

# General Purchasing Terms & Conditions of ThyssenKrupp MetalServ GmbH

## (I) Applicability

- (1) These General Purchasing Terms & Conditions shall apply to all present and future purchase orders for goods or services and their execution. Any Seller's terms and conditions in derogation hereof will not be accepted by us unless these General Terms & Conditions or the contract with the Seller specify otherwise. If we take delivery of the goods without expressly objecting to, this shall not be construed to be an acceptance of any such Seller's terms and conditions.
- (2) Any oral agreements made by or with our employees will not bind us unless and until confirmed by us in writing.
- (3) Quotes/offers shall be prepared free of charge to us and not bind us.
- (4) Commercial clauses shall be interpreted pursuant to the INCOTERMS as amended from time to time.

## (II) Prices

- (1) Agreed prices shall be fixed prices free point of destination. Goods shall be invoiced excluding packaging.
- (2) Prices quoted "free point of destination," "free place of destination" or other "delivered free" clauses shall include freight and packaging. Packaging will not be paid unless expressly agreed upon. In such cases, 2/3 of the invoiced packaging costs shall be credited if the packaging is returned freight prepaid to the place of dispatch.

## (III) Payment

- (1) Invoices shall be submitted in quintuplicate by separate mail (i.e., not included with the consignment) promptly after delivery of the goods or provision of the services. Invoices for goods or services provided monthly shall be issued by the 3rd workday of the succeeding month. Partial invoices shall be marked as such. Unless otherwise agreed, invoices will be paid in a form at our discretion (including by discountable promissory note or customer's bills of exchange), within 30 days less 2% cash discount or by the end of the month succeeding the provision of the goods/service. If paying by promissory note or customer's bill of exchange we will refund reasonable discounting charges at the applicable base rate, calculated as from the date of the note's physical delivery.
- (2) Invoices received late will throughout be paid by the end of the month succeeding invoice receipt, on unchanged terms and without any interest refund, deducting any additional costs for late invoice receipt (in particular the costs for bank guarantees we may have furnished).
- (3) Payment or cash discount periods will commence with the date of invoice receipt, however, not before the receipt of the goods or the acceptance of services, and not until any contractually agreed documentation, test certificates (e.g. mill certificates) or similar documents have been delivered to us.
- (4) Payment will be made by bank check or remittance/transfer. Payment shall be deemed timely and duly made if the check has been mailed or the remittance/transfer order have been handed out to the bank at the due date.
- (5) No interest may be claimed for payment after the due date unless we are in default. Default interest shall be 5 percentage points above the base rate of the European Central Bank, Frankfurt am Main, Germany. However, we have the right to prove that the loss caused by our default is smaller than claimed by the Seller.
- (6) We are entitled to offsets/retaining liens within the statutory scope.
- (7) Since we have been authorized accordingly by the companies belonging to our group (Art. 18 German Stock Corporation Act-"AktG")\*, we are entitled to offset any accounts whatsoever receivable by us or by these group members against all accounts due to the Seller. This shall also apply if one side has agreed upon cash payment and the other on payment by bill of exchange or other arrangements on account of performance. Where applicable, these agreements shall apply only to the balance. If the receivables fall due for payment on different dates, our receivables shall be due by no later than the date at which our liability falls due for payment and will be invoiced as of such date.
- (8) The Seller shall not assign his receivables or collect his receivables by a third party without our prior written consent which shall not be withheld unreasonably. In case the Seller assigns his receivables to a third party contrary to sentence 1, the assignment is valid. However, we are entitled to pay either to the Seller or to the third party with the effect of discharging us from our obligation.

## (IV) Delivery dates/delayed delivery/passing of risk

- (1) The agreed delivery dates shall be strictly observed. Part shipments will be subject to our written consent. Any impending delays in delivery shall be promptly communicated in writing to us, proposing suitable counteractions to avert repercussions of the delay. Excess or short shipments will only be permitted as customary in trade.
- (2) Unless otherwise agreed in writing, the delivery time commences with the date of the legally binding purchase order.
- (3) All shipping documents, operating instructions and other certificates forming part of the Seller's obligations shall be sent to us at the shipment date. If delayed delivery by the Seller (including late transmittal of the aforesaid documents) causes any payment collateral to expire, we will not pay until payment has been received from our customer.
- (4) Any default by the Seller on the performance of his obligations shall entitle us to all legal rights and remedies. In particular, we shall be entitled to claim damages in lieu of performance after the futile expiration of a reasonable extension granted by us. Our right to claim performance of the contract shall not expire until after the Seller has paid the damages in full.
- (5) Without prejudice to the aforesaid, in the case of any delay in delivery for reasons attributable to the Seller, the Seller shall pay us a penalty equivalent to 0.5% of the purchase price for each week of delay or fraction thereof, up to the aggregate maximum of 5%, unless otherwise agreed. If we name, and the Seller accepts, a specific vessel for the shipment of the goods, the Seller shall, notwithstanding the aforesaid, bear all charges for demurrage, dead freight, etc., if the goods are for whatever reason shipped not at all or late.

- (6) Any early delivery made without our consent will not affect the term of payment, which hinges on the scheduled date of delivery.
- (7) If in cases of force majeure, strike or lockout, performance of our contractual obligations is frustrated or materially impeded, we may cancel the contract wholly or in part or demand that the contract be performed at a later date, without entitling the Seller to any claims against us.
- (8) The Seller may only claim the non-receipt of any documents we are obligated to furnish if he has not received them even after a written reminder.
- (9) The Seller shall bear the risk of accidental loss and deterioration until the goods are physically delivered at the place of destination; this includes shipments "delivered free" and "free place of destination."

## (V) Reservation of title and ownership

- (1) In respect of the Seller's right to retain title and ownership, the Seller's terms and conditions shall apply provided that title to the goods passes to us when such goods have been fully paid for. Any extended reservation of title (pending payment of all debt balances outstanding under the business relationship with the Seller) shall not apply.
- (2) On the basis of the reservation of title and ownership, Seller may not claim return of the goods unless the Seller has rescinded the contract.

## (VI) Certificates of origin

- The following shall apply in cases where Seller makes any statements on the origin of the goods sold:
- (1) The Seller agrees to (i) permit any documentary evidence of origin to be verified by the customs authorities and (ii) provide all information and/or confirmations or endorsements that may be required.
  - (2) The Seller will be obligated to indemnify us for any loss caused by a certificate of origin declared inappropriate or non-verifiable by the local authorities, unless any such consequential loss is beyond the Seller's control.

## (VII) Liability for defects

- (1) The Seller shall provide the goods or services free and clear of any defects and third-party rights, interests or liens.
- (2) The Seller is obligated to deliver only such goods and materials that are free of any indication of ionising radiation. The Seller is obligated to compensate all costs and damages resulting from a breach of this obligation.
- (3) The Seller waives and disclaims the defense of delayed notification of defect under the terms of Art. 377 German Commercial Code ("HGB").
- (4) If the goods or services are defective, we are entitled to the legal rights and remedies at our discretion. The expenses incurred for the purpose of subsequent performance (by repair or replacement) shall also be deemed to include any expenses of our customer. For any repaired or replaced goods, the warranty period shall recommence to run.
- (5) If any warranty claims are asserted against us after resale to a third party, the Seller shall indemnify and hold us harmless for and against any resultant loss or damage. In addition, the Seller agrees to treat any such warranty claim asserted against us by our customer as a claim directly asserted against the Seller himself.
- (6) The limitation period for our warranty claims shall commence with the date of delivery of the goods or acceptance of the services. The Seller's warranty and liability for defects from or in connection with the delivery of goods will expire two years after physical delivery of the goods. Claims arising from or in connection with the delivery of goods which are typically used for building purposes will become statute-barred five years after their physical delivery. In all other cases, the statutory periods shall apply.
- (7) On account of performance of his contractual obligations, the Seller hereby assigns to us any and all rights and interests he may claim against his pre-suppliers in connection with the provision of defective goods or services. The Seller shall duly furnish us with all documents required by us to assert any such claims.

## (VIII) Place of performance and jurisdiction, applicable law, etc.

- (1) Unless otherwise agreed, place of performance for deliveries shall be our plant.
- (2) Place of jurisdiction shall be the location of our head office. We will also have the right to bring an action against the Seller before the Seller's local court of law or the court of competent jurisdiction over our officially registered branch with which the contract had been made.
- (3) All legal relations between us and the Seller shall be subject to, and only to, the law governing legal relations of German parties inter se as prevailing at our registered office, expressly excluding any non-German legislation. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- (4) The Seller, at his own cost and expense and without undue delay, shall ensure that all documents required for the effectiveness of the contract or order, e.g. export permits, licenses, approvals, etc. are available and remain valid while the order or contract is in progress. Failure by the Seller to meet this obligation shall entitle the Buyer to cancel or rescind the contract and claim damages from the Seller. The same shall apply if e.g. despite the Seller's efforts the required documents are (i) not granted within a period reasonably acceptable to the Buyer or (ii) withdrawn or become invalid while the order or contract is in progress.
- (5) Should any provision of these General Purchasing Terms & Conditions be or become ineffective or invalid, the effectiveness and validity of the remaining provisions shall not be affected thereby.
- (6) These General Purchasing Terms & Conditions shall apply mutatis mutandis to any hybrid contract forms, too (e.g. work performance contracts, contracts for work, combined contract of sale and work, etc.).

\* These include in particular:  
ThyssenKrupp Steel Europe AG, Duisburg  
ThyssenKrupp Materials International GmbH, Düsseldorf  
ThyssenKrupp Plastics GmbH, Düsseldorf  
ThyssenKrupp Schulte GmbH, Düsseldorf  
ThyssenKrupp Stahlkontor GmbH, Düsseldorf

ThyssenKrupp Mannex GmbH, Düsseldorf  
ThyssenKrupp Nirosta, Düsseldorf  
Freiburger Stahlhandel GmbH, Freiburg  
Hövelmann & Co. Eisengroßhandlung GmbH, Gelsenkirchen  
Otto Wolff Handelsgesellschaft mbH, Düsseldorf  
Jacob Bek GmbH, Ulm