

General Terms of Delivery and Payment of thyssenkrupp Materials Trading GmbH

I. Applicability/offers

1. These General Terms of Delivery and Payment shall apply to all - including future - contracts concerning deliveries, services and other performances including contracts for work and services, consultations, proposals and other ancillary services, concluded between thyssenkrupp Materials Trading GmbH and any enterprise, legal person, public-law legal entity and public-law fund. Even if we do not expressly reiterate the exclusion of Purchaser's purchase terms upon receipt, such terms shall not be deemed accepted.
2. Our offers are non-binding. Any oral agreements, promises, undertakings and guarantees made by our staff in connection with the conclusion of any contract shall only become binding when confirmed by us in writing.
3. In case of doubt, the Incoterms, as amended from time to time, shall be authoritative for any interpretation of terms of trade.
4. Any measurements, weights, illustrations, descriptions, assembly sketches and drawings indicated in sample books, price lists and other printed materials have been established only approximatively, however, to the best of our ability; for us, however, they are insofar non-binding. The same applies to indications concerning the works. Models and drawings remain our property.
5. As far as contracts for work and services are concerned, "Purchaser" within the meaning of these Terms shall also be the "Orderer".

II. Prices

1. The prices are quoted ex works or ex warehouse plus shipping and value added tax.
2. Unless otherwise agreed, such prices and terms shall apply as set forth in our price list that is valid at the time of conclusion of the contract. The goods are invoiced "gross for net".
3. In cases of distance delivery, in particular ex works deliveries, we may establish the prices in accordance with the terms of the respective delivering plant's price list that is valid on the day of delivery, unless we have expressly agreed on a fixed price.
4. If after no less than four weeks after conclusion of the contract, any charges or other third-party costs contained in the agreed price change or emerge, we are entitled to amend the price accordingly.
5. If circumstances arise due to changes in the commodities and/or economic situation that render the production and/or the purchase of the respective product significantly more expensive as compared with the time the prices were agreed, we shall reserve the right to increase the agreed price for any then outstanding quantity. In such a case, the customer shall be free to cancel the orders affected by such price increase within four weeks as from [receipt of] the respective notification. Furthermore, we are entitled to increase the agreed price if the delivery period is extended later for any of the reasons set forth in Section IV. 4., if the material or the design undergoes changes because the documentation provided and/or the instructions given by Purchaser did not match the actual conditions or were incomplete, or if we did not receive on time the information we needed to execute the order.

III. Payment and set-off

1. Unless otherwise agreed or indicated in our invoices, the purchase price shall be due immediately upon delivery without any cash discount deduction and payable in such a way that we can dispose of the amount on its due date. Purchaser shall bear any payment transactions fees. Purchaser shall only have a right of retention and is only entitled to set-off insofar as its counterclaims are undisputed or have been confirmed by a final and non-appealable judgment.
2. If it is not possible to dispatch or ship the goods from the point of dispatch on account of missing instructions or documents or if delivery is delayed for any other reasons for which we are not responsible, the full invoice amount shall be due for payment on the 15th day of the month following notification that the goods are ready for dispatch. In cases where a letter of credit has been opened, Purchaser is obliged to amend the terms of the letter of credit accordingly.
3. If the time allowed for payment is exceeded or in case of delay, we shall charge interest at a rate of 8 percentage points above the base interest rate of the European Central Bank, unless higher interest rates have been agreed. The right to claim further damages shall remain reserved.
4. Purchaser shall enter into default no later than ten days after the due date and receipt of the invoice/payment statement or after receipt of the services.
5. As we have been authorized accordingly by the companies belonging to our group (section 18 German Stock Corporation Act (*Aktiengesetz*)*), we are entitled to set off [payments] against any and all claims Purchaser is entitled against us or any such group company, irrespective of their legal ground. Offsetting shall also be admissible if payment in cash has been agreed on the one side and payment by bills of exchange or other methods on account of performance has been agreed on the other side. As applicable, these agreements may only refer to the balance amount. If the claims provide for different due dates, our claims in that respect shall become payable no later than on the date our liability falls due and shall be settled on a value date basis.
6. If it becomes apparent after conclusion of the contract that our payment claim is at risk due to Purchaser's lacking ability to perform, we are entitled to the rights under section 321 German Civil Code (*Bürgerliches Gesetzbuch*; "BGB") (defense of uncertainty). In such a case, we are also entitled to accelerate all non-statute-barred claims arising from the current business relationship with Purchaser. In all other cases, the defense of uncertainty shall extend to all other outstanding deliveries and services arising from the business relationship with Purchaser.

7. Any cash discount agreed shall always refer to the invoice value less shipping costs and shall be granted only if any and all of Purchaser's liabilities due at the time of its grant have been settled in full.

IV. Execution of deliveries, delivery periods and dates

1. Our duty to deliver is subject to the condition that our suppliers deliver correctly and in time, unless we have caused the incorrect or late delivery.
2. Information on delivery times is approximate. Delivery periods shall start with the date on which we confirm the order and shall apply only if all details of the order have been clarified and all obligations of Purchaser have been met in good time, e.g. the submission of all official certifications, the provision of letters of credit and guarantees or the making of advance payments.
3. The time when the goods are dispatched ex works or ex warehouse is authoritative for the purpose of complying with the delivery terms and dates. If, without our fault, the goods cannot be dispatched in good time, these terms and dates shall be deemed complied with on [receipt of the] notification that the goods are ready for dispatch.
4. In case of a force majeure event, we are entitled to postpone delivery for as long as the event prevails plus a reasonable starting period. This shall also apply where such event occurs during an existing default. Force majeure events are defined as monetary, trade and other sovereign government actions, strikes, lock-outs, interruptions of operations that are not our fault (e.g. due to fire, machinery and rolls breakdown, shortage of raw materials and energy, effects of radiant substances), obstruction of traffic roads, delay in import/customs clearance as well as any and all other circumstances which render delivery considerably more difficult or impossible, without our fault. Whether such circumstances occur at our end, the delivering plant or any upstream supplier is irrelevant in this context. If the execution of the contract becomes unreasonable for either contract party due to the above-specified events, in particular where major portions of the execution of the contract will be delayed for more than six months, either party may terminate such portion of the contract that has not been executed yet.

V. Reservation of title

1. We shall retain title in all goods delivered (goods subject to a reservation of title) until all payment claims have been fulfilled, including without limitation the respective balance claims that we are entitled to within the scope of the business relationship (overall reservation of title) and the claims unilaterally established by the insolvency administrator through his/her choice of performance. This shall also apply to future and conditional claims, e.g. under acceptor's bills of exchange, and to such cases where payments are to be made on specifically designated claims. As soon as all claims outstanding at the time of payment and covered by such overall reservation of title have been settled in full, the overall reservation of title shall become extinct.
2. Any reworking and processing of the goods subject to a reservation of title shall be done for us as the manufacturers in accordance with section 950 BGB, without establishing any obligation on our part. The reworked and processed goods shall be deemed goods subject to a reservation of title within the meaning of Section V. 1. Where Purchaser processes, combines and blends goods subject to a reservation of title with other goods, we are entitled to a co-ownership in the new item in proportion of the invoice value of the goods subject to a reservation of title to the invoice value of the other goods used [in said process.] If our title has become extinct as a result of combining or blending, Purchaser shall hereby transfer to us its title to the new inventory or item in proportion to the invoice value of the goods subject to a reservation of title, and shall keep it in custody for us free of charge. Our co-ownership rights shall be deemed goods subject to a reservation of title within the meaning of Section V. 1.
3. Purchaser may only sell the goods subject to a reservation of title within the ordinary course of business at its regular terms and conditions and as long as it has not entered into default, provided that the claims arising from the resale will be assigned to us pursuant to of Sections V. 4 through V.6. Purchaser is not entitled to dispose of the goods subject to a reservation of title in any other manner.
4. The claims arising from the resale of the goods subject to a reservation of title are hereby assigned to us together with any and all collateral securities that Purchaser has acquired for such claims. They shall serve the purpose of securing to the same extent as do the goods subject to a reservation of title. If Purchaser sells the goods subject to a reservation of title together with other goods that we have not sold, the claim arising from the resale shall be assigned to us in proportion of the invoice value of the goods subject to a reservation of title to the invoice value of the other goods sold. In cases where goods to which we have a co-ownership pursuant to Section V.2 are sold, a portion corresponding to our co-ownership share will be assigned to us. If Purchaser uses the goods subject to a reservation of title for the purpose of performing a contract for work and services, the claim arising from the contract for work and services will be assigned to us to the same extent beforehand.
5. Purchaser is entitled to collect claims arising from the resale. Such collection authorization will terminate once we revoke it, at the latest, however, upon default in payment, upon failure to honor a bill of exchange or upon filing for the institution of insolvency proceedings. We shall use our revocation right only in case that it becomes apparent after conclusion of the contract that our payment claims under this or other contracts concluded with Purchaser are at risk due to the latter's lacking ability to perform. Upon our request, Purchaser is obliged to immediately inform its customers of its assignment to us and to provide us with the documents necessary for collection.
6. It shall not be admissible to make assignments of claims arising from the resale, unless such assignments are done by way of genuine factoring that is notified to us and where the proceeds from such factoring exceed the value of our secured claims. Upon crediting of the proceeds from such factoring, our claims fall due immediately.
7. Purchaser is obliged to inform us of any attachment or other impairment by third parties without undue delay. Purchaser shall bear all costs for the lifting of the attachment or for returning the goods subject to a reservation of title, unless reimbursed by third parties.
8. We are entitled to take back the goods subject to a reservation of title and, for that purpose, access Purchaser's business, as applicable, if Purchaser is in default of payment or fails to honor a bill of exchange when due. The same applies if it becomes apparent after conclusion of the contract that our payment claims under this or other contracts entered into with Purchaser are at risk due to the latter's lacking ability to perform. Taking back the goods subject to a reservation of title shall not constitute a rescission from the contract. The provisions of the German Insolvency Code (*Insolvenzordnung*) shall remain unaffected.

9. Where the invoice value of the existing collateral securities exceeds the secured claims including ancillary claims (interest, costs, and the like) by more than 50 percent in the aggregate, we are insofar obliged to release collateral securities of our choice upon Purchaser's request.

VI. Qualities, measurements and weights

1. Grades and measurements shall be determined in accordance with the standards agreed, absent such agreement in accordance with the standards applicable upon conclusion of the contract, absent such standards in accordance with the standards in conformity with trade practice. References to standards, such as DIN/EN or its elements, such as materials specification sheets, test certificates or test standards as well as information referring to grades, qualities, measurements, weights and usability do not constitute representations or guarantees any more than declarations of conformity, manufacturer's declarations and the respective labels, such as CE and GS.

2. As far as the weights are concerned, the weighing performed by us or our upstream supplier is relevant. We are entitled to determine the weight without weighing in accordance with the standards (theoretical/rated weight) plus 2.5% (trade weight). We may also determine the weights theoretically, without weighing, on the basis of the length and/or the surface area of the products, and in doing so, we may establish the measurements in accordance with acknowledged statistical methods. Where goods are calculated on the basis of weight, the numbers of units, bundles and the like as indicated in the dispatch notice are non-binding. Unless individual weighing is customary, the weight shall be determined on the basis of the overall weight of the consignment. Any deviation as compared to the calculational individual weights shall be distributed to them proportionately.

VII. Acceptance

1. If an acceptance is agreed, it may only take place at the delivering plant and / or our warehouse immediately upon notification of the readiness for acceptance. The personal acceptance costs shall be borne by Purchaser, the factual acceptance costs shall be invoiced to Purchaser in accordance with our price list or the price list of the delivering plant.

2. If acceptance does not take place at all or in time without Purchaser being entitled to a right to refuse acceptance, we are entitled to dispatch the goods without their acceptance or store them at Purchaser's expense and risk. If the acceptance refers to any performance under a contract for work and services, it shall be deemed given three days following the declaration of readiness for acceptance. If the commissioning takes place prior to the declaration of readiness for acceptance or prior to the expiration of the three-day's period, the acceptance shall be deemed given upon commissioning.

VIII. Dispatch, passing of risk, packaging, partial delivery

1. We shall determine the route and means of dispatch as well as the shipping company and the carrier.

2. If, without our fault, the transportation on the intended route or to the intended destination within the intended period of time has become impossible or considerably more difficult, we are entitled to deliver via an alternative route or to an alternative destination; any additional costs incurred in this context shall be borne by Purchaser. Purchaser shall be given the opportunity to comment beforehand.

3. On transfer of the goods to a shipping company or a carrier, however, no later than when the goods leave the warehouse or the delivering plant, the risk, including the risk of a seizure of the goods, shall pass to Purchaser in all transactions, including prepaid and free deliveries. We shall only take out insurance on instruction and at the expense of Purchaser. Any unloading obligations and expenses shall be borne by Purchaser.

4. The goods shall be delivered unpacked and without protection against corrosion. Where this is customary trade practice, we deliver packed goods. We shall see to packaging, protective and / or transportation aids on the basis of our experience, at Purchaser's expense. These items shall be taken back in our warehouse. We shall not assume expenses incurred by Purchaser for returning the packaging or for disposing it on its own.

5. We are entitled to make partial delivery to a reasonable extent. We are entitled to reasonably exceed and fall below the delivery quantities agreed. Indicating an "approximate" quantity entitles us to exceed or fall below by, and a corresponding calculation of, up to 10 percent.

6. We are entitled to request the voucher confirming receipt of the goods with the consignee in electronic form.

IX. Call-off orders

1. Where call-off orders have been placed, goods notified as ready for dispatch are to be called off without undue delay; otherwise, we are entitled to either dispatch them at Purchaser's expense and risk after sending a reminder or store and invoice them immediately, at our own discretion.

2. In cases of contracts for continuous delivery, we shall be notified about call-offs and the division into the different types of grades for roughly equal monthly quantities; otherwise, we are entitled to make the determinations ourselves, at our equitable discretion.

3. If, in the aggregate, the individual call-offs exceed the contractually agreed quantity, we are entitled, however, not obliged, to deliver the excess quantity. We may invoice the excess quantity at the prices applicable at the time of its call-off and / or delivery.

X. Liability for defects in quality

1. Defects in quality in the goods shall be notified in writing without undue delay, however, no later than seven days as from surrender. Defects in quality that could not be detected within that period of time despite most careful testing shall – with an immediate stop to any reworking and processing, as applicable – be notified in writing immediately once detected, however, no later than before the expiry of the agreed or statutory statute of limitation. Where the goods have already been resold, processed or redesigned, Purchaser shall only be entitled to reduce the purchase price.

2. After Purchaser has carried out the agreed acceptance of the goods, any complaint in respect of defects in quality that were detectable in the agreed mode of acceptance shall be excluded.

3. In case of a justified notice of defects given in good time, we may elect to either remove the defect or deliver an item that is free from defects (remedial action). Where the remedial action fails or is refused, Purchaser can reduce the purchase price or repudiate the contract after granting, and fruitless expiry of, a reasonable grace period. If the defect is not material, it shall only be entitled to reduce the purchase price.

4. All rights arising from the defect in quality shall lapse if Purchaser fails to immediately provide us with the opportunity to assure ourselves of the defect in quality; this applies in particular where Purchaser fails to immediately provide us with the rejected goods or samples thereof upon request.

5. Where goods are sold as downgraded material – e.g. so-called class IIa materials – Purchaser shall not have any rights in respect of defects in quality in relation to the reasons for the downgrading indicated and in respect of those defects in quality that it would normally have to expect. Where IIa materials are sold, our liability for defects in quality shall be excluded.

6. We shall assume expenses in connection with any remedial action only where such expenses are reasonable in the individual case, in particular in proportion to the purchase price of the goods, in no case, however, in excess of 150% of the value of the goods. Costs relating to the installation and removal of the defect item as well as costs incurred by Purchaser for removing the defect on its own without the statutory requirements having been met for such measure shall be excluded. We shall not assume expenses incurred as a result of the fact that the goods sold are shipped to a location other than Purchaser's seat or branch, unless this corresponds to their contractual use.

7. Purchaser's rights of recourse pursuant to section 478 BGB shall remain unaffected.

8. We shall not warrant the suitability or fitness of the goods for an intended purpose, unless otherwise expressly laid down in writing; in all other respects, the risk of use and usage lies exclusively with Purchaser.

XI. General limitation of liability

1. We shall only be liable for breaches of contractual and extra-contractual duties, in particular for impossibility [of performance], default, culpa in contrahendo scenarios and in tort – also with respect to our officers, employees and vicarious agents – in cases of intent and gross negligence, however, limited to the damage typical for that type of contract as foreseeable at the time of conclusion of the contract.

2. These limitations shall neither apply in cases of culpable violation of material contractual duties where the achievement of the purpose of the contract is at risk, nor in cases of mandatory liability under the German Product Liability Act (*Produkthaftungsgesetz*), nor in cases of damage resulting from injury to life, limb or health nor if and to the extent that we have concealed defects of the item in bad faith or have warranted their absence. The standards as regards the burden of proof shall remain unaffected hereof.

3. Unless otherwise agreed, any contractual claims Purchaser has against us due to or in connection with the delivery of the goods shall become statute-barred one year as from the surrender of the goods, unless such claims are based on the compensation for an injury to body and health or a foreseeable damage typical for that type of contract or on intent or gross negligence on the part of Purchaser. Our liability arising from intentional and grossly negligent breaches of duty as well as the limitation of actions for statutory recourse claims shall remain unaffected hereof. Where remedial action is taken, the limitation period does not begin to run again.

XII. Place of delivery, venue and governing law

1. In case of delivery ex works, the place of delivery for our deliveries shall be the delivering plant, in all other cases, our warehouse. At our choice, the place of venue shall either be our headquarters or Purchaser's registered seat.

2. In addition to these terms, German non-unified substantive law shall govern all legal relationships between us and Purchaser. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall not apply.

XIII. Miscellaneous

1. If a purchaser resident outside the Federal Republic of Germany (foreign buyer) or its representative collects goods or if such purchaser or representative ships or dispatches them abroad, such purchaser shall provide us with the proof of exportation necessary for tax purposes. If the purchaser fails to provide such proof, it shall be liable to pay the value added tax applicable within the Federal Republic of Germany on the invoice amount.

2. In cases of deliveries from the Federal Republic of Germany to another EU member state, Purchaser shall provide us with its VAT ID number under which it handles the acquisition taxation within the EU, prior to delivery. Otherwise, it shall be liable to pay the value added tax amount we owe under statutory law in addition to the agreed purchase price. For each tax-exempt intra-Community delivery from the Federal Republic of Germany to another EU member state, the purchaser of the goods is obliged to provide us with a proof of the actual entry of the goods [of the intra-Community supply into another EU member state] pursuant to sections 17a and 17c of the Community Value Added Tax Implementing Regulation (Entry Certificate). Such proof shall be furnished on a form provided by us. If the purchaser fails to provide such proof, it shall be liable to pay the value added tax that is applicable within the Federal Republic of Germany on the current (net) invoice amount.

3. If any provision of these General Terms of Delivery and Payment is or becomes invalid, this shall not affect the validity of the remaining provisions.

*) This includes in particular, but is not limited to: (Last update: May 2018)
thyssenkrupp Steel Europe AG
thyssenkrupp Materials Services GmbH
thyssenkrupp Materials Processing Europe GmbH
thyssenkrupp Schulte GmbH
thyssenkrupp Materials Trading UK Ltd.
thyssenkrupp Materials Trading Asia Pte. Ltd.