



## GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT

### I. Applicability / Offers

1. These General Terms and Conditions apply to all present and future contracts entered into with companies, public law entities or public law entities with special public funds in respect of deliveries and other services including specific-task contracts. The Customer's purchasing conditions shall be deemed void notwithstanding the fact that we have not expressly refused to be bound by them upon receipt.
2. Our offers are subject to change without notice. Any oral agreements, promises, commitments or guarantees made by our employees in connection with the contract shall not be binding upon us unless confirmed by us in writing.
3. In the case of any doubt, the commercial clauses shall be interpreted pursuant to the prevailing version of the Incoterms.
4. All specifications such as dimensions, weights, illustrations, descriptions, assembly/installation sketches and drawings contained in sample books, price lists and other printed matter have been determined to the best of our ability but are approximate only and therefore not binding on us. Binding are dimensions contained in drawings approved by both parties and mutually agreed in the individual case. All models and drawings shall remain our property.
5. For the purposes of these terms and conditions, the "Buyer" shall also be the "Orderer" in the case of specific-task contracts.

### II. Prices

1. Prices are quoted ex works or warehouse plus freight and value added tax.
2. In the absence of anything to the contrary, the prices and terms set out in our price list prevailing on the date on which the contract is entered into shall apply.
3. In the event of any change to taxes, duties or other external costs forming a component of the agreed prices later than four weeks after the contract is entered into, we shall be entitled to adjust the prices accordingly.
4. With respect to goods whose delivery is still pending, we reserve the right to increase the agreed price in the event of any circumstances arising as a result of a change in the supply of raw materials or the general state of the economy making production and/or procurement of the products in question materially more expensive than was assumed on the date on which the prices were agreed upon. In such case, the Customer may cancel the orders concerned within one week of being informed of the price increase.

### III. Payment and offsetting

1. In the absence of anything to the contrary herein or in our invoices, the purchase price shall be due net immediately upon delivery and shall be paid such that we are able to draw on the proceeds on the day on which payment is due. The Customer shall bear all payment costs. The Customer may only retain or offset payment if his counterclaims are undisputed or have been upheld in a court of law.



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 all cases in which a letter of credit is opened, the Customer undertakes to modify the terms of the letter of credit accordingly.
3. If the Customer fails to pay the invoice amount by the due date or is in default of payment, we shall charge interest at a rate of 8 percentage points above the base rate unless higher interest rates have been agreed upon. This shall not operate to restrict any other remedies available on account of the Customer's default.
4. The Customer shall be deemed to be in default of payment if he fails to pay within 10 days of the invoice / payment list falling due and being received or of the goods or service being received.
5. Pursuant to the letter of attorney granted to us by the companies belonging to our Group (§ 18 of the AktG (German Stock Corporation Act)<sup>\*)</sup>, we are authorized to offset all receivables to which the Customer is for any reason entitled vis-à-vis ourselves or any of these Group members. This shall also apply if one side has agreed upon cash payment and the other payment by bill of exchange or other arrangements as fulfillment of the contractual obligations. 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 on which our liability falls due for payment and is invoiced with full effect on payments.
6. If it becomes evident after the contract has been entered into it that our entitlement to payment is jeopardized on account of the Customer's inability to perform, we shall be entitled to exercise the rights under § 321 of the BGB/German Civil Code (defense of uncertainty). In such case we shall also be entitled to demand immediate payment of all amounts under the current business relations with the Customer not barred by the passage of time. Moreover, the defense of uncertainty shall apply to all other outstanding deliveries and performances under the business relations with the Customer.
7. If any cash discount has been agreed upon, this shall always only apply to the invoice value excluding freight and may only be taken if the Customer has discharged in full all liabilities due for payment as of the date on which he seeks to take the cash discount.

#### IV. Execution of deliveries, delivery dates and periods

1. We shall only be bound by our obligation to deliver provided that our own suppliers provide us with the requisite goods correctly and on time, except in cases in which incorrect or delayed delivery on the part of our suppliers is due to reasons for which we are responsible.

<sup>\*)</sup> These include in particular :

ThyssenKrupp Stahl AG, Duisburg  
ThyssenKrupp Materials AG, Düsseldorf  
ThyssenKrupp Stahlunion GmbH, Düsseldorf  
Thyssen Mannesmann Handel GmbH, Düsseldorf

Krupp Thyssen Nirosta GmbH, Krefeld  
Krupp Thyssen Nirosta Export GmbH, Düsseldorf  
Thyssen Griff GmbH, Düsseldorf  
Otto Wolff Handelsgesellschaft mbH, Düsseldorf



2. All delivery dates and periods shall be approximate only. Delivery periods shall commence on the date on which we confirm the order and shall apply only provided that all details relating to the order have been clarified and the Customer has complied with all his duties, e.g. the provision of all official permits, letters of credit and guarantees or the remittance of advance payments.
3. The date on which the goods are dispatched from the factory or warehouse shall be decisive for determining compliance with delivery dates or periods. In the event of any delay in shipment for reasons for which we are not responsible, they shall be deemed to have been complied with upon notification that the goods are available for dispatch.
4. In the event of any events beyond our control, we may delay delivery for the duration of such event plus a reasonable start-up time. This shall also apply if such events occur during prior default. Events beyond our control shall also be deemed to include monetary, trade and other government measures, strikes, lockouts, any disruptions to our production operations for reasons beyond our control (e.g. fire, breakage of machinery or rollers, non-availability of raw materials or energy), transportation obstructions, delays in import/customs clearance as well as all other circumstances for which we are not responsible materially impairing delivery or rendering it impossible. In this respect, it shall be of no consequence whether the effects of such circumstances are sustained by us or one of our factories or suppliers. If as a result of any of the aforementioned events either party can no longer be reasonably expected to execute the contract and, in particular, if performance of material parts of the contract is delayed by more than six months, such party may rescind the contract.

## V. Reserved ownership rights

1. All goods supplied shall remain our property (“goods subject to reserved ownership rights”) pending the discharge of all receivables, particularly balances arising under the business relations (“reserved rights with respect to balance”) and the receivables established by the insolvency administrator on a unilateral basis as part of choice of fulfillment. This shall also apply to future and contingent receivables, e.g. under acceptances, and also in cases in which payment is to be applied to specific receivables. These reserved rights with respect to the balance shall expire once and for all upon full discharge of all receivables still open on the date of payment and covered by these reserved rights.
2. The goods subject to our reserved ownership rights shall be processed on our behalf as the producer as defined in § 950 of the BGB/German Civil Code without imposing on us any obligations whatsoever. The processed goods shall be subject to our reserved ownership rights as defined in Paragraph 1 of this Article. If the Customer processes, mixes or blends the goods subject to our ownership rights with third-party goods, we shall have prorated ownership rights to the resultant goods commensurate with the invoice value of the goods subject to our ownership rights proportionate to the invoice value of the third-party goods used. If our ownership rights expire as a result of blending or mixing, the Customer shall here and now grant us the ownership rights accruing to him in the new object or goods to an extent equaling the invoice value of the goods subject to our ownership rights and store these for us free of any charge. Our co-ownership rights shall be deemed to be goods subject to our reserved ownership rights pursuant to Paragraph 1 above.



3. The Buyer may only sell the goods subject to our reserved ownership rights during his normal business operations subject to his normal terms and conditions of business provided that he is not in default and the receivables arising from the resale of the goods subject to our reserved ownership rights are transferred to us pursuant to Paragraphs 4 - 6. He shall not be permitted to perform any other activities on the goods subject to our reserved ownership rights.
4. The Customer hereby assigns to us all receivables arising from the resale of the goods subject to our reserved ownership rights together with all collateral acquired by the Customer to back up the receivables. Such receivables shall serve as collateral to the same extent as the goods subject to our reserved ownership rights. If the Customer resells the goods subject to our reserved ownership rights together with other, third-party goods, the receivable arising from such resale shall be assigned to us on a prorated basis commensurate with the invoice value of the goods subject to our reserved ownership rights proportionate to the invoice value of the third-party goods sold. If goods in which we hold co-ownership rights pursuant to Paragraph 2 are sold, a part commensurate with our co-ownership rights shall be assigned to us. If the Customer uses the goods subject to our reserved ownership rights to perform a specific-task contract, the receivable under such contract shall be assigned in advance to us to the same extent.
5. The Customer shall be authorized to collect receivables from the resale of the goods subject to our reserved ownership rights. Such authorization shall lapse upon being revoked by us, however no later than upon the Customer defaulting on payment, failing to honor a bill of exchange or instituting insolvency proceedings. We shall only utilize our right of revocation if after the contract has been signed it becomes evident that our entitlement to claim payment from the Customer under this or any other contract with him is threatened on account of his inability to perform. At our request, the Customer shall immediately notify his customers of the assignment of his receivables to us and furnish us with the documents required to collect payment.
6. The Customer may not assign any receivables from the resale of the goods subject to our reserved ownership rights unless this entails genuine factoring, we are notified of such factoring transaction and the proceeds of the factoring transaction exceed the value of our secured receivable. Our receivable shall be due for immediate payment upon the proceeds from the factoring transaction being credited.
7. The Customer shall notify us immediately of any seizure or other impairment by third parties and shall bear all costs arising from averting such intervention or returning the goods subject to our retained ownership rights unless such costs are reimbursed by third parties.
8. If the Customer is in default of payment or fails to honor a bill of exchange when it is presented for payment, we may claim back the goods subject to our reserved ownership rights and, if necessary, enter the Customer's premises for this purpose. This shall also apply if after the contract has been signed it becomes evident that our entitlement to claim payment from the Customer under this or any other contract with him is threatened on account of his inability to perform. This shall not operate to rescind the contract. Insolvency regulations shall not be affected.
9. If the invoice value of the existing collateral exceeds the secured receivables including ancillary receivables (interests, costs etc.) by a total of more than 50%, we shall return collateral of our choice at the Customer's request.



## VI. Qualities, dimensions and weights

1. Qualities and dimensions shall be determined pursuant to the DIN/EN standards or materials specifications sheets in force on the date on which the contract is entered into or, in the absence of these, in accordance with standard practice. References to standards, factory standards, materials specifications sheets or examination certificates as well as qualities, dimensions, weights and suitability for certain uses shall not be deemed to constitute guarantees, declarations of conformity, producer declarations or corresponding designations such as CE and GS.
2. The weights stated shall be based on measurements taken by us or our supplier. The quantities stated in the delivery note shall not be binding in the case of goods charged by weight. The total weight of the consignment shall apply except in cases in which it is usual for individual goods to be weighed. Any discrepancies in the notional individual weights shall be spread on a proportionate basis.

## VII. Acceptance inspections

1. In cases in which it has been agreed that the goods are to be subject to an acceptance inspection, such acceptance inspection may only be conducted at our factory or warehouse immediately after notification that the goods are ready for such acceptance inspection has been received. The Customer shall bear the personal and technical acceptance inspection costs.
2. If the acceptance inspection is not performed punctually or either partially or fully for reasons for which we are not responsible, we may dispatch the goods without prior acceptance inspection or store them at the Customer's expense and risk and issue a corresponding invoice.

## VIII. Dispatch, transfer of risk, packaging, part deliveries

1. We shall determine the method and route of dispatch as well as the forwarder and carrier.
2. If, for reasons for which we are not responsible, transportation of the goods on the planned route or to the planned destination in the planned period of time is rendered impossible or is materially impaired, we may deliver the goods via a different route or to a different destination, it being understood that the Customer shall bear any additional costs in this connection. The Customer shall be given a prior opportunity to make any comments.
3. Risk, including the risk of the goods being seized, shall pass to the Customer for all transactions including carriage-free or carriage-paid transactions upon the goods being made available to the forwarder or carrier, however, no later than upon their leaving the warehouse or factory. We shall only arrange for insurance to be effected if instructed to do so by the Customer. The discharge obligation and costs shall be borne by the Customer.
4. The goods will be packed in accordance with normal trade customs. We shall arrange packaging, protection and/or transportation facilities at the Customer's expense on the basis of our experience. These shall be taken back at our warehouse. We shall not assume the cost incurred by the Customer of returning or disposing of the packaging.



5. We shall be entitled to effect reasonable part deliveries. Surpluses or shortfalls over the contracted quantity shall be permissible in keeping with standard industry practice.

#### **IX. Call-off orders**

1. In the case of call-off orders, goods which have been declared as being available for dispatch must be called off immediately, failing which we shall – subject to sending the Customer a written warning – be entitled to dispatch them at the Customer's expense and risk or, at our discretion, store them in our warehouse and immediately invoice them.
2. In the case of orders entailing continuous delivery, we are to be notified of call-offs and quantities of types for roughly identical monthly quantities, failing which we may determine this using our own discretion.
3. If the individual call-off orders exceed the total amount contracted, we shall be entitled but not obliged to supply the excess quantity. We may invoice the excess quantity at the prices prevailing on the date of call-off or delivery.

#### **X. Liability for material faults**

1. Any material faults in the goods shall be reported in writing immediately, however no less than seven days after delivery. Material faults which cannot be detected within this period notwithstanding extremely careful examination shall be reported in writing immediately after being discovered, however no later than before the commencement of the contractual or statutory time bar – with all processing to be ceased forthwith.
2. In the event that a prior acceptance inspection of the goods has been agreed upon, the Customer shall not have any right of recourse with respect to any material faults exhibited by the goods which could have been detected during the contractual examination.
3. If the complaint is justified and is lodged within the requisite period, we may at our discretion either remedy the fault or supply fault-free replacements (subsequent performance). In the event that subsequent performance fails or is rejected, the Customer may reduce the purchase price or – if we fail to successfully remedy the goods within a deadline set by the Customer – rescind the contract. The Customer may only reduce the purchase price in the case of a minor fault.
4. The Customer shall relinquish all rights with respect to the fault if he does not immediately give us an opportunity to verify the fault and, in particular, fails to furnish the goods or samples immediately after being asked to do so.
5. If the goods are sold as lower-grade material – e.g. so-called Ila material – the Customer shall not have any rights with respect to material faults if these are due to the reasons for which the material was degraded and he could reasonably be expected to encounter such fault. We shall not be liable for material faults in the case of Ila material
6. We shall bear the costs of subsequent performance only up to a reasonable amount in individual cases particularly in the light of the purchase price of the goods. We shall not assume any costs arising as a result of the fact that the goods sold have been



transported to a location other than the Customer's domicile except in cases in which this is normal practice.

7. This shall not have any effect on the Customer's right of recourse pursuant to § 478 of the BGB (German Commercial Code).

#### **XI. General restrictions of liability**

1. We shall only be liable for the breach of contractual and non-contractual obligations, particularly impossibility, default, precontractual fault and tort, including on the part of our management staff and other servants, in the event of willful misconduct and gross negligence, it being understood that such liability shall be confined to the typical loss or damage which could have reasonably been foreseen on the date on which the contract was entered into.
2. These restrictions shall not apply in the case of a culpable breach of any material contractual obligations jeopardizing the achievement of the purpose of the contract, cases of mandatory liability pursuant to the German Product Liability Act (Produkthaftungsgesetz), injury to persons or cases in which and to the extent that we fraudulently conceal the existence of any faults or guarantee their absence. This shall not have any effect on the rules governing the onus of proof.
3. In the absence of any agreement to the contrary, contractual claims held by the Customer against us as a result of or in connection with the delivery of the goods shall be time-barred one year after delivery of the goods. This period shall also apply to goods customarily used for construction purposes and causing faults. This shall have no effect on our liability for willful misconduct and gross negligence or the expiry of statutory rights of recourse. The period of limitation shall not restart in the case of subsequent performance.

#### **XII. Place of fulfillment, legal venue, applicable law**

1. The place of fulfillment for our deliveries shall be the factory in the case of delivery ex works or our warehouse in all other cases. Any disputes shall at our discretion be referred to the courts of law responsible for the city in which our main office is located or in which the Customer is domiciled.
2. All legal relations between the Customer and us shall be subject to non-unified German substantive law in addition to these Terms and Conditions. The provisions of the Convention for the International Sale of Goods (CISG) of April 11, 1980 shall be excluded.

#### **XIII. Miscellaneous**

1. If the Customer is domiciled outside the Federal Republic of Germany (foreign customer) and he or his agent collects goods, or transports or dispatches them to a foreign location, the Customer shall be required to furnish us with the export papers required for tax purposes. Failing this, the Customer shall be liable to pay the value added tax on the invoice amount applicable to transactions inside Germany.



2. In the event of deliveries from Germany to another member country of the EU, the Customer shall notify us of his VAT identification number under which his income is taxed within the EU. Failing this, he shall be required to pay the VAT amount stipulated by law.
3. When deliveries from the Federal Republic of Germany to another member country of the EU are invoiced, the VAT arrangements of the recipient member country shall apply if the Customer is registered in another EU member country for VAT purposes or we are registered for VAT purposes in the recipient member country.