

General Terms and Conditions of Sales thyssenkrupp Materials Trading NA LLC

1. **Entire Agreement.** The accompanying Order Confirmation and these Terms (collectively, this "Contract") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral with the respect to the subject matter of this Contract. By placing an order with Seller, or by proceeding with this order after Seller has issued its Order Confirmation, Buyer accepts the terms and conditions of the Order Confirmation and these Terms. The terms and conditions of the Order Confirmation shall prevail to the extent they are inconsistent with these Terms. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. No claimed change, termination or waiver of any of these Terms shall be valid unless agreed to in writing by both parties.
2. **Duties and Tariffs.**
 - 2.1. The responsibility for obtaining import permit licenses and the obligation to pay duties and tariffs are governed by the Incoterms set forth in the Order Confirmation.
 - 2.2. For newly imposed or increases in import duties or tariffs, whether resulting from an increase in the Tariff Schedules of the United States in effect on the date of the Order Confirmation or from an increase in the value of the goods if duty or tariff is assessed on an ad valorem basis, import taxes, or similar levies, however denominated, the parties will make good faith efforts to mutually negotiate a solution which reduces the impact of the new or increased tariffs. If the parties cannot reach a mutually agreeable solution, Seller reserves the right to i) pass through all newly imposed tariffs or increases in tariff costs, or ii) cancel any orders impacted by new or increased tariffs without liability to Buyer, in which case Buyer shall pay any cancellation penalties assessed by the mill producing the goods and any other costs arising out or associated with such cancellation.
 - 2.3. Seller reserves the right to cancel or renegotiate the Contract if an antidumping and/or countervailing duty petition is filed with the United States International Trade Commission and/or the United States Department of Commerce against the goods or in the event that new duties or tariffs are imposed against the goods without liability of Seller to Buyer.
 - 2.4. For the avoidance of doubt, the requirements of this Section 2 shall apply for duties or tariffs incurred by Seller anywhere in its supply chain.
3. **Sales Tax.** All state and local sales, use and other taxes (including any increases therein effective subsequent to the date of the Order Confirmation) which Seller may be required to pay or collect with respect to the goods covered by the Order Confirmation shall be for the account of Buyer. If Buyer's order is exempt from sales tax, it is Buyer's obligation to furnish appropriate confirming information including, without limitation, sales tax exemption form. Failure to provide such information prior to invoicing by Seller will result in the inclusion of appropriate sales taxes in addition to the Order Confirmation price.
4. **Force Majeure.** Seller shall not be responsible for any delay or failure in delivery due to causes beyond the control of Seller or Seller's supplier(s), including but not limited to, acts of God, war, civil commotion, riots, sanctions, embargoes, domestic or foreign governmental regulations or orders, fires, floods, accidents, machinery breakdowns, pandemic, epidemic, quarantine, strikes, lockouts or other labor difficulties, shortages of or inability to obtain shipping space or transportation, or inability to obtain timely delivery from Seller's supplier(s). In the event of delay in delivery due to any such causes, the time of delivery shall be extended automatically for a period of 45 days. If delivery is not made within such extended 45-day period, Seller may terminate the Contract upon notice to Buyer and without liability of Seller to Buyer. Additionally, despite anything to the contrary herein, if Seller's supplier(s) cancel one or more orders for the goods due to any cause outside of the control of Seller (or Seller's suppliers), Seller may terminate this Contract upon notice Buyer and without liability of Seller to Buyer. If Seller is responsible for selecting the means of transportation in accordance with the Incoterm set forth in the Order Confirmation, and if, for reasons beyond the control of Seller, the transportation is re-routed due to a Force Majeure event, Seller shall not be liable for costs or expenses incurred by Buyer as a result. In such an event, the parties shall work in good faith to reach a mutually agreeable solution to address the costs arising out of such rerouted transportation. If the parties are unable to reach a mutually agreeable solution, any additional costs resulting from rerouted transportation shall be for the account of the Buyer.
5. **Warranty; Claims.**
 - 5.1. **Warranty.** Seller warrants that all goods materially conform to the specifications contained in the Order Confirmation. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED. The warranty contained herein expressly excludes defects arising out of or relating to improper storage, handling, misuse, abuse, or neglect of the goods by Buyer, or Buyer's agents, representatives, or subcontractors.
 - 5.2. **Duty to Inspect.** Customer shall use reasonable efforts to test or consume a representative sample of goods during the claims period.
 - 5.3. **Claims Procedure.** All claims for damage, nonconformities to contract specifications, defects (including latent defects), or shortages in deliveries shall be made promptly after such damage, nonconformities, defects or shortages are or reasonably should have been discovered, provided that in no event may any claim be made more than 30 days after the goods are made available to Buyer unless a longer claims period is set forth in the Order Confirmation. All claims of whatever nature shall be made in writing, shall state with particularity the nature of the claim, and shall be accompanied by documentary support. Failure to furnish such documentary support shall constitute an absolute bar to any claim.
 - 5.4. **Seller's Right to Inspect.** Buyer shall provide Seller and its agent and insurer with access to any goods which Buyer claims are defective for purposes of inspection. Buyer shall make appropriate facilities available to Seller and its agent or insurer for the inspection and investigation of all claims. In the event Buyer destroys or scraps the goods or otherwise fails to make the goods available for inspection by Seller or its agent or insurer, Seller may deny Buyer's claim in its entirety without liability to Buyer.
6. **Remedies.** In the event that a timely and bona fide claim is made in accordance with the terms hereof, Seller shall have the right at its sole discretion to either:
 - (i) replace the goods, or,
 - (ii) credit or refund the price of such goods at the pro rata contract price, or,
 - (iii) give to Buyer an allowance (e.g., in the form of an agreed upon discount price or some other agreed allowance).Seller shall have no further liability with respect to the goods. Buyer agrees that the remedies set forth in this section 6 are Buyer's exclusive remedies for the delivery of nonconforming goods, breach of warranty or any other breach of these Terms or causes of action. Buyer's obligation to accept and pay for the balance of the goods delivered or to be delivered under the Contract shall not be affected by any claim and in no event shall Buyer have the right to cancel the Contract or reject sound coils, bundles, packages, or other shipping units on the basis of a prior non-conforming installment.
7. **Variations.** Seller shall not be liable for normal variations in tolerance, weights, size, shape, dimensions, straightness, composition, mechanical properties and quantities, except as otherwise specified herein. Buyer agrees surface and/or atmospheric rust is normal unless otherwise specified herein.
8. **Limitation of Liability.** In no event shall Seller's liability, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the value of the defective goods sold hereunder. Seller shall under no circumstances be liable for lost profits, injury to goodwill, downtime, or any special, incidental, consequential, punitive, exemplary damages, or other damages of a similar nature.
9. **Cross Default.** In the event Buyer defaults on its obligations to Seller under any other agreement(s) with Seller, Buyer will be deemed to be in default of this Contract and Seller may elect to terminate this Contract without liability. Seller may elect to terminate the contract if Buyer defaults in an agreement with a thyssenkrupp AG affiliate or subsidiary.

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10. Title; Risk of Loss; Transit Insurance. Title to goods shall pass from Seller to Buyer upon full payment of the price set forth in the Order Confirmation. Seller shall retain a security interest in any goods sold to Buyer until such time as the goods are paid in full. Risk of loss shall pass from Seller to Buyer in accordance with the Incoterms set forth on the Order Confirmation. Responsibility for insurance shall be in accordance with the Incoterms set forth on the Order Confirmation but in no event will Seller insure the goods after Seller has completed its delivery obligations in accordance with the Incoterms set forth in the Order Confirmation. Except as otherwise provided in the Order Confirmation, transit insurance on C.I.F. sales shall be on F.P.A. terms.
11. Installments. Unless otherwise expressly stated in the Order Confirmation, Seller shall have the right to make delivery in installments. Delivery dates set forth in the Order Confirmation are approximate. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining installments. Seller may withhold or cancel further deliveries in the event that Buyer fails to pay for any installment when due under this Contract or any other agreement between Buyer and Seller.
12. No Offset; Interest. Buyer shall not be entitled to setoff, deduct, or withhold any amounts from or against Seller's invoices. Interest will be charged on all past due balances at the Fed rate plus 2%, not in excess of rates permitted by law.
13. Insolvency. Buyer hereby represents that it is solvent and Buyer's signing of any delivery receipt (however denominated) furnished by Buyer to the delivering carrier shall constitute a further representation of solvency at the time of signing such receipt. Said action on the part of Seller shall not release Buyer from its obligation to accept and pay for such remaining portion of the goods if and when shipped by Seller. If at any time there is any adverse change in the financial condition or structure of Buyer or if Buyer becomes insolvent, makes an assignment for the benefit of creditors, or a petition in bankruptcy with respect to Buyer is filed, or if any lien, arising from judicial process or otherwise, is placed upon any material asset of Buyer, then Seller shall have the right to: i) withhold delivery of the goods covered by this Contract, or any other contract between Seller and Buyer; ii) cancel the Contract without liability on its part; or iii) to change the credit terms of the Contract, including but not limited to requiring the payment of cash in advance of delivery. Seller's remedies specified herein are cumulative and Seller shall have any and all other remedies provided by law. Buyer grants Seller a purchase money security interest in all goods delivered until payment in full is received and agrees to cooperate in the preparation, signing and filing of any documents necessary to substantiate or perfect Seller's security interest.
14. Costs and Expenses. In the event of Buyer's failure to fulfill any of its obligations hereunder, Buyer shall reimburse Seller for all costs and expenses incurred by Seller in enforcing its rights and in recovering any and all resulting damages, including, but not limited to, derivative, market, and financing losses with respect to the material, reasonable attorney's fees, costs and expenses of arbitration, litigation, collection, and enforcement of any arbitration award or judgment.
15. Miscellaneous.
- 15.1. Choice of Law; Arbitration. This Contract will be governed by the laws of the State of Michigan without regard to any principles of conflicts of law thereof that would permit or require the application of the laws of another jurisdiction. Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by binding arbitration in the State of Michigan administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules by a single arbitrator and conducted in English, and judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. The parties agree that the arbitrator shall have the authority to grant injunctive or equitable relief. The parties further agree and acknowledge that each of them is subject to personal jurisdiction in the State of Michigan for any dispute arising out of, or related to, this Contract.
- 15.2. Invalidity. The invalidity or unenforceability of any provision of this Contract or portion thereof shall not render invalid the remainder of this Contract or the remainder of such provision.
- 15.3. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Contract without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Contract. This Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- 15.4. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- 15.5. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 15.6. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing. Notices to Buyer shall be sent to the address set forth on the first page of the Order Confirmation, or to such other address that may be designated by the Buyer from time to time. Notices to Seller shall be sent to 2700 Post Oak Blvd, Suite 1100, Houston, TX 77056. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email, or certified or registered mail (postage pre-paid). Except as otherwise provided in this Contract, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
- 15.7. Compliance with Laws. Each party shall at all times comply with all federal, state, and local laws, ordinances, regulations, and orders that are applicable to this Agreement and its performance hereunder. Buyer understands that Seller may be sourcing Goods sold hereunder internationally. If any applicable law or internal thyssenkrupp's Code of Conduct prohibits seller from purchasing the material or importing the goods into the United States, Seller shall be entitled to re-negotiate the Contract or cancel the Contract without liability. Buyer represents and warrants that it is in compliance with all laws administered by the US Department of the Treasury Office of Foreign Assets Control ("OFAC") imposing economic sanctions and trade embargoes against designated countries ("Embargoed Countries"), regimes, entities, and persons. Buyer nor any of its affiliates or subsidiaries (a) is directly or indirectly owned or controlled by any person currently included on the Specially Designated Nationals and Blocked Persons List or the Consolidated Sanctions List maintained by OFAC (collectively, "SDN List"), or (b) is directly or indirectly owned or controlled by any person who is located, organized, or resident in a country or territory that is, or whose government is, the target of sanctions imposed by OFAC. Buyer's officers, directors, employees, agents or any other person acting on behalf of Buyer are not currently included on the SDN List. Buyer shall promptly notify Seller if it or any of its affiliates or subsidiaries become directly or indirectly owned or controlled by any person (a) included on the then-current SDN List, or (b) located, organized, or resident in a country or territory that is, or whose government is, the target of sanctions imposed by OFAC. Seller can terminate this Agreement in its sole discretion without liability if Buyer, its parent or any of its affiliates or subsidiaries, any of its owners, any of its officers, directors, employees, agents or any other person acting on behalf of Buyer is subsequently added to the SDN List or becomes directly or indirectly owned or controlled by any Person included on the SDN List.