

KME Special Products & Solutions GmbH

General Terms and Conditions for Metal Sale and Processing

(May 2022)

Customer can order an industrial product from KME Special Products & Solutions GmbH (hereinafter KME) via a “Full Price Contract” or a “Tolling Contract”.

A. Full Price Contracts

1. **Full Price Contracts** - Customer can buy from KME an industrial product through a Full Price Contract, which consists of “metal content” and “processing (or fabrication) services”, that will be invoiced as a whole at the time of product delivery.
2. **Metal Contracts (or Metal Fixation Contracts)** - The metal content of the products (including type of metal, quantity, price and invoicing due date) is agreed through a contract (“**Metal Contract**” or “**Metal Fixation Contract**”), which takes effect from the date (“**Metal Contract Date**”) of KME’s confirmation of the customer’s metal fixation order.
The customer’s metal fixation order shall be made in writing. If this is not the case, the customer has to countersign KME’s confirmation. However, even in the absence of customer’s signature, the Metal Contract will be considered as unconditionally agreed by customer in all details, unless customer sends a request for rectification immediately upon receipt of KME’s confirmation.
3. **Processing Orders** - The metal quantities covered by the Metal Contract have to be invoiced within the due date established in the Metal Contract (“**Invoicing Due Date**”). Therefore, customer has to send written “**Processing Order(s)**” to KME to define all required product specifications (including but not limited to: dimension, type, alloy and physical state), as much in advance as to enable the processing of metal into the product within the agreed delivery date. KME shall send to customer a confirmation of the “Processing Order”.
4. **Invoicing** - The overall amount invoiced to customer at the time of product delivery will be the sum of the “metal price” pursuant to the Metal Contract and the agreed “processing price”. In case several Metal Contracts are in effect at the same time, a FIFO (First In First Out) rule will be applied for the invoicing, except in case of different agreements.
5. **Metal Contract Effectiveness** - A Metal Contract constitutes a binding contract between customer and KME. Therefore, a Metal Contract cannot be cancelled by either the customer or KME on the basis of subsequent changes in LME official metal quotations, because customer and KME are aware that even heavy fluctuations are usual on the London Metal Exchange.
6. **Invoicing Due Date** - In case after the applicable Invoicing Due Date the metal quantities have not been entirely invoiced for reasons attributable to the customer (e.g. failure to issue the Processing Order or issuing of such an Order after the minimum agreed term prior to delivery):
 - a. If residual quantities are equal to or less than 150kg, KME will be entitled to cancel the Metal Contract for the residual quantities without any charges to the customer
 - b. If residual quantities are over 150kg, customer will have to communicate to KME if:
 - i. the Metal Contract has to be cancelled for the residual quantities and, therefore, customer shall reimburse KME for the consequent extra costs, if any, incurred by KME.
 - ii. Invoicing Due Date has to be postponed by 30 (thirty) days: customer will be charged with an extra price of 1% of LME official metal quotation (“**LME Price**”), as quoted on the Metal Contract Date, applied on residual quantities
 - iii. Invoicing Due Date has to be postponed by 60 (sixty) days: customer will be charged with an extra price of 2% of LME Price, as quoted on the Metal Contract Date, applied on residual quantities
 - c. After 60 (sixty) days from the Invoicing Due Date, point (i) of Section 6 lit (b) hereabove shall be automatically applied without further notice.

B. Tolling Contracts

7. **Tolling Contracts** - Customer can order from KME an industrial product through a Tolling Contract (which consists of customer's processing order as confirmed by KME), provided that the required metal is provided by customer to KME.
8. **Processing Orders** – Customer has to send a written “**Processing Order**” to KME to define all required product specifications (including but not limited to: dimension, type, alloy and physical state), as much in advance as to enable the processing of metal into the product within the agreed delivery date. KME shall send to customer a confirmation of the Processing Order
9. **Conversion Rate**. Customer has to provide metal in quantity and quality according to the agreed “**Conversion Rate**”, in order to enable KME to process the customer's metal pursuant to the Tolling Contract.
10. **Metal Delivery by Customer** - All metal quantities supporting the Conversion Rate have to be physically delivered at KME premises as much in advance as to ensure metal availability at the time of production start. Metal is weighed by KME, kept in storage, uploaded to the customer's metal account (“**Customer Metal Account**”) in compliance with the quality of the metal and then processed by KME into finished or semifinished products pursuant to the Tolling Contract. Measurements made by KME shall be decisive to ascertain the metal weight. Customer guarantees the quality and moisture content of the delivered metal, which must be within the scope of the relevant EN standards. In case of higher moisture a corresponding deduction in weight will be made.
11. **Customer Metal Account** - At the date of the Tolling Contract the Customer Metal Account will be committed according to the Conversion Rate agreed with the customer. At the date of invoicing the Customer Metal Account will be unloaded for the committed quantities of the Tolling Contract. The Customer Metal Account shall never have a debit balance of the customer, otherwise KME is entitled to suspend any Tolling Order until the Customer's Metal account is balanced again. In case the Customer Metal Account does not show enough quantities for the execution of the Tolling Contract, the missing quantities shall be considered as object of a Full Price Contract pursuant to above Section “A”.
12. **Evidence of Ownership** - KME shall send the Customer a statement of the metal account on a monthly basis, in order to ensure a complete reconciliation between the metal owned by customer, which is kept in storage by KME, and the customer's own accounting. This statement of metal account shall be binding for both KME and the customer, unless a written objection is sent by customer immediately upon receipt.
13. **Fungibility** – Due to metal fungibility by issuing a Tolling Order the customer authorizes KME to process the products by using metal of equivalent type as the one delivered by the customer, as well as to use customer's metal for KME's activities, by restoring it with metal of equivalent type (e.g. copper, zinc), on the basis of the application of the free loan agreement principles. KME will also be entitled to entrust other companies within the KME Group performing such processing.
14. **Set-off** - By issuing a Tolling Order the customer acknowledges irrevocably to KME, ABN AMRO (factor) and any other financial institution, which may finance from time to time receivables owed by customer to KME, that none of those receivables are or will be subject to set-off or reduced by counterclaim under the applicable laws in respect of metal delivered by customer to KME from time to time and that customer will not seek to assert any such right. Such a customer's acknowledgement does not prejudice customer's personal rights as against KME (separately from rights against the receivables) in the event customer has a valid claim against KME relating to such metal delivered by customer to KME.

General Conditions – For any other matters not covered by these “KME General Terms and Conditions for Metal Sale and Processing”, the Full Price Contracts and Tolling Contracts shall be regulated by “KME General Terms and Conditions of Sale for Deliveries and Services” available on KME Special Products & Solutions-website at the following webpages: <https://downloads.kme-special.com/>