

# GENERAL TERMS & CONDITIONS OF SALE AND DELIVERY

of Koot Metals B.V. and/or companies affiliated to Koot Metals B.V. , having its registered office at Rondgang 17, NL-5311 PB Gameren  
(Postal address: Postbus 2073, NL-5300 CB Zaltbommel; telephone: + 31 (0) 418 597 410; fax: + 31 (0) 418 597 429), hereafter referred to as  
"Koot Metals B.V.", for confirming the relationship between Koot Metals B.V. and parties contracting with it

## Article 1: general

- Unless and to the extent that there is a specific delegation, these General Terms & Conditions shall apply to all agreements pertaining to Koot Metals B.V. relating to goods and/or services to be supplied in the context of the operation of its business or to tenders for entering into such agreements. However, agreements and tenders for entering into agreements between Koot Metals B.V. and its contracting parties, where Koot Metals B.V. is acting as an agent for third parties, are excluded. Such agreements and tenders for entering into such agreements are governed exclusively by the general terms & conditions of those third parties. References to Koot Metals B.V. in these General Terms & Conditions shall include companies affiliated to Koot Metals B.V.
- The term "contracting party" within these General Terms & Conditions means those concluding an agreement as specified in 1.1 with Koot Metals B.V. and all those negotiating, consulting with corresponding with Koot Metals B.V. in relation to such an agreement.
- The contracting party may only rely upon any stipulations and/or other in his general terms or stipulations that deviate from these General Terms & Conditions if such other conditions or stipulations are explicitly accepted by Koot Metals B.V. in writing.
- The contracting party may never rely upon or enforce any right based upon a flexible application of the General Terms & Conditions by Koot Metals B.V.
- The contracting party also accepts the application of these General Terms & Conditions unconditionally in relation to all future agreements and tenders for agreements.
- Any void or voidable provisions shall have no impact upon the remaining provisions in these General Terms & Conditions. The void or voidable provisions shall be replaced by new admissible provisions within the spirit of the void or voidable provisions.
- Koot Metals B.V. reserves the right to amend or supplement these General Terms & Conditions. Amendments of minor significance may be effected at any time. If the contracting party is unwilling to accept an amendment to these General Terms & Conditions, it will be entitled, until the date on which the new conditions come into effect, to terminate the agreement with effect from that date.

## Article 2: quotation/agreement/price

- All quotations (including tenders by Koot Metals B.V. to enter into an agreement as defined in 1.1) are issued without obligation. Quotations may contain a time limit for acceptance. The quotation shall lapse automatically after the expiry of that time limit.
- All prices are indicated in euros and exclude VAT, import and export duties and other levies imposed by Dutch or foreign governments.
- Images, measurements, weights, colours, technical data and suchlike contained in brochures, quotations and agreements must be understood such that the contracting party is obliged to consider the possibility of minor deviations that do not exceed the norm. Koot Metals B.V. is entitled to supply a maximum of 10% more or less than the agreed quantity or amount.
- An agreement is completed by unconditional acceptance of the quotation, by a written confirmation of order from Koot Metals B.V. or when Koot Metals B.V. has embarked upon performance with approval of the contracting party (for example by means of supply). The order confirmation from Koot Metals B.V. is binding at all times.
- The costs of any recovery and/or destruction of packaging is not included in the quoted or agreed price.
- Koot Metals B.V. may not be held to its quotations if the contracting party might reasonably realise that the quotation or any element thereof contains an obvious mistake or clinical error.

## Article 3: supply

- Unless otherwise agreed, supplies are made carriage paid to the address stated by Koot Metals B.V. in the quotation or order confirmation or, failing that, to the address of the contracting party most recently communicated to Koot Metals B.V.. The risk in relation to supplied goods transfers to the contracting party at the point when Koot Metals B.V. makes these available to the contracting party.
- Supplies may be made in instalments.
- The delivery period starts to run on the date specified on the written order confirmation. The delivery period is approximate only and not a deadline unless otherwise specifically agreed.
- The contracting party is obliged to take delivery of the items on expiry of the delivery period. Uncollected items will be stored at the contracting party's risk and expense. The contracting party must cooperate fully in allowing Koot Metals B.V. to complete the delivery. In the event of a breach of this provision, the contracting party shall be due a penalty of €250 per day, subject to a maximum of €25,000, without prejudice to Koot Metals B.V.'s right to claim compensation.
- If, as a result of force majeure, Koot Metals B.V. is not in a position to complete the supply entirely, correctly and properly within the delivery period, Koot Metals B.V. shall be entitled to dissolve the agreement or to notify the contracting party of a reasonable period within which the supply can be completed entirely, correctly and properly; in such circumstances, Koot Metals B.V. shall not be obliged to pay any form of compensation, howsoever described.
- Force majeure exists if, following the conclusion of the agreement, Koot Metals B.V. is prevented from fulfilling its obligations under this agreement or from preparing to do so as a result of war, threat of war, civil war, civil uprising, war and kindred risks, fire, water damage, inaccessibility of specific locations, inundation, strikes at work, occupation of business premises, lockout, restrictions on import and export, government measures, defects to machinery, inoperability of computer equipment or software and disruptions in the supply of power, any of these affecting the businesses of either Koot Metals B.V. or third parties from whom Koot Metals B.V. has to acquire the requisite equipment or raw materials, in full or in part, and likewise during storage or transportation, whether this is managed in-house or otherwise, and also by any (other) causes arising outwith the control or blame of Koot Metals B.V.

## Article 4: payment

- Payment must always be made within 30 days following the date of the invoice, in the currency of the invoice and without any discount or offset, at the premises of Koot Metals B.V. or by transfer into the bank account of Koot Metals B.V.
- Koot Metals B.V. is entitled to charge the contracting party for any increase in factors that determine the cost price and which occur after the conclusion of an agreement.
- Koot Metals B.V. reserves ownership in items supplied until the point when the purchase price that is due, including the interest specified in 4.3 and collection costs specified in 4.4 have been paid in full and received by Koot Metals B.V.. The contracting party hereby grants to Koot Metals B.V., in advance, the right to enter all premises and locations where items supplied by Koot Metals B.V. are located, with a view to exercising the retention of ownership right and to recovering the items that have been supplied.
- If the contracting party fails to make payment within the set time limit, it shall be in default by operation of law without the need for any formal warning or notice of default. From that point, the contracting party shall be due to Koot Metals B.V. interest equivalent to the statutory interest specified in Article 6:119, Dutch Civil Code plus two percent and also any costs incurred by Koot Metals B.V. with a view to demanding fulfilment or dissolution of the agreement and/or compensation, except to the extent that there is an irrevocable judicial finding against Koot Metals B.V. in the matter. In such cases, the extrajudicial collection costs shall be deemed to be at least 15% of the amount due, subject to a minimum of €250.
- Irrespective of any other arrangements regarding payments, Koot Metals B.V. is entitled at all times to require the contracting party to lodge sufficient security for the correct fulfilment of the agreement or to demand payment in advance or payment in cash upon delivery.
- Should there be any change to the limit imposed by a credit insurer used by Koot Metals B.V. on the cover in relation to the value of goods and/or services delivered or yet to be delivered to the contracting party and the credit insurance concluded by Koot Metals B.V. accordingly does not offer any further coverage for the goods and/or services yet to be delivered, Koot Metals B.V. shall be entitled to dissolve the agreement either in full or in part. In the event of such a dissolution of the agreement, the contracting party shall not be entitled to compensation for loss, howsoever described.

## Article 5: complaints

- Complaints in relation to the quantity and amounts of items delivered by Koot Metals B.V. must be made to Koot Metals B.V. within eight days after delivery, in writing and with reasons. If the complaint pertains to defects that only become apparent when items are used, the time limit of eight days shall start to run at the point when the contracting party becomes aware of the complaint or the date on which the contracting party ought to have been aware of that complaint, for instance by checking immediately after delivery. Complaints in relation to invoices must be submitted to Koot Metals B.V. in writing and with reasons within eight days after the date of the invoice. Failing this, Koot Metals B.V. shall be entitled to ignore the complaints.
- Complaints may only be vindicated in relation to goods that are still in the condition in which they were delivered. Koot Metals B.V. may not place reliance on this provision if and to the extent that the defects can only become apparent on first use.
- Complaint resulting from corrosion may only be vindicated if the contracting party demonstrates that the goods as supplied were damp when received.
- Complaints do not entitle the contracting party to suspend its payment or other obligations.
- If the complaint pertains to part of the items supplied, this may not justify rejection of the entire consignment of items supplied, unless the result is that the entire supplied consignment must be deemed to be unusable.
- If a complaint in relation to an item that has been supplied is justified, the limit of Koot Metals B.V.'s obligations shall be the replacement of the rejected item, at its expense, or else (in the option of Koot Metals B.V.) a credit to the contracting party for an amount equivalent to the price due by the contracting party for the rejected item.

## Article 6: guarantee

- Koot Metals B.V. guarantees the fitness for purpose of new items delivered by it, provided that the complaint in relation to such matters is notified in writing and with reasons to Koot Metals B.V. in the manner specified in Article 5 and provided all instructions from Koot Metals B.V. in relation to the use of those items have been followed accurately, promptly and completely. The guarantee pertains exclusively to defects in the material or manufacturing errors.
- Defects arising through inexpert or negligent use, or through use for any purpose other than that for which the supplied item is intended, and also defects arising through normal wear and tear, are not covered by the guarantee.
- If an item supplied by Koot Metals B.V. reveals defects, within the guarantee period, that are covered by the guarantee, Koot Metals B.V. undertakes to replace the item free of charge with a new equivalent item or else to refund the contracting party for the amount charged to the contracting party for that supplied item. Koot Metals B.V. shall in no circumstances be obliged to compensate for any damage arising from a defect in the supplied item, other than damage to the supplied item itself.
- Under no circumstances does Koot Metals B.V. issue any guarantee more extensive than the guarantee provided by the manufacturer of the supplied item to Koot Metals B.V.

## Article 7: liability

- All liability for loss (specifically consequential loss) that is not covered by the guarantee specified in Article 6 is hereby excluded, except in cases of intent or gross negligence on the part of Koot Metals B.V.
- Koot Metals B.V. is not liable for loss arising as a result of any advice issued by or on behalf of Koot Metals B.V. or as a result of the inaccuracy of any design, drawing or sample. Koot Metals B.V. is entitled to proceed upon the assumption that any data and information supplied by the contracting party is accurate and complete.
- In the event that Koot Metals B.V. is liable, then the amount of such liability is limited to the amount that will be paid out by Koot Metals B.V.'s insurer. If Koot Metals B.V.'s insurer does not proceed to pay out, then the level of liability shall be restricted to a maximum of 15% (excluding VAT) of the contract amount for the component or partial delivery in question.
- The contracting party indemnifies Koot Metals B.V. against all claims by third parties for compensation of loss as specified in 7.1.

## Article 8: cancellation and dissolution

- A contracting party who cancels the agreement is obliged to pay in full the costs incurred by Koot Metals B.V. and/or for materials produced and/or procured, at cost price, including wages and national insurance charges. If necessary, the contracting party must make an additional payment in the form of compensation.
- In cases of cancellation, the contracting party is obliged to indemnify Koot Metals B.V. against claims by third parties resulting from the cancellation.
- The parties are entitled to dissolve the agreement with immediate effect if: (I) the other party fails to fulfil obligations under the agreement, even after having received a formal warning to do so, (II) the other party is made bankrupt, applies for a moratorium on payments or no longer has free control of its assets, or (III) the other party ceases commercial operations. If Koot Metals B.V. relies upon any circumstances specified in this paragraph, this will have no impact upon the right of Koot Metals B.V. to the payment of costs and damages it may have sustained.

## Article 9: intellectual property

- Koot Metals B.V. reserves all copyright and other rights of intellectual property to any examples, samples, designs, working methods and other intellectual products it may prepare. Items specified in this article may not be copied, duplicated, shown to third parties or used in any other way without permission from Koot Metals B.V.
- In the event of an infringement of this Article, the contracting party shall forfeit a penalty of €1,000 for every infringement and for every day during which the infringement continues, without prejudice to any other rights that may be enforced by Koot Metals B.V.

## Article 10: applicable law and disputes

- The law of the Netherlands applies exclusively to all agreements pertaining to goods and/or services to be supplied by Koot Metals B.V., and to tenders issued by it within the context of operating its business.
- The Vienna Convention on the Sale of Goods and the Unified Act on the International Sale of Movable Physical Items (LUVI) are not applicable.
- All disputes arising from agreements concluded with Koot Metals B.V. or from tenders to enter into such agreements shall be determined by the competent court within the court district of 's-Hertogenbosch, to the exclusion of all others.