

## **General Terms and Conditions of Purchase of the Kontinex Staal group Version: 12.2012**

Issued by Kontinex Staal B.V., Postbus 6003, 4780 LA Moerdijk and its subsidiaries, being KS profiel B.V. and KS band en plaat B.V.

### **Definitions:**

The following definitions are used in these terms and conditions:

Contractor:	Manufacturer and/or Seller of goods and/or services.
Client:	businesses of the Kontinex Staal group, i.e.; Kontinex Staal B.V., KS profiel B.V., KS band en plaat B.V.
Parties:	the Client and the Contractor.
Purchase order:	a document signed or electronically submitted by a duly authorised representative of the Client.
Goods:	products and services delivered to the Client by the Contractor.

### **1. Applicability**

Unless explicitly agreed otherwise in writing, these terms and conditions apply to all requests for quotation and orders for the delivery of goods and services made by the Client.

The applicability of the Contractor's general terms and conditions is hereby explicitly rejected. Neither are they implicitly accepted through the acceptance or receipt of goods, services or payments.

### **2. Scope of the purchase order**

The purchase order, including its appendixes, drawn up by the Client is normative for the scope and content of the purchase order placed. If the Contractor fails to confirm the purchase order, the content of the purchase order placed by the Client remains normative. Changes made to the purchase order verbally or by telephone are legally valid only after they have been confirmed in writing by a duly authorised representative of the Client.

### **3. Purchase order**

A purchase order only binds the Client when the purchase order has been signed or electronically submitted by a duly authorised representative of the Client. The Contractor must send the Client written confirmation of the purchase order within 5 days.

### **4. Prices and conditions of payment**

The prices given in the purchase order are fixed and inclusive of all costs and levies in connection with fulfilment of the Contractor's obligations.

The agreed prices are fixed and are payable within 14 days with a 3% payment discount, or 60 days net from the agreed moment of delivery of the goods or services, after receiving the invoice, documents to be included in the delivery and following full delivery/service provision at the Client. Additional, subsequent claims brought by the Contractor of whatever nature are excluded. Payments cannot be interpreted as an implicit confirmation of delivery of goods/services in accordance with the contract.

### **5. Period and exceeding the period**

The periods and dates for delivery of goods and services given in the purchase order are binding. When the Contractor realises the agreed periods cannot be met, he must immediately notify the Client in writing of the reason and duration of the delay. If a contractual penalty has been agreed for instances of late delivery, it will not affect the Client's other statutory rights. The Client can demand payment of the contractual penalty up to the moment of the last payment, or set it off against outstanding payments when the service was accepted without proviso. When the agreed delivery period cannot be met for reasons attributable to the Contractor, the Client is, after an additional 2-week period, entitled to demand compensation as it sees fit, as the contract is not observed, as a result of which the Client is no longer bound by the contract.

### **6. Delivery and shipment**

6.1. The Contractor is obliged to pack the goods to be delivered properly and at his own expense and risk. The Contractor is liable for all damage or loss ensuing from goods being packed incorrectly and/or insufficiently.

6.2. Delivery by the Contractor is made free domicile place of destination, free from additional costs of

whatever nature. On the delivery order the Client must state the order details, the purchase order number in particular, as well as the weight, nature of the packaging and, if applicable, the shelf-life of the material. The Client is, at the expense of the Contractor, entitled to refuse deliveries not made in accordance with the applicable agreements.

6.3. Deliveries must be made during opening hours of the Client's warehouses.

6.4. Before accepting an order, the Contractor undertakes to check if the goods or their components listed in the purchase order must be regarded as hazardous substances (e.g. paint, glue, chemicals, non-flammable substances, oxidants, explosives, flammable substances, toxicants, radioactive substances, caustics or self-combustible substances). In such cases, the Contractor will notify the Client. Furthermore, he will observe the applicable national and international regulations, as well as any deviating or additional regulations of the receiving country, and he will send the Client all the necessary binding declarations, correctly completed and duly signed, in duplicate (e.g. the corresponding EU safety data sheets) as soon as possible.

### **7. Invoices and certificates of origin**

7.1. An invoice can list multiple purchase orders and it must state the order details - the purchase order number in particular - of the Client.

7.2. At the latest on the date on which the invoice is received, the Contractor must submit any completed and signed certificates of origin of the goods requested by the Client, such as supplier's declarations, goods export certificates and test reports. The same applies to documentary evidence relevant for turnover tax/VAT in the case of foreign and Community deliveries/services.

7.3. The payment term will not come into effect if the Contractor submits incorrect or incomplete invoices, certificates of origin or test reports.

### **8. Transfer of ownership and risk**

8.1. The Contractor bears the risk of any loss and deterioration of the goods until they are transferred to the Client. If the goods are returned due to a warranty, the risk reverts back to the Contractor at the moment the goods have been loaded for return shipment.

8.2. Ownership transfers to the Client at the moment the unloading process has been completed at the place of receipt.

### **9. Inbound and outbound quality checks**

The Contractor will send only parts that have been checked and found to be in order, which is why the Client will not conduct any detailed inbound quality checks. The Client will immediately report any manifest transport damage or hidden defects and submit a complaint about this.

### **10. Guarantee**

10.1. The Contractor guarantees that the delivery/service is free from defects, that it is suitable for the agreed intended use, and that it complies with the properties agreed in the purchase order in terms of quality and nature. In the case of wearing parts, the Contractor guarantees at least that they will endure the normal number of operational hours without showing any defects. The Contractor offers the warranty that his delivery/service complies with the rules of technology, applicable legislation and applicable EU directives with regard to execution, prevention of accidents and protection of the environment, and that he has passed all prescribed environmental audits for this type of product.

10.2. The guarantee period is 24 months from the moment of delivery at the Client. This also applies to replacement parts from the moment they are built in or from the moment corrective work has been completed. The guarantee period is extended by any downtime of the product if it can be traced back to faults and work to remedy the faults.

10.3. Upon request, the Contractor must immediately correct faults in deliveries and services by either, at the request of the Client, remedying the fault or by delivering new goods/services that are fault-free. Any subsequent costs ensuing in order to fulfil the obligations, particularly assembly and disassembly costs, transport and removal costs, are payable by the Contractor. Furthermore, the Client may revoke statutory rights to withdrawal, discount or compensation, insofar as there is a legal basis for that.

10.4. In urgent cases, in the event of delays in remedying faults by the Contractor, in the event of unsatisfactory corrections by the Contractor or in the event of refusal to remedy faults, the Client is, after allowing another 2 weeks, entitled to remedy the faults himself at the expense of the Contractor. This does not affect the Client's other statutory rights.

## **11. Parts**

The Contractor guarantees the availability of all parts required for the performance of the delivery/service, for a period of 10 years, counting from the time of delivery. If the Contractor is unable to fulfil this obligation, he will immediately notify the Client accordingly in writing. If the Contractor is unable to fulfil his obligation to safeguard availability of parts, the Client is entitled to recreate the part that is no longer available, at the expense of the Contractor. The Contractor must assist the Client in every aspect, for instance by providing production drawings and by providing any licences or rights that are required.

## **12. Liability**

12.1. The Contractor will indemnify the Client against claims for compensation brought against the Client on account of a production fault that can be attributed to the Contractor. Upon request, the Contractor will prove to the Client that he is sufficiently covered under a product liability insurance contract.

12.2. If this is not demonstrated or if the Contractor refuses to arrange for an increase of the amount of cover suggested by the Client, the Client is entitled to dissolve the contract and to claim compensation.

12.3. The Contractor is liable for all damage or loss suffered or to be suffered by the Client and/or his staff and/or third parties which damage or loss directly or indirectly ensues from or is related to the result of execution of the purchase order. The Contractor indemnifies the Client and will compensate the Client fully with regard to such claims.

12.4. The Client is not liable towards the Contractor, subcontractors of the Contractor and persons employed on the instructions of the Contractor for any damage or loss of whatever nature suffered in connection with the execution of the agreed order.

12.5. The Contractor is liable towards the Client and/or his staff for all damage or loss of whatever nature which they suffer as a result of the actions or omissions of the Contractor in connection with the execution of the agreed order.

12.6. The Contractor and any subcontractors must observe all orders and instructions given by the Client and his staff with regard to safety and company rules.

## **13. Protective rights**

13.1. The Contractor guarantees that all deliveries are unencumbered with protective rights of third parties and that the delivery and use of the goods delivered do not infringe any patents, licences or other protective rights of third parties.

13.2. The Contractor indemnifies the Client and its customers against third-party claims by virtue of an (alleged) infringement of intellectual property rights on the delivered goods and/or auxiliary supplies. Any costs ensuing from infringements of protective rights are payable by the Contractor.

13.3. The Client is entitled to take measures, at the expense of the Contractor, to get permission from titleholders to use the goods and services delivered.

13.4. If the goods and/or auxiliary supplies are developed exclusively for the Client, the Contractor will transfer the ownership rights to the Client.

## **14. Drawings, documentation, tools, production means, confidentiality**

14.1. The Client reserves all rights (property rights, copyrights and other protective rights) in relation to drawings, designs, tools, production means, construction drawings and all other documentation - and the knowledge contained therein - made available to the Contractor for the execution of the purchase order. These items can be disclosed to third parties only if this is required for the execution of the purchase order and provided that the Client has given his prior written consent in that respect. The Contractor is only allowed to use the items for the execution of the purchase order in question and when requested by the Client they must be returned immediately yet no later than after the execution of the purchase order. The Contractor must treat and store them with due care and keep them sufficiently insured.

14.2. The Contractor is obliged to observe confidentiality with regard to all information, data and business details of the contractual relationship with the Client. The duty of confidentiality remains in place, also after termination of the contractual relationship.

## **15. Default**

Without notice of default, the Contractor is in default:

- if the Contractor fails to fulfil one or more of his obligations, or fails to do so in time or properly;
- in the event of the liquidation or a moratorium of the Contractor;
- when circumstances lead the Client to believe that the Contractor will not fulfil his obligations or will not

do so in time or properly, and the Contractor fails to provide any security that he will fulfil his obligations in time and properly within a reasonable period to be set in writing by the Client.

The above cases give the Client the right to claim compensation and/or demand compliance. Compliance can be demanded only when reasonable and fair.

#### **16. Termination**

The Client is entitled to fully or partially suspend the execution of the purchase order or to fully or partially dissolve a purchase order for any reason other than those mentioned in Article 15. In that case, the Client has no obligation other than to compensate the Contractor for costs incurred. This compensation will never exceed the amount of the purchase order in question.

#### **17. Miscellaneous**

17.1. An assignment of debts under this contract requires the prior consent of the Client.

17.2. The deployment of subcontractors or suppliers requires the prior consent of the Client. Such consent does not affect the Contractor's other statutory liabilities.

17.3. Following a prior notification, the Client is entitled to check production during the Contractor's normal working hours and to gather information about production progress.

17.4. The interpretation of commercial clauses is subject to the most recent INCOTERMS as they apply at the time the contract is concluded.

17.5. The Client may demand technical changes to the goods to be delivered after conclusion of the contract, insofar as this can be reasonably expected from the Contractor. In the event of such changes to the contract, both parties must be aware of the consequences, particularly with regard to any extra or fewer costs and delivery periods.

17.6. The place of delivery for goods and services is the destination given in the purchase order.

17.7. Dutch law applies.

17.8. The competent court is the district court in Dordrecht. However, the Client reserves the right to bring legal proceedings against the Contractor at any other court.

#### **18. Final provision**

If any provision in these General Terms and Conditions of Purchase is invalid or voidable by virtue of applicable law, the Client and the Contractor will consult and agree on a permitted provision that reflects the purport of the original provision as closely as possible. The other provisions of these General Terms and Conditions remain in full force.

These General Terms and Conditions have been filed with the Dutch Chamber of Commerce and Industry in Dordrecht.