

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

## I. Applicability / Offers

- These General Terms and Conditions apply to all present and future contracts in respect of deliveries and other services, consulting, proposals and other additional services. In the case of direct sales, the terms and conditions set out in the sub-supplier's price list shall additionally apply. The Buyer's purchasing conditions shall be deemed void notwithstanding the fact that we have not expressly refused to be bound by them upon receipt.
- Our offers are subject to change without notice. Any oral agreements, promises, commitments or guarantees made by our employees in connection with the contract shall not be binding upon us unless confirmed by us in writing.
- In the case of any doubt, the commercial clauses shall be interpreted pursuant to the prevailing version of the Incoterms.
- All specifications such as dimensions, weights, illustrations, descriptions, assembly/installation sketches and drawings contained in sample books, price lists and other printed matter have been determined to the best of our ability but are approximate only and therefore not binding on us. This shall also apply to any information given by the mills. All models and drawings shall remain our property.

## II. Prices

- Prices are quoted ex works or warehouse plus freight and value added tax.
- Unless stipulated to the contrary, the prices and terms set out in our price list prevailing at the date at which the contract is entered into shall be applicable. In the case of direct sales, especially deliveries ex works, we are entitled to apply the prices according to the terms and conditions of the sub-supplier's price list in force at the date of delivery, unless fixed prices have been agreed upon.
- If taxes, duties, carriage, insurance premiums or other external costs which are included in the agreed prices increase later than four weeks after the contract is entered into, or if new costs arise, we shall be entitled to adjust the prices accordingly.
- With respect to goods not yet delivered, we reserve the right to increase the agreed price in case of a change in the supply of raw materials or the general economic situation causing production and/or procurement of the products in question to become far more expensive than at the time when the prices were agreed upon. In such a case, the Buyer may cancel the orders concerned within four weeks after being informed of the price increase. We shall also be entitled to increase the agreed price, if the delivery period is subsequently extended for one of the reasons listed under IV.4; or if the material or design is modified because the documents and/or instructions received from the buyer were either not in accordance with actual conditions or were incomplete; or if the data needed for the completion of the order is not received by us in time, or if the data is subsequently altered by the Buyer, thus causing a delay in delivery.

## III. Payment and offsetting

- Unless otherwise agreed or stated in our invoices, the purchase price shall be due net immediately upon delivery and shall be paid so as to enable us to dispose of the proceeds on the due date for payment. The Buyer shall bear all payment costs. The Buyer may only retain or offset payment if his counterclaims are undisputed or have been finally upheld in a court of law.
- If delivery is delayed for any reasons for which we are not responsible, the full invoice amount shall be due for payment 14 days after notification that the goods are ready for dispatch. In all cases in which a letter of credit is opened, the Buyer undertakes to modify the terms of the letter of credit accordingly.
- If the Buyer fails to pay the invoice amount at the due date or is in default of payment, we shall charge interest at a rate of 8 percentage points above the base rate of the European Central Bank, unless higher interest rates have been agreed upon. This does not restrict our right to claim damages on account of the Buyer's default.
- The Buyer shall be deemed to be in default of payment if he fails to pay within 10 days after the due date and receipt of the invoice / payment list or receipt of the goods or services.
- By virtue of the authorization granted to us by the companies belonging to our group (§ 18 of the German Stock Corporation Act \*), we are entitled to offset against all claims due to the Buyer by us or by these group members. This shall also apply if one side has agreed upon cash payment and the other upon payment by bill of exchange or other arrangements on account of performance. Where applicable, these agreements shall only apply to the balance. If the receivables fall due for payment at different dates, our receivables shall be due by no later than the date at which our liabilities fall due for payment and are invoiced at value date.
- If we learn of any circumstances which in our view are liable to impair the credit standing of the Buyer, we are entitled to refuse delivery of the goods or effect deliveries only against advanced payments or other guarantees. In such a case all our not prescribed claims for payment under the current business relation with the Buyer shall immediately fall due.
- Any agreed cash discount shall always apply to the invoice value only, excluding freight, and may only be taken if the Buyer's due liabilities have been discharged in full at the date of taking the cash discount.

## IV. Execution of deliveries, delivery dates and periods

- Our obligation to deliver shall be subject to the timely and correct delivery of goods by our own suppliers, except in cases in which incorrect or delayed delivery on the part of our suppliers is due to reasons for which we are responsible.
- All delivery dates and periods are approximate indications only. Delivery periods shall commence at the date at which we confirm the order and shall apply only provided that all details relating to the order have been clarified and the Buyer has complied with all his duties, e.g. the provision of all official permits, letters of credit and guarantees or the remittance of advance payments.
- The date at which the goods are dispatched from the mill or warehouse shall be decisive for determining compliance with delivery dates or periods. In the event of any delay in shipment for reasons for which we are not responsible, they shall be deemed to have been complied with upon notification that the goods are ready for dispatch.
- Any events beyond our control will entitle us to postpone delivery for the duration of such events plus a reasonable start-up time. This shall also apply if such events occur during our default. Events beyond our control shall be deemed to include monetary, trade and other government measures, strikes, lockouts, any disruptions to our production operations for reasons beyond our control (e.g. fire, breakage of machinery or rollers, non-availability of raw materials or energy), transportation obstructions, delays in import/customs clearance as well as all other circumstances for which we are not responsible, which materially impair delivery or render it impossible. In this respect, it shall be of no consequence whether the effects of such circumstances are sustained by us or the mill commissioned with the order or our sub-suppliers. If as a result of any of the aforementioned events either party can no longer be reasonably expected to execute the contract and, in particular, if performance of material parts of the contract is delayed by more than six months, such party may rescind the contract.

## V. Reserved ownership rights

- The goods shall remain our property until all our claims against the Buyer under the contract have been satisfied.
- Should this provision of a retention of title be invalid under the law of the country in which the goods are situated, such security which corresponds to the above provision of a retention of title shall be deemed to have been agreed upon. The Buyer shall take all measures necessary for such security to come into effect and/or to be maintained.
- Should a more extensive retention of title clause be permitted by the law of the country in which the goods are situated (such as - without prejudice to the generality of the foregoing - the assignment of the Buyer's future claims resulting from the resale of the goods delivered by us), the Buyer shall, upon our request, implement such clause.

## VI. Qualities, dimensions and weights

- Qualities and dimensions shall be determined pursuant to the DIN/EN standards or material specification sheets in force at the date at which the contract is entered into or, in the absence of these, in accordance with standard practice. References to standards, mill standards, material specification sheets, test certificates, declarations of conformity, producer declarations or corresponding designations such as CE and GS as well as qualities, dimensions, weights and suitability for certain uses shall not be deemed to constitute any form of guarantee.
- The weights stated shall be based on measurements taken by us or our supplier. Proof of weight shall be furnished in the form of an attestation of weight. Weights may be determined according to standards without measurements being taken, if permitted by law. This shall have no effect on the customary additions and reductions in the steel trading business in Germany (commercial weights). The quantities and bundle numbers etc. stated in the delivery note shall not be binding in the case of goods charged by weight. The total weight of the consignment shall apply except in cases where the weighing of individual goods is customary. Any discrepancies with regard to the individual weights shall be allocated on a proportionate basis.

## VII. Inspections

- Any agreed inspection of the goods may only be conducted at our mill or warehouse immediately after receipt of notification that the goods are ready for inspection. The Buyer shall bear his personal inspection costs; the technical inspection costs shall be charged in accordance with our price list or the mill's price list.
- If for reasons for which we are not responsible, the inspection is either not performed, not performed on time or only performed in part, we may dispatch the goods without prior acceptance test or store them at the Buyer's expense and risk and issue the corresponding invoice.

## VIII. Dispatch, passing of risk, packaging, part deliveries

- We shall determine the method and route of dispatch as well as the forwarder and carrier.
- If, for reasons for which we are not responsible, transportation of the goods on the planned route or to the planned destination becomes impossible in the planned period of time or is materially impaired, we may deliver the goods via a different route or to a different destination, it being understood that the Buyer shall bear any additional costs. The Buyer shall be given a prior opportunity to make any comments.
- Risk, including the risk of the goods being seized, shall pass to the Buyer for all transactions, including carriage-free or carriage-paid transactions, upon handing the goods over to the forwarder or carrier, however, no later than upon their leaving the warehouse or mill. We shall only arrange for insurance to be effected if instructed to do so by the Buyer. The discharge obligation and costs shall be borne by the Buyer.
- The goods will be delivered unpacked without rust protection. If packing is customary in the trade business, we shall deliver the goods packed. We shall arrange for packaging, protection and/or transportation facilities at the Buyer's expense on the basis of our experience. These shall be taken back at our warehouse. We shall not assume the cost incurred by the Buyer for returning or disposing of the packaging.
- We shall be entitled to effect reasonable part deliveries. Excess or short deliveries of the contracted quantity shall be permissible in keeping with standard industry practice.
- Our obligation to deliver and dispatch the goods shall be covered by the usage in sea ports, e.g. the Antwerp Conditions 51, 1972 edition etc. In the case of cif deliveries, clauses 2, 3, 5, 7 to 18, and 21 of the Warsaw-Oxford Rules 1932 shall apply in addition.

## IX. Orders for delivery on call

- In the case of orders for delivery on call, goods which have been declared as being available for dispatch must be called off immediately, failing which we shall, after written notice, be entitled to dispatch them at the Buyer's expense and risk or, at our discretion, to store them in our warehouse and immediately invoice them.
- In the case of orders for continuous delivery, we are to be notified of calls for delivery and quantities of types for roughly identical monthly quantities, failing which we may determine same at our own discretion.
- If the individual release orders exceed the total contracted quantity, we shall be entitled but not obliged to supply the excess quantity. We may invoice the excess quantity at the prices prevailing at the date of release or delivery.

## X. Warranty

- Any defects in the goods shall be notified in writing immediately, however no later than seven days after delivery. Defects which cannot be detected within this period notwithstanding the most careful examination shall be notified in writing immediately after being discovered, however no later than before the expiry of the contractual or statutory period of prescription with all processing to be ceased forthwith.
- In the event that an inspection of the goods has been agreed upon, the Buyer shall not have any right of recourse with respect to any defects which could have been detected during such inspection.
- If a complaint is justified and is lodged within the requisite period, we may at our discretion either repair or replace the defective goods. If we fail or refuse to remedy the defect, the Buyer shall be entitled to reduce the purchase price or rescind the contract after the stipulation and futile expiration of a reasonable period. In the case of minor defects, the Buyer may only be entitled to a reduction of the purchase price.
- All claims under this warranty are excluded, if Buyer does not immediately give us an opportunity to verify the defect and, in particular, fails to furnish the defective goods or samples immediately upon our request.
- If the goods are sold as lower-grade material - e.g. so-called Ila material - the Buyer shall not have any rights with respect to the stated reasons for which the material was degraded and those he could reasonably expect to encounter. We shall not be liable for defects in the case of Ila material.
- We shall bear the costs to remedy the defects only up to a reasonable amount and in individual cases, in as far as they are appropriate in relation to the purchase price of the goods. We shall not assume any costs arising as a result of the fact that the goods sold have been transported to a location other than the Buyer's domicile, except in cases in which this is in line with their contractual use.

## XI. General restrictions of liability

- We shall only be liable for the breach of contractual and non-contractual obligations, particularly default, pre-contractual fault and tort, also on the part of our management staff and other servants, in the event of willful misconduct and gross negligence, it being understood that such liability shall be confined to the typical loss or damage which could have reasonably been foreseen at the date at which the contract was entered into.
- These restrictions shall not apply in the case of a breach of any material contractual obligations for which we are responsible and which jeopardize the achievement of the purpose of the contract, cases of mandatory liability pursuant to the German Product Liability Act (Produkthaftungsgesetz), injury to persons or cases in which and to the extent that we fraudulently conceal the existence of any defects or guarantee their absence. This shall not have any effect on the rules governing the onus of proof.
- In the absence of any agreement to the contrary, contractual claims held by the Buyer against us as a result of or in connection with the delivery of the goods shall be time-barred one year after delivery of the goods. This period shall also apply to goods customarily used for construction purposes, which have caused a defect to the whole construction. This shall have no effect on our liability for willful misconduct and gross negligence or the expiry of statutory rights of recourse. The period of prescription shall not restart for repaired or replaced goods.
- Notwithstanding the foregoing, we shall not be liable for consequential or indirect damages such as loss of profit or loss of production.

## XII. Place of performance, place of jurisdiction, applicable law

- Unless expressly agreed to the contrary, the place of performance for our deliveries shall be the mill. The competent courts in Düsseldorf, Germany, shall have exclusive jurisdiction. Nevertheless we shall also be entitled to take legal proceedings against the Buyer at his seat at our discretion.
- All legal relations between the Buyer and us shall be subject to German substantive law applicable to the legal relations between domestic parties in addition to these Terms and Conditions. The provisions of the Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall be excluded.

## XIII. Export to EU-member states

- In the event of deliveries from Germany to another member country of the EU, the Buyer shall notify us of his VAT identification number under which his income is taxed within the EU. Failing this, he shall be required to pay the VAT amount stipulated by law.
- When deliveries from the Federal Republic of Germany to another member state of the EU are invoiced, the VAT arrangements of the recipient member state shall apply if the Buyer is registered in another EU member state for VAT purposes or if we are registered for VAT purposes in the recipient member state.

## XIV. Severability

Should any clause of these General Terms and Conditions of Sale and Delivery be partially or totally invalid, the balance of the Conditions shall remain unaffected. It is hereby agreed that the ineffective clause shall be replaced by such valid provision which is fair to both parties and which comes as close as possible to the economic purpose of the ineffective provision.

\*) These include in particular:  
ThyssenKrupp Steel AG, Duisburg  
ThyssenKrupp Services AG, Düsseldorf  
ThyssenKrupp Stahlkontor GmbH, Düsseldorf  
ThyssenKrupp Schulte GmbH, Düsseldorf  
ThyssenKrupp GT Bautechnik GmbH, Essen

ThyssenKrupp Materials International GmbH, Düsseldorf  
Otto Wolff Handelsgesellschaft mbH, Düsseldorf  
Otto Wolff Kunststoffvertrieb GmbH, Düsseldorf  
ThyssenKrupp Metallurgie GmbH, Essen  
ThyssenKrupp MinEnergy GmbH, Essen