

General Terms and Conditions of Sale and Delivery of thyssenkrupp Materials Trading North America

1. The accompanying Sales Confirmation and these Terms (collectively, this "Contract") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The terms and conditions of the Sales Confirmation shall prevail to the extent they are inconsistent with these Terms. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. No claimed change, termination or waiver of any of these Terms shall be valid unless agreed to in writing by both parties.
2. Seller warrants that all goods conform to the specifications contained herein. To the extent Seller's supplier provides a separate express warranty covering the goods ("Supplier Warranty"), Buyer shall be solely responsible to assert such Supplier Warranty directly against Seller's supplier. IN SUCH EVENT, BUYER ACKNOWLEDGES AND AGREES THAT, TO THE EXTENT ALLOWED BY LAW, BUYER'S SOLE RECOURSE AND REMEDY WITH RESPECT TO SUCH SUPPLIER WARRANTY WILL BE AGAINST SELLER'S SUPPLIER DIRECTLY, AND NOT AGAINST SELLER. The provisions of paragraphs 9 and 10, below, shall not apply to Buyer's efforts to enforce a Supplier Warranty. Seller agrees to cooperate with Buyer in connection therewith. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED.
3. Except as otherwise provided herein, Seller shall not be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges and all such charges shall be for the account of and be paid by Buyer. If such charges are included in the price, any increases in rates becoming effective after the date hereof shall be for the account of Buyer.
4. Except as otherwise provided herein, all import permits, licenses and other government authorizations and the payment of all United States import duties and customs fees shall be the sole responsibility of Buyer. If Seller has agreed to pay import duty, Buyer shall nevertheless be responsible for procuring all necessary import permits and licenses. Any increase in import duties, whether resulting from an increase in the Tariff Schedules of the United States in effect on the date hereof or from an increase in the value of the goods if duty is assessed on an ad valorem basis, shall be charged to Buyer; in the event of a decrease therein, such decrease will be credited to Buyer. Any import taxes or similar levies, however denominated, which may be imposed after the date hereof shall be borne by Buyer. Seller reserves the right to cancel or renegotiate the Contract if an antidumping and/or countervailing duty petition is filed with the United States International Trade Commission and/or the United States Department of Commerce against the goods.
5. All state and local sales, use and other taxes (including any increases therein effective subsequent to the date hereof) which Seller may be required to pay or collect with respect to the goods covered by this order shall be for the account of Buyer, except as otherwise required by law. If Buyer's order is exempt from sales tax, it is Buyer's obligation to furnish appropriate confirming information including, without limitation, sales tax exemption numbers. Failure to provide such information prior to invoicing by Seller will result in the inclusion of appropriate sales taxes in addition to the purchase order price.
6. Seller shall not be responsible for any delay in delivery due to causes beyond the control of Seller or Seller's supplier(s), including but not limited to, acts of God, war, mobilization, civil commotion, riots, embargoes, domestic or foreign governmental regulations or orders, fires, floods, accidents, machinery breakdowns, quarantine, strikes, lockouts or other labor difficulties, shortages of or inability to obtain shipping space or transportation, or inability to obtain timely delivery from Seller's supplier(s). In the event of delay in delivery due to any such causes, the time of delivery shall be extended automatically for a period of 45 days and Buyer shall extend all appropriate Letter of Credit for 45 days. If delivery is not made within such extended 45-day period, the contract shall be terminated upon notice of either party and without liability of either party to the other, except for payment of any monies then due to Seller from Buyer; provided, however, that in no event may Buyer cancel this order for delays in delivery due to force majeure after goods have left point of shipment.
7. Seller reserves the right to select the means of transportation and routing. If, without fault of Seller, the vessel unloads the goods at a place other than the agreed place of destination, Seller shall not be liable therefore and the place of destination within the terms of the contract shall be the place at which the goods are unloaded by the vessel. Seller shall advise Buyer of any such deviations within a reasonable time and cooperate with Buyer in shipping the goods to the original place of destination.
8. Quality and quantity shall be final at load. Buyer shall have the right and be given the opportunity to inspect and test the goods at point and time of loading. Buyer's failure to inspect or test the goods at that time shall preclude rejection of the goods if the basis for such rejection reasonably would have been disclosed by such inspection or testing. Buyer's inspector shall be deemed Buyer's agent with authority to waive test and inspection procedures.
9. All claimed damage, nonconformities to contract specifications or defects (which are or reasonably should be discovered) and all claimed shortages in deliveries shall be recorded on dock delivery receipt(s) prior to removal of goods by Buyer or inland bill(s) of lading and/or truck receipt(s) on goods delivered to Buyer's premises by Seller, such bill(s) of lading and/or receipt(s) being hereinafter referred to as "documentary support". All claims for damage, nonconformities to contract specifications, defects or shortages in deliveries shall be made promptly after such damage, nonconformities, defects or shortages are or reasonably should have been discovered, provided that in no event may any claim be made more than 30 days after the goods are made available to Buyer. All claims of whatever nature shall be made in writing sent by Buyer to Seller by registered or certified mail, shall state with particularity the nature of the claim and shall be accompanied by documentary support. Failure to furnish such documentary support shall constitute an absolute bar to any claim. Full facilities shall be offered Seller and its insurer for inspection and investigation of all claims.
10. In the event that a timely and bona fide claim is made in accordance with the terms hereof, Seller shall have the right at its sole discretion to either: (i) replace the goods, (ii) credit or refund the price of such goods at the pro rata contract price, or (iii) give to Buyer an allowance (e.g. in the form of an agreed upon discount price or some other agreed allowance). Seller shall have no further liability with respect to the goods for their use. Buyer agrees that the remedies set forth in this section 10 are Buyer's exclusive remedies for the delivery of nonconforming goods, breach of warranty or any other breach of these Terms or causes of action. In no event shall Seller's liability, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total of the amounts paid to Seller for the goods sold hereunder. Seller shall under no circumstances be liable for lost profits, injury to goodwill or any other special, incidental, consequential, punitive or exemplary damages. Buyer's obligation to accept and pay for the balance of the goods delivered or to be delivered under the contract shall not be affected by any claim and in no event shall Buyer have the right to cancel the Contract or reject sound coils, bundles, packages, or other shipping units on the basis of a prior non-conforming installment.
11. Seller shall not be liable for normal variations in tolerance, weights, dimensions, straightness, composition, mechanical properties and quantities, except as otherwise specified herein, Buyer agrees surface and/or atmospheric rust is normal unless otherwise specified herein.
12. Except as otherwise provided, insurance on C.I.F. sales shall be on F.P.A. terms.
13. Unless otherwise expressly stated, Seller shall have the right to make delivery in installments. All installments shall be separately invoiced and paid as billed without regard to subsequent deliveries and no offset shall be allowed against payment due for such installment. Failure to pay for any installment when due shall excuse Seller from making further deliveries under this or any other contract. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining installments. Delivery dates are approximate and are based on information from Seller's supplier(s).
14. Interest will be charged on all past due balances at Seller's prevailing rates, not in excess of rates permitted by law.
15. Buyer hereby represents that it is solvent and Buyer's signing of any delivery receipt (however denominated) furnished by Buyer to the delivering carrier shall constitute a further representation of solvency at the time of signing such receipt. Seller shall have the right to withhold delivery of any portion of the goods covered by this contract, or any other contract between Seller and Buyer, in the event Buyer fails to make payment when due under any contract between Buyer and Seller or in the event of Buyer's insolvency. Said action on the part of Seller shall not release Buyer from its obligation to accept and pay for such remaining portion of the goods if and when shipped by Seller. If at any time there is any adverse change in the financial condition or structure of Buyer or if Buyer becomes insolvent, makes an assignment for the benefit of creditors, or a petition in bankruptcy with respect to Buyer is filed, or if any lien, arising from judicial process or otherwise, is placed upon any material asset of Buyer, then Seller shall have the right to cancel the contract without liability on its part or to change the credit terms of the contract, including but not limited to requiring the payment of cash in advance of delivery. Seller's remedies specified herein are cumulative and Seller shall have any and all other remedies provided by law. Buyer grants Seller a purchase money security interest in all goods delivered until payment in full is received and agrees to cooperate in the preparation, signing and filing of any documents necessary to substantiate or perfect Seller's security interest.
16. In the event of Buyer's failure to fulfill any of its obligations hereunder, Buyer shall reimburse Seller for all costs and expenses incurred by Seller in enforcing its rights and in recovering any and all resulting damages, including, but not limited to, reasonable attorney's fees, costs and expenses of arbitration, litigation, collection, and enforcement of any arbitration award or judgment.
17. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration held in the State of Michigan in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof. No cause of action of any kind arising under the contract may be asserted more than one (1) year after the date on which such cause of action arises. All matters arising out of or relating to this Contract shall be governed by and construed according to the laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Michigan. Buyer irrevocably submits to the exclusive jurisdiction of the courts of the State of Michigan.
18. The invalidity or unenforceability of any provision of this Contract or portion thereof shall not render invalid the remainder of this Contract or the remainder of such provision.
19. Buyer shall not assign any of its rights or delegate any of its obligations under this Contract without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Contract. This Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.