

General Terms and Conditions of Sale

Translation: The original German version has priority

A) General Terms

I. Conclusion of Contract

1. Our supplies and services are provided exclusively on the basis of the following terms and conditions. Purchaser's terms and conditions of purchase are hereby rejected.
2. The goods representing the subject-matter of the contract are restricted to such from our own production, unless otherwise agreed upon.
3. Our offers are not binding.
4. Offers made by the Purchaser are deemed to have been accepted by us only if we make an express declaration to that effect. Silence in response to such an offer does not constitute acceptance. The same also applies to commercial letters of confirmation sent in electronic form, unless the electronic form has been agreed as the mutual form of communications in the business relation and transmission is made to the address expressly defined for the acceptance of such declarations.
5. Our declarations concerning the conclusion, modification or termination of contracts must be made in writing, however, unless otherwise agreed with the Purchaser, no qualified electronic signature is necessary.

II. Terms and conditions of payment

1. Payment shall be due not later than the 15th day of the month following the month of delivery ex works or ex stock.
2. If it has been agreed that the Purchaser shall release the goods for shipment within a certain period of time after our notification of readiness for shipment (release order), we are entitled to invoice the goods from the date of readiness for shipment; in this event, the selling price is payable 30 days after the date of invoice. We reserve the rights stipulated in Part A Section II Clause 5.
3. Payment shall be made without deducting of cash discount and securing that the amount is available to us on due date. Purchaser is entitled to offset only against claims which are either undisputed or have become res judicata; Purchaser shall only be entitled to rights of retention insofar as they are based on one and the same contract.
4. In case of late payments, interest in the amount of 9 % points above the prevailing base lending rate shall be charged.
5. If our claim for payment became a risk due to circumstances appearing subsequent to the conclusion of Contract which may be held as a significant deterioration of Purchaser's economic situation we are entitled to demand and receive immediate payment.
6. In case of a situation as under Clause 5 above as well as under Part A Section IV Clause 8 we are entitled to revoke Purchaser's authorisation to collect payments (Part A Section IV Clause 7) from his customers and we are furthermore entitled to demand and receive advance payments for outstanding supplies.
7. Purchaser can avoid the consequences referred to under Clause 5 and Part A Section IV Clause 8 by furnishing collateral in the amount of our payment claim at risk. If, in the cases of Clause 5 or Part A Section IV Clause 8, the Purchaser fails to make advance payment or furnish securities within a reasonable period of time, we are entitled to exercise the right of rescission to the exclusion of all claims for compensation on the part of the Purchaser.
8. The statutory provisions on default in payment shall remain unaffected.

III. Collateral's

We are entitled to demand and obtain collateral's which are customary in the business in nature and amount, even if our claims are conditional or limited in time.

IV. Retention of title

1. All goods delivered shall remain our property (goods in which title is retained) until all accounts receivable from Purchaser are settled. This shall also apply to future and conditional claims. We are entitled to assign our pecuniary claims against the Purchaser.
2. Machining and processing of the goods in which title is retained shall take place on our behalf as our being the manufacturer in the meaning of § 950 BGB (Civil Code), without any obligation on our part deriving therefrom. The machined and processed goods shall be deemed to be goods in which title is retained in the meaning of para.1.
3. If the goods in which title is retained are processed, combined and mixed with other goods by Purchaser, we shall have joint title to the resultant merchandise, proportionally in the amount of the invoiced value of the goods in which title is retained. If by such combining, mixing or processing our title ceased to exist, Purchaser shall hereby assign to us the proprietary/prospective rights to which Purchaser is entitled in the new products, proportionally in the amount of the invoiced value of the goods. In such case Purchaser shall keep the new products in custody for us free of costs. In proportion to our co-ownership rights the new products shall be deemed to be goods in which title is retained as defined under Clause 1.
4. Goods in which title is retained may only be resold by Purchaser in the normal course of his business at normal terms and conditions and as long as he is not in default, always provided that he shall retain title on the products sold by him and the claims from the resale shall be assigned to us as set forth in Clauses 5 and 6. Purchaser shall not be entitled to dispose in any other way of the goods in which title is retained. Use of the goods in which title is retained to perform contracts for works or contracts for works and materials shall also be deemed to constitute resale in the meaning of Part A Section IV.
5. All claims accruing to Purchaser from the resale of goods in which title is retained are hereby assigned to us. They shall serve as collateral to the same extent as the goods in which title is retained in the meaning of Clause 1.
6. If the goods in which title is retained are resold by Purchaser together with other goods, the claim from the resale shall be assigned to us proportionally in the amount of the invoiced value of the goods in which title is retained. In the case of resale of goods in which we have co-ownership rights in accordance with Clause 3 we shall be assigned a part of the claim in the amount of our proportion of co-ownership.
7. Purchaser is entitled to collect claims resulting from the resale unless we revoke this authorisation in the cases mentioned in Parts A Section II Clause 5 and Section IV Clause 8. At our request and unless we do so ourselves, Purchaser shall notify his customers immediately of the assignment to us and furnish us with the information and records required to effect collection of payment. Purchaser shall in no event be authorised to assign claims; this applies also to all kinds of factoring transactions, which are not permitted irrespective of the authorisation to collect payments.
8. In case of payment arrears we are entitled to forbid the further processing of the goods supplied, to claim restitution of the goods and, at our discretion, if required to enter the premises of Purchaser and to remove the goods.
9. In case Purchaser's property were seized or otherwise became subject to third party rights Purchaser shall inform us immediately.
10. If the value of the existing collateral's exceeds the secured accounts receivable by more than 10 % in total we shall be obliged, at Purchaser's request, to release collateral's in the appropriate value; in case of different kinds of collateral we are free which to release.

B) Execution of Delivery

I. Delivery periods, delivery dates

1. Delivery periods shall start with the date of our order confirmation, however, not before full clarification of all details of the order; the same shall apply correspondingly concerning delivery dates. All delivery periods and dates are conditional on there being no unforeseeable production stoppages and on our being supplied on time with the necessary feedstock materials and, in case of trade goods, subject to availability and timely receipt of such quantities.
2. If Purchaser is in delay with his contractual obligations - including cooperation obligations or ancillary duties - such as but not limited to opening of a letter of credit, furnishing required domestic or foreign certificates or effecting advance payments, we are entitled - irrespective of any additional statutory or contractual right based on Purchaser's default - to appropriately extend our delivery periods and dates in accordance with the requirements of our production sequences.
3. The date of despatch ex works shall be decisive for determining our compliance with delivery periods or dates.
4. In cases of force majeure, the contractual obligations of both parties are suspended and the periods and dates for the fulfilment of contractual obligations are postponed accordingly; deemed to be circumstances of force majeure are also labour disputes in our own works or third party works, transport delays (in particular transport delays and impairments regarding the pre-materials caused by low or high water level on waterways), machine failures, acts of a sovereign nature, and other circumstances for which neither of the parties are responsible. The other contractual party must be notified without delay in the event of force majeure. Both contractual parties are entitled to withdraw from the contract at the earliest six weeks after receiving this notification. The Purchaser's rights to withdrawal from the contract pursuant to Part B. Section I Clause 7. remain unaffected.
5. In consideration of the sector specific high production lead times, the Purchaser has in the event of failure to comply with delivery periods the rights under § 281 and § 323 Civil Code (BGB) only after he has granted us a reasonable extension for delivery combined with the declaration - in derogation of § 281 and § 323 BGB - that he will refuse acceptance after expiry of the extended delivery period; after expiry of the extended delivery period without delivery having been effected the right to claim performance is excluded. The specification of an additional delivery period combined with the declaration that he will refuse acceptance after expiry of that period is not required in case we seriously and definitely refuse performance.

6. In the event of default on our part, we are liable for the default damages and expenses to the extent evidenced by the Purchaser and in only in case of failure to comply with bindingly agreed delivery dates and periods; at this our liability is determined with the provisions in Part C. Irrespective of its statutory duty to mitigate damage, the Purchaser shall especially notify us without delay of any cognizable damages caused by the delivery delay. We reserve the right to propose covering purchase possibilities to the Purchaser.

7. Prior to passing of the risk, Purchaser is entitled to withdraw from the contract without advance notice in the event that the contract performance in whole finally turns out impossible to be fulfilled by us. Beyond such situation, Purchaser is also entitled to withdraw from the contract if a part of our contract obligations turn out impossible to be fulfilled by us and Purchaser has a legitimate reason to reject a partial fulfillment. If the latter is not the case Purchaser remains obligated to pay the contractual price corresponding to the partial delivery made. Impossibility in the meaning of this clause shall also include subjective impossibility. Besides Part C remains applicable.

II. Dimensions, weight and grade

Deviations from contracted dimension, weight or analysis are permitted within the range allowed by EN/DIN or customary business practice. Weight shall be established on our calibrated weighing facilities and shall be decisive for invoicing. The measurement readings forming the base of our invoices originate from the recordings of our electronic data systems. Upon request, within a term of 3 months after weighing, we grant access to the measurement record of the respective calibrated weighing facility in order to verify the compliance with the electronically recorded measurement readings. If items are not weighed individually in the ordinary course of business, the total weight of the consignment shall be used. Differences in contrast to the calculated individual weights shall be allocated proportionally. The Purchaser's right to demonstrate the falseness of our measuring method shall remain unaffected.

III. Shipment, packaging and passing of risk

1. We shall appoint the forwarder or the carrier.
2. If, for a reason for which Purchaser is responsible, take-over or despatch of the goods were delayed, we shall be entitled, at our discretion and at Purchaser's risk and expense, to put the goods into storage and to take all further measures deemed suitable to preserve the goods and we shall also be entitled in such case to invoice the goods as delivered. The same applies if goods notified ready for shipping are not called up in due course. The statutory regulations in respect of default in acceptance shall remain unaffected.
3. To the extent it is customary business practise, we will deliver the goods packed and protected against rust at the Purchaser's expense. Costs incurred by the Purchaser for a return transport or an own disposal of the packaging, protective equipment and transport aids will not be reimbursed. An express agreement is required for any packaging beyond transportation purposes or for other type of special protection, e.g. for longer-term preservation or storage.
4. The risk shall pass to Purchaser when the goods are handed over to the forwarder or carrier, latest, however, when leaving our plant or warehouse.

IV. Claims based on defects

1. The goods are in conformity with the contract if they do not or do not deviate significantly from the agreed specification at the time of passing of the risk; contract conformity and absence of defects concerning our goods are determined exclusively in accordance with the express agreements on quality and quantity of the goods ordered. Liability for a specific use or purpose or specific suitability is assumed only to the extent to which this is expressly agreed; otherwise the risk of suitability and use lies exclusively with the Purchaser. We are not liable for any deterioration or loss or improper treatment of the goods after the risk has passed.
 2. Contents of the agreed specification and any expressly agreed purpose do not constitute a guarantee; the granting of a guarantee requires a written agreement.
 3. The Purchaser has to examine goods upon receipt without delay. Claims based on defects are available only if defects are reported without delay in writing, concealed defects must be reported without delay after their discovery. After an agreed acceptance has taken place, any complaint about defects which should have been discovered in the course of the acceptance procedures is excluded.
 4. In the event of complaints about defects, the Purchaser has to give us an opportunity to examine the goods alleged to be defective without delay; at our request, the goods alleged to be defective or a sample of the same must be made available to us at our expense. In the event that complaints are unjustified, we reserve the right to charge the freight and transport costs as well as the costs of examination.
 5. In case of sales of downgraded goods - e.g. so-called II-a material - Purchaser shall have no warranty rights concerning such defects which were either indicated by us or which one would normally expect with II-a-goods.
 6. In the event of a defect we shall, at our discretion, taking into account the Purchaser's interests, restore contract conformity either by delivering conforming products or by repair. We are entitled to refuse to remedy a claim if this were only possible at disproportionate costs. Costs shall be regarded disproportionate if the direct costs to remedy the claim, including necessary expenditures, would exceed 150 % of the final invoice price (excluding VAT) of the commodity concerned. Installation and removal shall not be owed in case of delivering conforming products.
- If we fail to restore contract conformity within a reasonable period of time, the Purchaser may notify us a reasonable deadline for compliance; if the deadline expires without compliance having been effected, the Purchaser may either reduce the selling price or withdraw from the contract; further claims, e.g. for damages or reimbursement of expenses are only available subject to the provisions in Part C.
7. The warranty period for defective deliveries ends - except in the case of intent or gross negligence- one year after Purchaser's receipt of the respective product. Irrespective of the before going, the statutory warranty periods shall apply in the case of goods that were used in line with their regular purpose for building construction and that caused that buildings structural defect; repair or replacement deliveries do not cause the warranty period to begin again.
 8. The Purchaser's rights of recourse against us under § 478 Civil Code (BGB) are restricted to the statutory limitations of the claims based on defects brought by third parties against the Purchaser and always provided that the Purchaser has complied with his obligation to notify us defects without delay pursuant to § 377 Commercial Code (HGB).

C) General restriction of liability

1. Unless otherwise stipulated in these Terms and Conditions of Sale, we shall be liable to compensate incurred damages in the event of violation of contractual or non-contractual obligations, including the phase of contract negotiations, only in case of intent or gross negligence on the part of our statutory representatives or contractual agents or for being at fault for violating essential contract obligations.
2. In the event of being slightly negligently at fault for the violation of essential contract obligations, we shall be liable - except in the case of intent or gross negligence on the part of our statutory representatives or contractual agents - only for the foreseeable, contract specific typical damage.
3. For damages according to C. 2. we shall not be liable for loss of profit or loss of production.
4. The above liability restrictions shall not apply in cases of harm to life, physical injury or harm to health.
5. Claims based on personal injury or damage to privately used goods under the Product Liability Act (Produkthaftungsgesetz) remain unaffected from the above.

D) Miscellaneous

I. Export certificate

If a Purchaser domiciled outside the Federal Republic of Germany or an agent of said Purchaser collects goods and transports or despatches them abroad the Purchaser shall furnish the export certificate required under tax law. If said certificate is not furnished, Purchaser shall be obligated to pay to us the applicable German value added tax in proportion to the invoice amount.

II. Entry certificate

According to § 17a and 17c of the Value Added Tax Implementation Ordinance the Purchaser is obligated to provide us with an evidence of the actual receiving of the goods for every VAT-exempt EU delivery ex Germany to another EU member state (Entry certificate). Such evidence shall be provided on a form furnished by us. If the evidence is not provided the Purchaser shall be required to pay the value added tax as calculated on the basis of the previous (net-) invoice amount at the rate applicable to deliveries within the Federal Republic of Germany.

III. Applicable law

1. The substantive laws of the Federal Republic of Germany shall apply; non-applicable shall be the United Nations Convention on Contract for the International Sale of Goods (CISG) of 11.04.1980.
2. For the settlement of accounts for deliveries from one E.U. member state into another, E.C. Regulation 6 pertaining to value-added tax in its currently valid form shall apply, except where contrary to national law. When value-added tax is levied from us, the customer shall pay the amount of the value-added tax in addition to the agreed purchase net price.

IV. Place of performance and legal venue

Place of performance for our supply obligations shall be the location of the supplying plant or the warehouse from which we supply. The place of fulfillment for Purchaser's payment obligation as well as the place of jurisdiction for both Contract parties shall be Duisburg, Federal Republic of Germany. We are also entitled to enter into legal proceedings against Purchaser at his general legal venue.

thysenkrupp Hohenlimburg GmbH 10/2016