

General Terms and Conditions of Purchase

I. Application

1. These General Terms and Conditions of Purchase apply to all present and future orders of goods and services and their performance. Any conflicting or diverging conditions of the Seller shall be deemed void, unless these General Terms and Conditions of Purchase or the contract concluded with the Seller contain a provision to the contrary. Taking delivery of the goods without an express objection must not be construed as our recognition of Seller's terms and conditions.
2. Any oral agreements made by our employees shall not be valid unless confirmed by us in writing.
3. Quotations shall be prepared free of charge and shall not be binding for us.
4. Commercial clauses shall be interpreted pursuant to the prevailing version of the Incoterms.

II. Prices

1. Agreed prices are fixed prices free point of destination.
2. The price quotation „free point of destination“ and other quotations „delivered free“ include freight and packing costs. Packing will only be paid, if a separate remuneration has been expressly agreed. In such a case, 2/3 of the packing costs shall be credited if the packing is returned to the place of dispatch carriage paid.

III. Payment

1. Invoices shall be submitted in fivefold under separate cover, i.e. not together with the consignment, immediately after the delivery or service has been performed or rendered. Invoices for monthly deliveries or services shall be issued until the 3. working day of the following month, at the latest. Partial invoices shall be marked as such. Unless otherwise agreed, invoices are payable either within 30 days less 2 % discount or by the end of the month following the delivery or service in a mode of payment of our choice. This includes discountable promissory notes or customer's bills of exchange. For payments by promissory notes or customer's bills of exchange we will refund reasonable discounting charges on the basis of the applicable basic interest rate, calculated according to the amount valid on the day the bill is presented.
2. Any invoices not received in due time will not be paid until the end of the month following receipt of the invoice, on the same terms and without interest, less any additional costs we have incurred as a result of the delayed invoice receipt, in particular costs for bank guarantees provided by us.
3. Payment and discount periods shall start as of the date of invoice receipt, however, not before the receipt of the goods or the acceptance of services, and not until any documentation, test certificates (e.g. mill certificates) or similar documents pertaining to the contractual performance have been presented to us in accordance with the contract.
4. Payments will be made by cheque or bank transfer. Payment shall be deemed to have been effected in due time if the cheque has been posted or the transfer been ordered with the bank on the due day.
5. Interest for late payment cannot be claimed unless we are in default. We shall only be deemed in default after receipt of a reminder. Default interest shall be 5%-points above the basic interest rate. In any event, we shall be entitled to furnish proof that the damage caused by our default is below the claim asserted by the Seller.
6. We shall be entitled to any rights of set-off and retention as provided by law.
7. 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 receivables due to the Seller from us against all receivables due to us or to any of these group members from Seller, irrespective of their legal basis. 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 not later than the date at which our liabilities fall due for payment and will be invoiced at value date.

IV. Delivery Dates/Delay in Delivery/Passing of Risk

1. The agreed delivery dates shall be strictly observed. Part deliveries shall only be permissible with our written consent. Any imminent delays in delivery shall be advised forthwith in writing by proposing suitable counter-measures to avert possible consequences. Surplus or short deliveries shall only be allowed as customary in trade.
2. Unless otherwise agreed in writing, the delivery time commences on the day of the legally binding order.
3. All shipping documents, operating instructions and other certificates forming part of Seller's obligations shall be dispatched to us on the day of shipment. Should any payment security expire due to Seller's delay in delivery including delayed transmittal of the said documents, we will effect payment only on receipt of our customer's payment.
4. In the event of Seller's default with the performance of his obligations we shall be entitled to all rights and remedies provided by law. In particular, we shall be entitled to claim damages in lieu of performance after the futile expiration of a reasonable grace period stipulated by us. Our right to claim performance of the contract will not be excluded until the Seller has paid the damages in full.
5. Without prejudice to the aforesaid, in the case of a delay in delivery through Seller's fault; Seller shall pay us as liquidated damages an amount of 0.5% of the purchase price for each week of delay or part thereof, up to the maximum amount of 5%, unless otherwise agreed. If we nominate a vessel for the shipment of the material and this vessel is accepted by the Seller, the latter shall, without prejudice to the aforesaid, bear all charges for demurrage, dead freight etc., if the material - for whatever reason - is not shipped or is not shipped at the scheduled time.
6. Any premature delivery made without our consent does not affect the term of payment contingent upon the scheduled date of delivery.
7. If in cases of force majeure, strike or lockout the fulfilment of our contractual obligations becomes impossible or is considerably impeded, we are entitled to rescind the agreement in whole or in part or to demand that the agreement may be performed at a later date, without giving rise to any claims of the Seller against us.

8. The Seller may only plead the absence of required documents to be furnished by us if he has not received same even after a written reminder.
9. The Seller shall bear the risk of accidental loss and deterioration until the goods are handed over at the place of destination; this includes deliveries on the basis „delivered free“ and „free place of destination“.

V. Reservation of Title

1. In respect of Seller's rights to a reservation of ownership, Seller's conditions will be applicable provided that title to the goods shall pass to us upon payment of the item in question. Consequently, any current account retention („Kontokorrentvorbehalt“) and extended reservation of title shall be void.
2. In view of the reservation of title, Seller may only claim return of the goods, if he has rescinded the contract.

VI. Declaration on Origin

The following shall be applicable to those cases where Seller submits declarations on the origin of the goods sold:

1. The Seller undertakes to allow the verification of any documentary evidence of origin by customs authorities, and to provide any information and/or confirmation that might be required.
2. The Seller undertakes to indemnify us for any loss caused by a non-recognition of the indicated origin by the responsible authorities as a result of an incorrect certificate or missing possibilities for verification, unless these consequences are beyond his responsibility.

VII. Liability for Defects

1. The Seller shall provide the goods and services free from any defects and free from title, lien or other rights of third parties.
2. The Seller waives the right of objection for delayed notice of defects (§377 German Commercial Code).
3. In case of defective goods or services we shall at our discretion be entitled to all rights and remedies provided by law. The expenses incurred for the purpose of a subsequent performance also include the expenses of our customer. Any repaired or replaced goods shall be subject to a new warranty period.
4. If any claims for warranty are lodged against us after a resale to third parties, Seller shall hold us free and harmless from any damage caused thereby. In addition, Seller undertakes to treat any warranty claim lodged against us by our customer as a claim lodged against the Seller himself.
5. The limitation period for our complaints shall commence upon delivery of the goods or acceptance of the service. Seller's liability for defects out of or in connection with the delivery of goods will generally end two years after delivery of the goods. Claims caused by or in connection with the delivery of goods which are customarily used for building purposes will become time-barred five years after delivery. As for the rest, the limitation periods provided by law shall be applicable.
6. On account of performance of his contractual obligations, Seller hereby assigns to us any and all rights and claims against his sub-suppliers, to which he is entitled by reason of or in connection with the delivery/ performance of defective goods or services. He will hand over to us all documents required to assert any such claims.

VIII. Place of Performance, Jurisdiction and Applicable Law, Miscellaneous

1. Unless otherwise agreed, the place of performance for deliveries shall be our workshop.
2. The place of jurisdiction shall be at the location of our head office. We shall also be entitled to take legal proceedings against the Seller at his place of jurisdiction or at the place of jurisdiction of our registered branch office which has concluded the contract with the Seller.
3. The legal relations between our company and the Seller are governed exclusively by the German substantive law applicable to the legal relations between domestic parties, excluding foreign law. The provisions of the UN-Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
4. The Seller shall at his own expense and without any delay make sure that all documents required for the effectiveness of the order, e.g. export approvals, are on hand and remain valid during the time of the order execution. If Seller fails to fulfil this obligation, we shall be entitled to rescind the contract, if need be, and in any case to claim damages from the Seller. The same shall apply to those cases, where, for example, despite Seller's efforts the required approvals are not granted within a period reasonable for us or are withdrawn or become invalid during the execution of the contract.
5. In the event that any provision of these General Terms and Conditions of Purchase is or will become invalid, the validity of other provisions shall not be affected thereby.
6. These General Terms and Conditions of Purchase also apply mutatis mutandis to other types of contracts, in particular to contracts for work and services and contracts for work and materials.

*) This includes in particular:
ThyssenKrupp Steel AG, Duisburg
ThyssenKrupp Services AG, Düsseldorf
ThyssenKrupp Stahlkontor GmbH, Düsseldorf
ThyssenKrupp Schulte GmbH, Düsseldorf
ThyssenKrupp GfT Bautechnik GmbH, Essen

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