

**GENERAL PURCHASE CONDITIONS****HKS BELGIUM NV****Article 1**      **Description**

HKS Belgium NV (enterprise number: 0443.676.416) is referred to in these general terms and conditions as the “*customer*”; any (legal) person who has concluded or wishes to conclude a contract for the supply of goods with the customer and, in addition to this person, their representative(s), agent(s), assignee(s) and successor(s), is referred to as the “*supplier*”.

**Article 2**      **Applicability**

- 2.1. The general terms and conditions apply to and form part of all requests for quotations and orders from the customer and the purchase agreements concluded with the customer, as well as to the execution thereof by the customer. The acceptance of an order by the supplier or the conclusion of a purchase agreement by the supplier with the customer implies acceptance by the supplier of these general terms and conditions.
- 2.2. By accepting these general terms and conditions, the supplier fully waives the application of their own general terms and conditions, even if priority is stipulated in them in any other way.
- 2.3. In an individual agreement, the parties may deviate (partially) from these general terms and conditions. Deviating conditions must be confirmed in writing by the customer. In case of conflict between these purchase conditions and further agreements, the provisions of the individual agreement will prevail. The general terms and conditions will always apply in full to subsequent agreements.

**Article 3**      **Customer’s core activities**

The customer is mainly engaged in the collection, processing, reworking and trading of metals.

**Article 4**      **Conclusion of the agreement**

- 4.1. An agreement is concluded after the supplier's offer has been confirmed in writing by the customer. Each agreement is entered into for a fixed period of time so that after

delivery of the goods the agreement ends by operation of law. The agreement shall only apply to the extent that the parties enter into a framework agreement with each other for as long as it has not been terminated in accordance with Article 14.1, unless a duration has been determined in the framework agreement.

- 4.2. A confirmation sent by the customer, which is not objected to in writing by the supplier within two working days, fully proves the content of the agreement.
- 4.3. An agreement is, in any case, concluded if the agreement is actually executed by the supplier and the customer does not immediately protest against this execution.
- 4.4. Any changes and additions to the order or an existing agreement are not binding on the customer if and in so far as the customer has not confirmed them in writing.
- 4.5. The customer is entitled to demand that the scope and/or quality of the goods to be delivered be/will be changed. The customer is entitled to make changes to the instructions, specifications, etc. with regard to the goods to be delivered. If, in the opinion of the supplier, the aforementioned change(s) has/have consequences for the agreed fixed price, they will, before complying with the changes, inform the customer in writing as soon as possible, but no later than eight days after the notification of the required change(s). If, in the opinion of the customer, the consequences for the price and the delivery time are unreasonable in relation to the nature and scope of the change, the customer has the right to unilaterally dissolve the agreement by operation of law, without notice of default and without prior judicial intervention, by means of a written notification to the supplier, unless this would be manifestly unreasonable in view of the circumstances. Dissolution on the aforementioned grounds does not give either party any right to compensation for any damage.
- 4.6. In the case of framework agreements, the purchase contract will be concluded as soon as confirmation of the order for a (partial) delivery, within the context of the framework agreement, is sent by the customer. These general purchase conditions apply in full to these (partial) deliveries.
- 4.7. Verbal orders will be executed in accordance with the notes made by the customer and the interpretation given to them, whereby the supplier is authorised to provide evidence to the contrary. The execution of verbal agreements may be suspended until the moment of their written confirmation by the customer. The quality assumed by the customer is part of the agreement. An inspection takes place in accordance with Article 9.

## **Article 5      Prices and payment**

- 5.1. Unless otherwise agreed in writing, the agreed prices are fixed and are therefore not subject to revision. Unless otherwise agreed, the prices are in euros, excluding VAT, and are based on the delivery conditions "Delivery Duty Paid (DDP)", in accordance with Incoterms 2010.

- 5.2. The supplier guarantees that the prices offered to the customer do not exceed those offered by the supplier to third parties for the delivery of similar goods in similar quantities. If the supplier lowers their prices during the term of the agreement with the customer, the supplier will lower the price applicable to the customer accordingly.
- 5.3. Payment by the customer will take place, unless agreed otherwise in writing, within thirty days of receipt and approval of the invoice and all accompanying documentation, weighing and inspection certificates. Under no circumstances will the customer make advance payments to the supplier prior to this.
- 5.4. If the supplier has delivered more than agreed, the customer is entitled to (i) refuse and return the excess to the supplier at the supplier's expense, or (ii) retain it free of charge, on the understanding that in the latter case, the supplier is entitled to retrieve the excess from the customer at their own expense within a period of thirty calendar days after the date of delivery, at the end of which the customer has acquired the excess delivered goods free of charge and definitively.
- 5.5. The obligation to pay will be suspended as long as the delivery has not been approved in accordance with the provisions of Article 9, or if the customer has previously objected to the manner of execution of the agreement by the supplier.
- 5.6. For each payment, the customer has the right to set off the amount owed by the supplier against all outstanding claims from the customer to the supplier, whether or not disputed by the supplier, that are outstanding at that moment. This applies without prejudice in the event of bankruptcy, bankruptcy filing, writ of summons in bankruptcy or similar insolvency proceedings on the part of the supplier, in which case set-off will take place by operation of law between all the amounts owed on both sides between the supplier and the customer, irrespective of whether these amounts are already due and payable or fixed on such a date, even if they are not yet fully certain. The supplier is not permitted to set off any debt to the customer against any claim made on the customer.
- 5.7. Payment cannot be construed as an acknowledgement by the customer of the quality of the goods in the state in which they have been delivered and does not release the supplier from any liability in this respect.
- 5.8. Payment releases the customer from any obligation arising from the agreement in question and cannot be regarded by the supplier as payment of any other claim made by the supplier against the customer.
- 5.9. In the event of late payment, the customer is liable to pay the supplier interest of a maximum of 7% per annum, calculated from the date on which written notice of default for payment is sent by the supplier to the customer.

## **Article 6**      **Transport**

- 6.1. The customer is entitled to set further regulations with regard to the way in which the transport and delivery is carried out by the supplier and with regard to the way in which the goods are packaged and marked.
- 6.2. The transport must take place in accordance with the applicable statutory regulations, as well as with the customer's regulations set pursuant to the previous paragraph.
- 6.3. The supplier is obliged to have the transport of the goods to be delivered accompanied by the required (transport) documents, which in any case show the following:
- the identity of the supplier;
  - the weight of the goods delivered;
  - the composition and description of the goods delivered;
  - the place of departure of the goods delivered;
  - the place of destination;
  - the required documentation which complies with the current, statutory national and international regulations on transit, cross-border trade and the environment;
- 6.4. The supplier is always obliged to take care of the aforementioned documents and all documents for the benefit of transit, cross-border trade and the environment, in accordance with the relevant regulations, and to give these to the customer in good time. The customer is entitled to immediately suspend their obligations if the supplier does not comply with this condition.

## **Article 7**      **Delivery**

- 7.1. Unless otherwise agreed in writing, delivery will be DDP with due observance of the provisions of Article 8, in accordance with the instructions given by the customer (including: rules concerning their acceptance policy for delivered goods) and the documents as mentioned in Article 6.3, at the agreed place of delivery, punctually at the agreed time or within the agreed period. Timely delivery is an essential element of the agreement between the supplier and the customer.
- 7.2. Notwithstanding any other rights that the customer has under these terms and conditions or applicable law to obtain compensation for damages suffered by them, in the event of late delivery, the customer has the right to perform subsequent actions:
- i. Unilaterally terminate the entire agreement by operation of law, without notice of default and without prior judicial intervention and without being liable to pay any compensation to the supplier for this; or
  - ii. Apply a price reduction;

- iii. To refuse the late delivery of the goods; or to ask the supplier to provide the customer with additional guarantees regarding their delivery obligation, which the supplier may not unreasonably refuse.
- 7.3. As soon as circumstances arise or are foreseeable as a result of which the supplier cannot fulfil their obligations towards the customer, or cannot fulfil them on time or properly, the supplier will immediately inform the customer in writing, stating the nature of the circumstances that give rise to this non-compliance, as well as the measures taken and the probable duration of the delay, in the absence of which the supplier will be fully liable for all the damage caused by this. The above does not affect the rights and powers that the law grants to the customer in the event of non-compliance by the supplier and the rights granted to them under Article 7.2.
- 7.4. With regard to the agreed quantities, unless explicitly agreed otherwise, the following provisions will apply:
  - i. For ferrous scrap deliveries, the indication of a certain quantity preceded by the indication, a deviation of approx. 5% more or less than the specified quantity is allowed.
  - ii. For non-ferrous scrap deliveries, a deviation of 2% more or less than the specified quantity is allowed and if the notification is preceded by the indication, a deviation of approx. 5% more or less than the specified quantity is allowed.
- 7.5. The net weight of the delivery will be determined by the customer and mentioned in a weighing document. This weight is decisive for the invoices. In so far as this weight differs from the weight stated by the supplier in the transport documents, the following will apply between the parties:
  - i. 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 will invoice the customer in accordance with the weighing documents drawn up by the customer, without the supplier being entitled to a re-inspection.
  - ii. If the difference in weight is greater than 1% for ferrous scrap deliveries in 25 mt units and 0.2% for non-ferrous scrap deliveries in 25 mt units, the supplier is entitled to have the delivery reweighed at their own expense within three working days after receipt of the weighing document. The supplier does not have this right if the weighing is carried out by an independent body, or by the recipient to whom the customer will deliver it. In that case, their determination between the parties will be binding and will serve as full proof.

**Article 8**      **Risk and transfer of ownership**

- 8.1. The supplier expressly waives any retention of title, right of retention, right of revision, or similar right that exists or could exist on their part with regard to the delivered goods.
- 8.2. At the time of approval of the goods after the delivery, the ownership of the goods will be transferred to the customer in full and unencumbered. Until such time as the goods are approved after delivery, the goods will remain at the supplier's expense and risk, with HKS applying the extended retention of title.
- 8.3. Approval, as referred to in Article 8.2, is evidenced by the signing of the delivery note for the supplier with a stamp, by or on behalf of the customer. This approval has no further consequences than the completion of the delivery.

**Article 9**      **Quality and inspection**

- 9.1. Inspection, control and/or sampling in the manner customary in the sector by a person or inspection body designated by the customer for this purpose can take place both during and after delivery. To this end, the supplier will grant access to the places where the goods are produced or stored and will cooperate with the desired inspections, controls and sampling and will provide the necessary documentation and information at their expense.
- 9.2. Unless otherwise agreed in writing, a final inspection will take place at the agreed place of delivery. This inspection will be carried out by an independent person or inspection body appointed by the customer. The result of this inspection is binding on the final invoice.
- 9.3. The costs of the inspections carried out during or after delivery will be at the expense of the customer.
- 9.4. An inspection carried out never discharges the supplier from the responsibility or obligation to deliver goods that meet the set requirements and does not exclude later rejection. Claims of the customer due to defects in the delivered goods remain unaffected, even if these defects only become apparent during further processing or in the use of these goods, or after they have been passed on to a third party.
- 9.5. In the event of rejection, the customer will inform the supplier of this as soon as possible, stating the reasons. The supplier is obliged to repair or replace the rejected delivery (in whole or in part) within a reasonable period set by the customer at their own expense. The costs and possible damage as a result of repair (by means of a new equal delivery) or replacement will be at the expense of the supplier. If the supplier is not able to repair or replace the goods in question within the set period, the customer is entitled to take measures for this at the expense of the supplier. This

does not affect the right of the customer to unilaterally dissolve the agreement in whole or in part by operation of law, without notice of default and without prior judicial intervention.

- 9.6. If, on the basis of repeated rejection, the doubt is justified that the supplier will not be able to meet the agreed delivery or the quality requirements to be set by the customer, the customer is entitled to dissolve the agreement unilaterally by operation of law, without notice of default and without prior judicial intervention, either immediately or partially, by means of a written notification to the supplier, without being obliged to pay compensation for damage.

## **Article 10**      **Containers**

- 10.1. At the supplier's request, the customer can place a container (or have it placed) at a place designated by the supplier. The supplier must obtain the necessary permission from the authorities concerned for the placement. Costs, fines and levies in connection with the placement of a container shall be at the expense and risk of the supplier.
- 10.2. The supplier is liable for any form of damage, including damage to the container and damage suffered by third parties, which is the result of the placement of the container.
- 10.3. The supplier is obliged:
- i. to arrange the container in such a way that it can be easily loaded for transport, and
  - ii. to seal the container at the request of the customer.
- 10.4. It is not permitted to load the container heavier than 12 tonnes and to have a height of more than 12 cm. For a 40m<sup>3</sup> container, however, the edge of the container is the limit for the height of the head.

## **Article 11**      **Warranty**

The supplier warrants:

- 11.1. that the delivered goods are fully in accordance with the acceptance policy of the customer, which has been made available by the customer to the supplier for the delivery, the specifications, sizes, weights and quantities stated.
- 11.2. that the goods supplied are free from contamination, including:
- explosive and flammable substances;
  - materials with moisture and air entrapment (so-called 'closed parts');
  - chemical contamination;
  - nuclear contamination;
  - unwanted metal or non-metallic elements, as well as other unwanted attachments such as soil, etc.;

- substances that are harmful to public health;
  - sharp objects such as hypodermic needles, blood tubes, etc.
- 11.3. that, if the delivered goods contain contamination as referred to in 11.2, the supplier shall take back the goods at their expense and risk and shall dispose of them in accordance with the applicable legal requirements and government regulations. For the sake of clarity, if the goods supplied are to be regarded as a radioactive source that cannot be categorised as an orphan source, the supplier will be obliged to bear any costs incurred as a result. The customer has the right to refuse if the customer knows or suspects that one or more of the contaminations as referred to in 11.2 are present in the delivered goods.
- 11.4. that the supplier is fully liable for damage to people and materials which is a direct or indirect result of the presence of contamination in the delivered goods as referred to in Article 11.2, regardless of whether the customer can be blamed for fault or negligence.
- 11.5. that the delivered goods at least comply with the applicable legal requirements and government regulations.
- 11.6. that, if goods are processed at a place outside the (business) premises of the supplier, the laws and government regulations applicable to that place as well as the regulations declared applicable by the customer or the customer's client for that place, will be observed.

## **Article 12      Liability**

- 12.1. The supplier is liable for all material and/or immaterial (consequential) damage suffered by the customer or by third parties as a result of:
- a breach of the warranties given in Article 11; or
  - a defect in their products, including but not limited to the presence of explosives and/or dangerous substances and/or any contamination on, to or in the goods supplied by the supplier; or
  - a late delivery; or
  - any contractual or extra-contractual fault;
  - an infringement of (intellectual property) rights of third parties; or
  - a violation of any applicable law; or
  - acts or omissions by the supplier, their staff or any other person involved in the performance of the contract.
- 12.2. The supplier indemnifies the customer against claims by third parties for any compensation on the basis of liability as described above. Personnel of the customer is hereby regarded as a third party.



- 12.3. The supplier shall be required to take out adequate insurance against the liability referred to in Article 12 and shall allow the customer, if so desired, to inspect the policy.
- 12.4. In the event that the customer, in their opinion, is forced to take measures to prevent (further) damage as referred to in the above articles, the supplier shall be liable for all costs and damage that are incurred and suffered in connection with these measures.
- 12.5. The supplier is liable for (indirect) damage to battery boxes and containers.
- 12.6. The supplier is liable for all material damage and/or immaterial (consequential) damage caused by leaking battery boxes and containers as referred to in Article 12.5.
- 12.7. The supplier shall properly insure the containers made available by the customer against damage, loss and theft.

### **Article 13**      **Unforeseen circumstances**

- 13.1. If circumstances beyond the control and/or influence of the parties, regardless of whether those circumstances could have been foreseen or avoided at the time of the conclusion of the agreement, seriously disturb the contractual balance between the parties and/or the performance of the agreement by the supplier in whole or in part, temporarily or permanently, and the fulfilment of the agreement can no longer reasonably be demanded, the parties shall agree on appropriate amendments in order to restore the contractual balance between the parties.
- 13.2. If the customer is prevented from taking delivery of the ordered and quoted goods due to force majeure as described in article 13.1, this does not entitle the supplier to compensation and discharges the customer from compliance with the agreement.
- 13.3. The customer will inform the supplier as soon as possible if they are in a situation of force majeure.

### **Article 14**      **Termination and dissolution**

- 14.1. The parties are at all times entitled to terminate a framework agreement by means of a written notice stating the reasons, with a notice period of two months.
- 14.2. At the request of the customer, the supplier shall cease the execution of the agreement immediately after receipt of written notification as referred to in Article 14.1.
- 14.3. If the supplier does not timely or properly fulfil their obligations arising from the agreement or from other agreements resulting from it, or if the customer has reasonable grounds to assume that such will be the case, the customer is entitled to unilaterally dissolve the agreement by operation of law, without notice of default and without prior judicial intervention by means of a written notification, without prejudice

to the customer's further rights to compensation. In such a case, the customer shall not be liable to pay any compensation.

- 14.4. If a situation arises on the part of the supplier which is beyond their control, which is insurmountable and unforeseeable, and as a result of which the fulfilment of the agreement by the supplier has become impossible, the performance of the agreement shall be suspended in whole or in part for the period that this situation prevents fulfilment, without prejudice to the customer's right to terminate the agreement by operation of law, without notice of default and without judicial intervention by means of a written notice. If such a situation lasts longer than 1 month, the customer is entitled to unilaterally dissolve the agreement by operation of law, without notice of default and without prior judicial intervention, by means of a written notification, without prejudice to the customer's further rights to compensation. In the latter case, the customer will not be obliged to pay any compensation.
- 14.5. In the event of bankruptcy, declaration of bankruptcy, writ of summons in bankruptcy or other insolvency proceedings of the customer and in the event of shutdown, liquidation or takeover or any similar situation of the customer's business, they shall be in default by operation of law and the customer shall have the right to unilaterally dissolve the agreement, without any notice of default, and by operation of law, unilaterally, whether in part or in whole, by means of a written notice or to suspend the execution of the agreement in whole or in part and to entrust the execution of the agreement in whole or in part to third parties without the customer being obliged to pay any compensation, without prejudice to any other rights to which the customer may be entitled (including the right to full compensation).

#### **Article 15**      **Compensation**

In case the customer can claim any compensation on the basis of the agreement, these terms and conditions or the applicable law shall apply.

#### **Article 16**      **Lien**

The supplier grants a lien in favour of the customer on all their rights in current or future claims against third parties (i.e., inter alia, claims relating to sales, rental, service, storage and insurance contracts, claims arising from the professional or commercial activity of the supplier, claims relating to contractual and non-contractual liability, claims against the State and other public legal entities). The customer is entitled to register this lien and to notify the debtors of the pledged claims and to take all necessary steps to implement this pledge towards third parties, whereby all costs thereof shall be borne by the supplier. This lien serves as security for all amounts that the supplier currently owes to the customer or will owe in the future, whether or not together with other persons, on the basis of an agreement or these general purchase conditions. The supplier undertakes, at the first request of the customer, to

provide all necessary information with regard to the identity of their debtors. If the supplier does not provide the requested information to the customer within 10 days of such a request, the customer will owe an amount of EUR 50 to the customer for each additional day that this request is not honoured, without prejudice to any other rights the customer has to obtain compensation. The customer is entitled to receive directly all amounts due from a debtor to the supplier under the pledged claims in exchange for a simple acknowledgement of receipt, without any other formalities or notifications to the supplier being required. If amounts due under the pledged claim(s) have been paid to the supplier, the latter accepts and guarantees that they will deposit these amounts in a special bank account of which the customer will be the beneficiary.

#### **Article 17**      **Transfer and subcontracting**

Without the prior written consent of the customer, the supplier shall not be entitled (i) to transfer all or part of their rights or obligations arising from any agreement with the customer to third parties, including a transfer by means of a sale, contribution, gift or any other transaction (including a transfer or contribution of a line of business or generality, merger, demerger, any other corporate restructuring or any other transfer under general title), or (ii) to call upon one or more subcontractors within the framework of this agreement.

#### **Article 18**      **Confidentiality**

- 18.1. The supplier shall regard all information provided to them by the customer as confidential and shall in no way communicate or disclose such information to any other person without the customer's prior written consent.
- 18.2. The supplier guarantees that their employees, agents, or any other third parties that they call upon within the framework of the delivery shall comply with the obligation under Article 18.1.
- 18.3. All obligations under this Article 18 will remain unaffected after the termination of the agreement.

#### **Article 19**      **Applicable law and jurisdiction**

- 19.1. All requests for quotations from the customer, agreements and their implementation are subject exclusively to Belgian law.
- 19.2. The parties exclude the applicability of the Vienna Sales Convention and the Convention of 14 June 1974 on the Limitation Period in the International Sale of Goods.
- 19.3. All disputes arising from or related to the agreement to which these terms and conditions apply, will exclusively be settled by the competent court in the judicial district of Antwerp, Turnhout division, unless the supplier and the customer are

obliged to have their disputes settled by arbitration on the basis of a special agreement between them and/or on the basis of a membership of a professional organisation.

**Article 20**      **Invalid provisions**

If and in so far as one or more provisions of these general terms and conditions should prove to be wholly or partially invalid or voidable, this shall not affect the validity of the remaining provisions. In consultation between the parties, the invalid or voidable provision will be replaced by a provision that is as close as possible to the purport and meaning of that earlier provision.