

## GENERAL TERMS AND CONDITIONS OF SALE

### 1. General Provisions

1.1 Seller shall not be bound by any agreements and in particular any variations of these General Terms and Conditions of Sale unless confirmed by Seller in writing.

1.2 All present and future orders placed with Seller as well as proposals, advice and other secondary services shall be governed exclusively by these General terms and Conditions. Buyer's terms and conditions of purchase shall not be binding on Seller and shall not form part of the contract even if Seller does not object against them after having received such conditions.

1.3 Seller's employees or agents are not authorised to make any representations concerning any goods unless confirmed by the Seller in writing. Any information made available in connection with any offer for the supply of goods, including photographs, drawings, data about the extent of the delivery, appearance, performance, dimensions, weight, consumption of operating materials, operating costs, is not binding unless expressly designated as binding by the Seller in writing. In entering into the contract the Buyer acknowledges that it does not rely on and waives any claim based on any such representations or information not so confirmed.

### 2. Contract Price, Terms of Payment, Security

2.1 The Contract price shall be as stated in the order confirmation. If any duties, consular fees, freight charges, insurance premiums and other charges included in the contract price are increased after the contract is entered into, any such increase shall be charged additionally to Buyer; the same applies to any similar charges which may be introduced after the date the contract is entered into.

2.2 If no other specific terms have been agreed in writing between the Buyer and the Seller, the following terms shall apply:

2.2.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the goods unless the goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the goods are ready for collection or (as the case may be) the Seller has tendered delivery of the goods.

2.2.2 The Buyer shall pay the price for the goods within 14 days of the invoice date.

2.3 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the goods in case of:

(a) any increase in the cost to the Seller (such as without limitation any foreign exchange fluctuation currency regulation alteration of duties significant increase in the costs of labour materials or other costs of manufacture);

(b) any change in delivery/performance dates quantities or specifications for the goods which is requested by the Buyer; or

(c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

2.4 Unless otherwise agreed in writing between the Buyer and the Seller, all prices for goods are given by the Seller on an ex works basis.

2.5 The price is exclusive of any applicable goods and services tax, value added tax or similar tax which the Buyer shall be additionally liable to pay to the Seller. The Seller shall be

entitled to receive the price net of all bank charges, taxes and similar expenses.

2.6 The Buyer shall meet the cost of any special packaging of the goods which it may request or which may be necessitated by delivery by any means other than the Seller's normal means of delivery. The Buyer shall unless otherwise agreed be solely responsible for the disposal of all packaging in accordance with all regulations whether statutory or otherwise relating to protection of the environment.

2.7 All payments to be made by Buyer to Seller shall be made without set-off, counter claim or condition.

2.8 If expressly agreed by Seller it may accept payment by discountable and duly stamped bills of exchange. If bills of exchange or cheques are accepted, Buyer's obligations shall only be discharged upon the bills or the cheques being honoured in full. Discount charges and any costs incurred in connection with the payment of bills of exchange and/or cheques shall be borne by Buyer.

2.9 If payment is delayed for any reason then without prejudice to any of Seller's other rights under the contract, interest will be charged at a rate of 4 per cent above the current discount rate applicable for bills in the contractual currency and quoted by Deutsche Bank, Singapore Branch. In addition Seller shall be entitled to claims for additional damages, in particular additional expenses in connection with financing transactions, fluctuations of exchange rates and covers of risk in foreign exchange.

2.10 Without prejudice to sub-clause 2.4 above, in case of any delay in payment or if in Seller's reasonable opinion, Buyer's ability or willingness to make payment is or is likely to be impaired for whatever reason, Seller shall be entitled to claim immediate settlement of all debts irrespective of the maturity dates of any bills of exchange. Seller shall in that event also be entitled to require pre-payment or security for all outstanding deliveries or cancel the contract or suspend any further deliveries of the goods.

2.11 Seller shall be entitled to offset all claims, which Seller has against Buyer, against those, which Buyer has against Seller.

### 3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms.

3.3 The quantity quality and description of and any specification for the goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller) or as otherwise set out in any contractual documentation.

3.4 The Seller reserves the right to make any changes in the specification of the goods which are required to conform with any applicable statutory or regulatory requirements or where the goods are to be supplied to the Seller's specification which do not materially affect their quality or performance.

3.5 No concluded contract may be modified or cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all

labour and materials used) damages charges and expenses incurred by the Seller as a result of the modification or cancellation, as the case may be.

#### 4. Documents, Grades, Dimensions and Weights

4.1 Any documents relating to the goods delivered by Seller, in particular any drawings shall remain Seller's property and shall be used only for the purpose of the contract. Such documents shall be returned upon Seller's request.

4.2 Grade and size shall be determined pursuant to the DIN Standards or, as the case may be, the material data sheet. Insofar as no DIN Standards or data sheet exist, the respective Euro Standards shall apply and in their absence any relevant commercial practice shall apply.

4.3 The weight recorded by Seller or Seller's supplier shall be conclusive as shown by the weight certificate. Weights may be determined without weighing according to DIN or according to the scales customary in the trade. Any indications relating to numbers of pieces and/or bundles etc. shall be of no relevance in case the goods have been invoiced according to their weight. Unless weighing per piece is customary, the total weight of the consignment shall be relevant. Bundles are weighed out gross for net.

#### 5. Packing

Except as otherwise agreed upon the goods shall be delivered unpacked and without protect against corrosion. Any packing agreed upon shall be invoiced to and paid by Buyer. Alternatively Seller may at its option request that the packing material be returned to Seller at Buyer's cost and that payment for its use be made by Buyer to Seller.

#### 6. Inspection

6.1 If an inspection has been agreed upon, it shall be carried out at the supplying works or at Seller's warehouse, at the latest upon Seller's notification that the goods are ready for inspection. All costs arising in connection with the inspection (whether Seller's own costs or those charged to Seller by third parties) shall be borne by Buyer.

6.2 If, through no fault of Seller, the inspection of the goods is not carried out in time or is incomplete, Seller shall thereupon be entitled to dispatch the goods without being further inspected or to store them at Buyer's expense and risk.

#### 7. Passing of Risk, Shipment

7.1 Risk shall pass to Buyer on the earlier of the goods being delivered to the forwarding agent or the Carrier, or upon leaving the supplying works or Seller's warehouse.

7.2 Trade terms used in the contract shall be interpreted in accordance with Incoterms 2010.

7.3 The means and routes of transport shall be at Seller's discretion; Seller shall be entitled to nominate the forwarding agent and the carrier.

7.4 Goods notified as being ready for dispatch must be called for immediately, failing which Seller shall be entitled to store them at its discretion and at Buyer's expense and risk and to invoice them as if delivered ex works.

7.5 Seller shall be entitled to effect part deliveries. Deliveries of larger or smaller quantities shall be permitted to the extent they are common in the trade. Where the goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these General Terms and Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the contract as a whole as repudiated.

#### 8. Performance and Time Delivery, Delays

8.1 Unless otherwise agreed, delivery of the goods shall be made by the Buyer collecting the goods at the Seller's

premises at any time after the Seller has notified the Buyer that the goods are ready for collection. If the parties agree on some other mode of delivery per Incoterms, the Seller's delivery obligations shall be determined according to the applicable Incoterm. Save for obligations according to the applicable Incoterm or obligations expressly undertaken by the Seller in writing, the Seller shall have no other obligations, in particular obligations which it might otherwise have according to the provisions of the Sale of Goods Act (Cap. 393). The Seller may, if the Buyer so requests, and at Buyer's cost, assist Buyer to arrange for transportation or insurance of the goods, but if the Seller does so, it shall accept no liability whatsoever, nor shall such action in any way affect the Seller's contractual delivery obligations as aforesaid.

8.2 The Seller has the right at any time to sub-contract all or any of its obligations for the sale of the goods to any other party as it may from time to time decide without giving notice of the same to the Buyer.

8.3 Any dates quoted for delivery of the goods are approximate only. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer. Unless previously agreed by the Seller in writing, the time for delivery/performance shall not be of the essence, and the Seller shall not be liable for any delay in delivery or performance howsoever caused. Where time of performance has been agreed by the Seller to be of the essence of the contract, and the Seller fails to comply with its obligations in due time, the Buyer shall be entitled to compensation for actual loss and expense sustained as a result of the Seller's delay in performance, which was foreseeable at the time of conclusion of the contract and resulting from the usual course of events, subject always to the limitations set out in clause 11.

8.4 Without prejudice to sub-clause 9.1 Seller's obligation to deliver shall be subject to timely and correct delivery of the goods by Seller's suppliers unless delay or incorrect delivery by Seller's suppliers is due to Seller's fault.

8.5 The stipulated time of delivery shall only apply on condition that all details of the contract have been clarified in time and Buyer has fulfilled in a timely manner all of its obligations, e.g. to submit all the necessary permits, licences or other official documents or to open a Letter of Credit or to effect a down payment. The time of delivery relates to the date of dispatch from the supplying works or Seller's warehouse. The time of delivery shall be deemed complied with upon Seller notifying Buyer that the goods are ready for dispatch if Seller for reasons beyond its control is unable to dispatch the goods in due time.

8.6 Seller shall be under no liability to Buyer should Seller be prevented from fulfilling its obligations under the contract by unforeseen events affecting Seller or its suppliers and which notwithstanding all care reasonably possible in the circumstances of the case Seller was not able to avert, e.g. (but without prejudice to the foregoing) war, acts of State, riots, acts of God, accidents, operational disturbances and delays in the delivery of essential utilities or materials. In particular the time of delivery shall be extended by the duration of the impeding occurrences (with the addition of a reasonable starting period). Strikes and lock-outs shall in any case be considered such events within the meaning of this clause. If, by reason of any such event, delivery becomes impossible, illegal, indefinitely postponed or cannot reasonably be required of Seller, Seller shall be entitled to cancel the contract; Buyer shall have the same right if acceptance cannot reasonably be required because of the delay.

8.7 If Seller is in default of its obligations to deliver, Buyer shall have the right to cancel the contract provided it has given written notice to Seller to rectify the default within a reasonable period of time thereafter and Seller, at the expiration of such extended period, is still in default of its obligations.

8.8 Seller's and Buyer's right of cancellation under sub-clauses 8.6 and 8.7 apply only to the unexecuted part of the contract.

8.9 All further rights in respect of delays in delivery, in particular any claims for damages, shall be excluded subject to clause 11.

9. Defect in the Goods, Delivery of Products other than those ordered

Subject to clause 11 Seller shall not be liable for defects in the goods including lack of warranted qualities except in accordance with the following provisions:

9.1 Defects in the goods must be notified immediately to Seller. If an inspection of the goods has been carried out by Buyer, any claim in respect of defects which were detectable on inspection in the stipulated form shall be excluded.

9.2 Seller shall, at its discretion, either repair or replace defective goods. If Seller fails to effect such repair or replacement within a reasonable period of time, Buyer shall be entitled to cancel the respective part of the contract or to require a reduction in price.

9.3 With goods which are sold as lower grade material – for example so called IIA material – no warranties shall be granted to Buyer with reference to the declared faults and those normally to be expected with such material.

9.4 All claims for defects shall become statute-barred 6 months after delivery of the goods but at the latest 8 months after notification of readiness for despatch.

9.5 Seller's warranty applicable to the original goods shall also apply to the repair or replacement; any claims for defects shall become statute-barred 6 months after completion of repair or replacement.

9.6 Notwithstanding that goods supplied under the contract do not conform to the description thereunder or that goods of a different type altogether have been supplied, the above provisions shall apply to the supply of such goods.

10. Retention of Title

10.1 The goods shall remain Seller's property until all Seller's claims against Buyer under the contract have been satisfied. Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the goods as the Seller's fiduciary agent and bailee and shall keep the goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property but shall be entitled to resell or use the goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and in the case of tangible proceeds properly stored protected and insured. If the Buyer has not received the proceeds of any such sale it will if called upon to do so by the Seller assign to the Seller within seven (7) days all rights against the person or persons by whom the proceeds are owed.

10.2 Until such time as the property in the goods passes to the Buyer (and provided the goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the goods are stored and repossess the goods.

10.3 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Seller but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

10.4 Where the goods have been incorporated by the Buyer into any product or article in such a way that the substance and identity of the goods have been irrevocably altered or destroyed, then property in such new product(s) or article(s) shall immediately upon its or their creation vest wholly in the Seller, and the provisions of the preceding sub-clause shall apply mutadis mutandis to such products or articles as if they were goods remaining the property of the Seller; provided that this sub-clause shall not apply if the Seller has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due. For the avoidance of doubt, it is hereby declared that the provisions of the preceding sub-clauses shall continue to apply to goods which have been incorporated by the Buyer into any product or article in such a way that the substance and identity of the goods have not been irrevocably altered or destroyed.

10.5 The Buyer shall indemnify the Seller against all loss damages costs expenses and legal fees incurred by the Seller in connection with the assertion and enforcement of the Seller's rights under this clause.

10.6 Should the retention of title clause in this clause 10 be invalid under the law of the country in which the goods are situated, such protection for Seller as in that country corresponds to the above retention of title clause shall be deemed to have been agreed upon. Buyer shall take all measures necessary for such protection for Seller to come into effect and/or to be maintained.

10.7 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 Buyer's future claims resulting from the re-sale of the goods delivered by Seller), Buyer shall upon Seller's request implement such clause.

11. Limitation of Liability

11.1 The Seller shall accept liability to the Buyer for death or injury resulting from its own or that of its employees' negligence. Save as aforesaid, the Seller's liability under or in connection with the contract shall be subject to the limitations set out in this clause 11. Seller's liability shall be limited exclusively to the express conditions contained in these General Terms and Conditions of Sale. Any other rights not expressly acknowledged therein such as but not limited to rights of cancellation, termination, restitution or price reduction and any claims for damages however arising, particularly due to tort, breach of contract, impossibility of performance and culpa in contrahendo shall be excluded.

11.2 The Seller shall be under no liability whatsoever where this arises from a reason beyond its reasonable control when a force majeure event occurs (including but not limited to an act of God, explosion, natural disasters, war, civil disturbance or unrest or from an act or default of the Buyer).

11.3 In no event shall the Seller be liable for loss of profit or goodwill, loss of production or revenue or any type of special indirect or consequential loss whatsoever (including loss or damage suffered by the Buyer as a result of an action brought by a third party) even if such loss were reasonably foreseeable or the Seller had been advised of the possibility of the Buyer incurring the same.

11.4 Where time of performance has been agreed by the Seller to be of the essence of the contract, and the Seller fails to comply with its obligations in due time, so that the Buyer becomes entitled to compensation in accordance with clause 8.3, the Seller's liability shall be limited to an amount of 0.5% for each full week of delay, in total to a maximum cumulative amount of 5%, of the value of the delayed goods.

11.5 If the Buyer becomes entitled to compensation arising out of the Seller's non delivery of goods, the Seller's liability shall be limited in total to the value of the undelivered goods.

11.6 The remedies set out in these Terms and Conditions are the Buyer's sole and exclusive remedies for non-conformity of or defects in the goods and the Seller's liability for the same shall be limited in the manner specified in this clause.

11.7 Without prejudice to the sub-limits of liability applicable under this clause or elsewhere in these conditions, the Seller's maximum and cumulative total liability (including any liability for acts and omissions of its employees agents and sub-contractors) in respect of any and all claims for defective performance, breach of contract, compensation, indemnity, tort, misrepresentation, negligence at law or equity and any other damages or losses which may arise in connection with its performance or non-performance under the contract, shall not exceed the total purchase price of the products to be delivered under the contract.

11.8 If a number of events give rise substantially to the same loss they shall be regarded as giving rise to only one claim under these conditions.

11.9 No action shall be brought by the Seller later than 12 months after the date it became aware of the circumstances giving rise to a claim or the date when it ought reasonably to have become aware, and in any event, no later than 12 months after the end of the warranty period.

This exclusion of liability shall not apply in case of

- willfull misconduct;
- gross negligence on the part of statutory representatives or senior executives;
- claims under any Products Liability Law

## 12. Termination

12.1 On or at any time after the occurrence of any of the events in clause 12.2, the Seller may stop any goods in transit, suspend further deliveries to the Buyer and/or terminate the contract with the Buyer with immediate effect by written notice to the Buyer

12.2 The events are:-

- (i) the Buyer being in breach of an obligation under the Contract;
- (ii) the Buyer passing a resolution for its winding up or a court of competent jurisdiction making an order for the Buyer's winding up or dissolution;
- (iii) the making of an administration order in relation to the Buyer or the appointment of a receiver over or an encumbrancer taking possession of or selling any of the Buyer's assets;
- (iv) the Buyer making an arrangement or composition with its creditors generally or applying to a Court of competent jurisdiction for protection from its creditors.

## 13. General

Each of the provisions of the contract is severable and distinct from the others so that if any provisions of the contract are held to be invalid, void, illegal or unenforceable under any applicable law or by any order of any court of competent jurisdiction, the remaining provisions shall not be impaired or affected by such illegality or invalidity or unenforceability and shall continue to bind Buyer and Seller.

No person who is not a party to this Contract (including any employee officer agent representative or sub-contractor of either party) shall have any right under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any terms of this Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties, which agreement must refer to this condition.

## 14. Place of Jurisdiction, Applicable Law

14.1 The place of jurisdiction and the forum for all disputes including those with regard to bills of exchange and/or cheques shall be Singapore. Seller may however also sue Buyer in Buyer's own jurisdiction as Seller elects.

14.2 The contract and the legal relations between Seller and Buyer shall be governed exclusively by the laws of the Republic of Singapore.

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any Contract for the sale of Goods.

thyssenkrupp Materials Trading Asia Pte. Ltd.

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