-inspection.
  - B. If the difference in weight is greater than 1% for ferrous scrap deliveries per 25 mt and greater than 0.2% for non-ferrous scrap deliveries per unit, the Supplier shall be entitled to have the delivery re-weighed at his/her/its own expense within three working days after receipt of the weighing-in document. The Supplier does not have this right if the weighing-in is performed by an independent body, or by the addressee, our purchaser. In that case, the determination of weight shall be regarded as conclusive proof by the parties.

## **5. QUALITY AND INSPECTION**

- 5.1 Inspection, testing and sampling may take place before, during or after delivery in the manner customary in the sector by persons or bodies designated for that purpose by HKS. To this end, the vendor shall grant access to the places where the goods are produced or stored and shall cooperate in any inspections, testing and sampling that may be required and shall provide the necessary documentation and information at its expense.
- 5.2 The inspection carried out does not release the Supplier from his/her/its responsibility or obligation to deliver goods that meet the requirements set, nor does it rule out later rejection. Claims by HKS arising from defects in delivered goods shall remain unaffected, even if such defects become apparent only during the further processing or use of those goods or after they have been resold to a third party.
- 5.3 In the event of rejection, HKS shall inform the Supplier as soon as possible, stating its reasons. The Supplier shall be obliged to repair or replace the rejected delivery, in whole or in part, at the expense of the Supplier within a reasonable period set by HKS; the costs and any damage resulting from this shall be borne by the Supplier. If the Supplier is unable to repair or replace the goods in question within the set period, HKS shall be entitled to take measures to this end at the expense of the Supplier. This does not affect the right of HKS to dissolve the contract, in whole or in part.
- 5.4 If repeated rejection raises legitimate doubts that the Supplier is unable to meet the delivery or quality requirements set by HKS, HKS shall be entitled, without being liable to pay compensation, to dissolve the contract in whole or in part immediately by informal written notification to the Supplier.

## **6. GUARANTEE**

The Supplier guarantees:

- 6.1 that the goods delivered are fully in accordance with the acceptance policy of HKS and the specifications, sizes, weights and quantities provided.
- 6.2 that the scrap delivered does not include:
- A.
    - Explosive and flammable substances
    - Materials containing moisture or air
    - Chemical contamination
    - Nuclear contamination
    - Unwanted metal or non-metallic elements as well as other unwanted adhesives, such as soil, etc.
    - Substances presenting a threat to public health
  - B. HKS has the right to refuse a delivery if HKS knows or suspects that one or more of the contaminants referred to in Article 6.2A. are present in the scrap metal. The Supplier is obliged to take back and dispose of the goods excluded as a result of Article 6.2A, in accordance with the applicable legal requirements and government regulations, at his/her/its own expense and risk.
  - C. The Supplier shall be fully liable for damage to people and materials resulting directly or indirectly from the presence of these contaminants in the scrap metal, irrespective of whether HKS can be blamed for fault or negligence.
- 6.3 that the delivered goods comply with the statutory requirements and government regulations applicable in the country of delivery, at a minimum.
- 6.4 that, if the goods are transported to a location outside the business premises and grounds of the Supplier, the laws and government regulations applicable at that location and the regulations declared applicable by HKS or the purchaser of HKS for that location shall be complied with.

## **7. RISK AND PASSING OF OWNERSHIP**

- 7.1 At the time of approval of the goods after delivery, the ownership of the goods shall pass to HKS in full and unencumbered, until which time the goods are at the expense and risk of the Supplier.

## **8. TRANSPORT**

- 8.1 The goods must be transported and marked in accordance with the regulations of HKS, so that they reach their destination in good condition during normal transport. The Supplier expressly assumes all transport risks.
- 8.2 The Supplier must ensure that the transport is accompanied by the required transport documents, which must include at a minimum the:
- identity of the Supplier, sub-Supplier, etc.
  - weight
  - composition and description of the materials
  - place of origin
  - place of destination
  - required documentation which complies with the current legal national and international environmental regulations.

## **8.3 CONTAINERS**

- 8.4 At the request of the Supplier, the purchaser can install a container or have it installed at a location designated by the Supplier. The Supplier must obtain the necessary permission from the relevant authorities for the installation. Costs, fines and levies related to the installation of a container are at the expense and risk of the Supplier.

8.5 The Supplier shall be liable for any form of damage, including damage to the container and damage suffered by third parties, which is the result of the installation of the container.

8.6 The Supplier is obliged:

- to prepare the container in such a way that it can be easily be loaded for transport, and
- to seal the container at the request of the purchaser.

8.7 The Supplier is not permitted to load the container heavier than 12 tons and the head must not be higher than 12 cm. In the case of a 40m<sup>3</sup> container, however, the edge of the container is the limit for the head.

## **9. LIABILITY**

9.1 The Supplier shall be liable for all material and immaterial damage and consequential damage suffered by HKS or third parties as a result of a defect in its products, including the presence of explosive and hazardous substances and any contamination whatsoever of the goods supplied by the Supplier.

9.2 The Supplier shall be liable for all material and immaterial damage or consequential damage suffered by HKS or third parties as a result of acts or omissions on his/her/its part, on the part of his/her/its personnel or on the part of those involved by his/her/it in the execution of the contract.

9.3 The Supplier shall indemnify HKS against claims by third parties for compensation for damage on the grounds of liability as described above.

9.4 For the purposes of this article, the personnel of HKS and its employees are deemed to be third parties.

9.5 The Supplier shall take out adequate insurance against the liability referred to in this article and shall grant HKS access to the insurance policy if it so wishes.

9.6 If, in its opinion, HKS is obliged to take measures to prevent damage or further damage, as referred to in the above articles, the Supplier shall be liable for all costs and damage incurred and suffered in connection with these measures.

## **10. FORCE MAJEURE**

10.1 Force majeure exists if the execution of the contract in whole or in part, temporarily or permanently, is prevented by circumstances beyond the will and influence of the parties, regardless of whether those circumstances could have been foreseen at the time of the conclusion of the contract, as a result of which fulfilment of the contract can no longer be reasonably expected.

10.2 If HKS is prevented from taking delivery of the goods ordered and offered as a result of an event of force majeure as described in Article 10.1, this shall not entitle the Supplier to claim any compensation or performance.

10.3 HKS shall inform the Supplier as soon as possible if it experiences an event of force majeure.

## **11. TERMINATION**

11.1 HKS shall at all times be entitled to terminate the contract early by means of a written notification to the Supplier, provided that this notification includes a statement of reasons.

11.2 Upon receipt of a written notification, the Supplier shall immediately cease the execution of the contract. The parties will then consult on the consequences of such a termination.

- 11.3 A. If the Supplier fails to fulfil his/her/its obligations under the contract or under other contracts arising therefrom, or to do so on time or properly, HKS shall be entitled to terminate the contract unilaterally and without judicial intervention by giving written notice of termination, without prejudice to any other rights of HKS to claim compensation for damages.
- B. If a situation of force majeure arises on the part of the Supplier, the performance of the contract shall be suspended in whole or in part for the period that performance is prevented by the situation of force majeure, without prejudice to the right of HKS to terminate the contract by giving written notice.
- C. In the event of the bankruptcy or suspension of payments of the Supplier and in the event of the business of the Supplier is shutdown, liquidated or taken over or any comparable situation, he/she/it shall be in default by operation of law and HKS shall be entitled to unilaterally terminate all or part of the contract without notice of default and without judicial intervention by giving written notice to the Supplier and by suspending payment obligations and entrusting all or part of the execution of the contract to third parties, without HKS being obliged to pay any compensation for damages, and without prejudice to any other rights to which HKS is entitled, including its right to claim full compensation. All claims against the Supplier shall then be immediately and fully due and payable and can be compensated by offsetting debts.

## 12. COST OF LEGAL ASSISTANCE

- 12.1 If the Supplier fails to fulfil his/her/its obligations under the contract or fails to do so properly, he/she/it shall be obliged to pay all judicial and extrajudicial costs incurred by HKS, which shall amount to at least 10% of the principal sum.

## 13. TRANSFER

- 13.1 The Supplier shall not be entitled to transfer all or part of its rights and obligations under any contract with HKS to third parties, without the written permission of HKS.

## 14. APPLICABLE LAW AND DISPUTES

- 14.1 All our requests for quotation, contracts and the execution thereof are governed exclusively by Dutch law.
- 14.2 All disputes arising from or in connection with the contract to which these General Purchasing Conditions apply or these General Purchasing Conditions themselves, shall, if no settlement can be reached amicably, be decided exclusively by the competent civil court in Amsterdam under Dutch law, unless the parties are bound to have their disputes settled by arbitration by virtue of their membership of the Metal Recycling Federation.

All disputes arising out of or in connection with the contract to which these General Purchasing Conditions apply or these General Purchasing Conditions themselves, shall be settled exclusively by the competent civil court in Rotterdam, unless in addition to the Supplier, the purchaser is also a member of the Metal Recycling Federation and the parties are bound by virtue of their membership of the Metal Recycling Federation to have their disputes settled by arbitration.

## 14.3 INVALID PROVISIONS

If and insofar as one or more provisions of these General Purchasing Conditions should prove to be wholly or partially invalid or subject to nullification, this shall not affect the validity of the remaining provisions. In consultation between the parties, a provision that is invalid or subject to nullification shall be replaced by a provision that comes as close as possible to the purport and meaning of that earlier provision.