

General Terms and Conditions of Delivery of thyssenkrupp Materials Schweiz AG

Our goods and services are supplied exclusively on the basis of the terms and conditions set out below. Terms and conditions to the contrary are only valid if these have been expressly agreed in writing. The customer's General Terms of Business are herewith expressly excluded.

These general terms and conditions were originally drawn up in the German language. In the event of discrepancies between the German- and English-language texts, exclusively the German-language version shall apply.

A. Conclusions of contract

1. The offers from the supplier are subject to change. All details and prices remain non-binding until the definitive written or e-mail confirmation of order is issued by the supplier.
2. Counter offers and/or proposals from the customer are only deemed to have been accepted after an express declaration in writing has been issued. Equally, the absence of a response from the supplier to a letter of confirmation from the customer does not constitute acceptance.
3. Insofar as a written confirmation of order has been issued the declarations from the supplier relating to amendment or termination of contract must be in writing or confirmed by e-mail to be valid.

B. Payment terms

1. Insofar as a written contract has been concluded the purchase price is taken from the written confirmation of order. Unless expressly agreed otherwise the customer is liable for all costs associated with the delivery, such as taxes (for example sales tax; VAT), customs duties, shipment, packaging, transport and insurance costs, etc. Unforeseeable increases in such costs after the conclusion of contract shall also be borne by the customer even if the originally anticipated costs are to be met by the supplier on the basis of a special agreement.
2. As a general rule the supplier's invoices must be paid within 30 days of the invoice date, net without any deduction. Interest at 6% is payable in the event of payment arrears.

In the event of payment arrears the supplier is entitled to immediately cease deliveries arising from this or any other contract with the customer and, at its discretion, to withdraw from any contract. The supplier also has the right to demand immediate payment in advance or surety for any outstanding deliveries arising from this or another contract with the customer.

Any delay in delivery on the part of the supplier arising from this or other contracts shall not entitle the customer to refuse payment. The customer is not permitted to offset any claims arising from another contract or legal relationship with the supplier.

The supplier is entitled to unilaterally require delivery on a step by step basis in return for payment or surety, even if a period for payment has been agreed in principle.

C. Retention of title

The supplier retains ownership of the goods delivered until payment in full is received. The customer authorizes the supplier to unilaterally record the retention of title in the retention of title register. The costs for the registration are borne by the supplier.

D. Delivery; deadlines; place of performance; transfer of risk

1. **Delivery periods, dates**
 - 1.1. The place of performance for our delivery obligations is the production plant (supplier's manufacturer) or warehouse, at the supplier's discretion.
 - 1.2. Delivery periods commence no earlier than on issue of the written definitive confirmation of order by the supplier. The delivery periods do not commence in any event prior to clarification of any details of the order. All delivery periods and dates are subject to the proviso of unforeseeable disruptions to production and prompt delivery to the supplier. The supplier's proviso with respect to delivery periods applies equally to disruption of production or operations at the supplier's production plant.
 - 1.3. If the customer fails to promptly fulfill contractual obligations, in particular the obligation to provide assistance, or additional obligations such as opening of a Letter of Credit, deposit, matching payment with delivery, provision of domestic or foreign certificates or the like, delivery periods and dates will be extended accordingly. This does not affect any rights of the supplier arising from any delay on the part of the customer.
 - 1.4. The date of dispatch from the place of performance (see D. No. 1.1. above) is the deciding factor for determining adherence to delivery periods and dates.
 - 1.5. All delivery periods and dates stated in the confirmation of order/agreement are target dates. In the event of any failure to adhere to these periods and dates the customer must set an appropriate period of grace for delivery. The supplier is only deemed to be overdue with delivery if this period of grace expires without delivery being made. The supplier shall only be liable for losses arising from delay in the event of willful intent or gross negligence.

- 1.6. In cases of force majeure the supplier's contractual obligations are suspended and the dates and periods for the performance of contractual obligations postponed. Labor disputes at the supplier's own or third-party companies, transport delays, machine breakage, government decrees or other circumstances for which none of the parties is at fault are also deemed to be cases of force majeure.

The other party to the contract must be notified immediately in the event of force majeure. In such cases the earliest date on which the supplier may withdraw from the contract is six weeks after notification. The customer has no entitlement to claims for compensation whatsoever.

2. Dimensions, weight, quality

Deviations from dimensions, weight or quality are permitted in accordance with EN or DIN standards or applicable practice. Weights are determined on calibrated scales of the supplier or its producers and are the deciding factor for the purpose of billing. If goods are not normally weighed individually the total weight of the consignment applies respectively. Differences compared with the theoretical individual weights are allocated to these on a proportional basis.

3. Shipment, packaging and transfer of risk

- 3.1. The carrier or freight forwarder will be selected by the supplier.
- 3.2. In the event of a delay in the loading or transportation of the goods on grounds for which the customer is at fault, the supplier is entitled to store the goods at its discretion and at the costs and risk of the customer, to take all the measures deemed appropriate to preserve the integrity of the goods and to invoice the goods as delivered. The same applies if goods that have been notified as ready for shipment are not requested or collected within an appropriate period. This does not affect the statutory regulations relating to delay in acceptance.
- 3.3. Packaging, transport aids, etc. will not be taken back unless agreed otherwise. Packaging or other special protection for a purpose over and above that of transportation, e.g. storage or warehousing for an extended period, shall require an express agreement in writing.
- 3.4. In the event of transport damage the customer must immediately arrange for a status report from the relevant agent. The supplier and carrier must be notified immediately in writing of any transport damage.
- 3.5. The risk passes to the customer on transfer of the goods from the production plant or warehouse to the carrier or freight forwarder, no later however than when the goods leave the warehouse or production plant.

E. Commissioning of third parties for material tests / certifications

If a test with test report or certification is necessary for the goods to be delivered, the vendor may commission a suitable third party ("testing institute") to do so. The vendor shall be liable exclusively for ensuring that the third party selected in such cases is suitable for performing the testing and is properly instructed, but not for the actual testing or for correctness of the test report, etc. The vendor declares that it will assign to the purchaser any claims against the third party – insofar as this does not already apply by law – so that the purchaser can assert claims directly against the third party. Excepting the case of inadequate care being taken in the selection of the third party or inadequate instruction, the vendor shall also not be liable for any defects (in particular in accordance with Section F. below) if, on the basis of erroneous testing or an incorrect test report, the goods were presumed by the vendor to have been delivered as specified in the contract.

F. Warranty

1. The goods are deemed to be in accordance with the terms of the contract if they do not deviate, or only deviate to a minimal extent, from the agreed specification at the time of the transfer of risk. The supplier shall not be liable for a deterioration in or loss of or improper handling of the goods after the transfer of risk.

The compliance of the goods with the terms of the contract or the faulty nature of the goods are determined purely and exclusively in accordance with the express written agreements on quality and quantity – insofar as a written confirmation of order has been issued. Details in brochures or other sales documents do not form part of the contract. Liability for a specific purpose of use or specific suitability will only be accepted insofar as this has been expressly agreed in writing. Moreover, the risk of suitability and use lies solely and exclusively with the customer. The simple statement of purpose of use or application in the agreement does not represent any assurance from the supplier with regard to suitability and use.

2. The customer or consignee of the goods must examine the goods immediately on receipt. Defects must be reported immediately in writing. Hidden defects must be reported immediately on discovery. Claims arising from defects and/or claims for compensation are invalidated in the event of a delay in these being reported. In the case of joint acceptance of the goods, obvious defects that have not been reported are deemed to have been accepted.
3. In the event of a notice of defect the customer must immediately provide the supplier with the opportunity to examine the goods. This also includes the facility for taking samples of the goods forming the subject of complaint, at the supplier's costs. The right is reserved to pass on the costs of the examination to the customer if the complaints should prove unjustified.

4. In the event of a defect the supplier has the right to subsequent performance within a set period of grace by way of replacement or reworking. In place of reworking the supplier is entitled to exercise the right to declare the contract cancelled and to repay the purchase price to the customer. Additional or other claims arising from defects by the customer, other than the claim to subsequent performance, are excluded.

5. The statute of limitations is one year following delivery. The goods are deemed to have been delivered on the transfer of risk. The statute of limitations does not commence anew with any reworking or replacements.

G. Limitation to liability

Unless contractually agreed otherwise the supplier shall only be liable for compensation for breach of contractual and non-contractual obligations in the event of willful intent or gross negligence. The liability is limited to the foreseeable losses typical for this kind of contract and does not in any event cover lost profits.

H. Waiver declaration for the surrender of original documents

The Contractual Partner acknowledges that thyssenkrupp Materials Schweiz AG may archive contracts, correspondence, documents, order forms, plans, papers, certificates, etc. in digital form after signing and subsequently destroy the originals. The Contractual Partner explicitly waives the right to demand the surrender of original documents in connection with criminal or civil proceedings.

I. Applicable law

Swiss law applies to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980.

J. Jurisdiction

Jurisdiction is at the domicile of the supplier, i.e. **Wil, Canton of St. Gallen**. The supplier is entitled to take legal action against the customer at the customer's general place of jurisdiction.

Wil, November 2018