

thyssenkrupp Materials Trading UK – a division of thyssenkrupp Materials UK Ltd
Terms and Conditions of Sale 2020

1. Interpretation

1.1 These Conditions shall apply together with such other terms agreed in writing. No variation of these Conditions will become binding unless such variation is agreed in writing. Any such variation of these Conditions which are additional to or inconsistent with these Conditions shall take precedence and have priority over these Conditions.

1.2 In these Conditions:

'BUYER' is the party identified who accepts a written quotation from the Seller for the sale of the Goods or whose order for the purchase of Goods is accepted by the Seller; **"BUYER'S PREMISES"** shall be the place identified in this Contract at which the Seller will deliver the Goods to the Buyer;

'CONDITIONS' means the terms of sale and purchase for the Goods set out in this document subject to and together with any additional terms and conditions agreed in writing between the Buyer and the Seller;

'CONTRACT' means the contract for the sale and delivery of by the Seller to the Buyer who will purchase and take delivery of the Goods subject to the Conditions;

'GOODS' means those products (including any instalment of the goods or any parts of them) which the Seller has agreed to sell and deliver and the Buyer has agreed to purchase and take delivery of under the Conditions of this Contract;

'INCOTERMS 2020' means the Incoterms 2020 edition or such subsequent amendment thereto published by the International Chamber of Commerce. "Incoterms" is a trademark of the ICC. The Incoterms 2020 shall be deemed to apply to this Contract;

'SELLER' means the party identified who is to sell and deliver the Goods to the Buyer subject to the Conditions; **"SELLER'S PREMISES"** shall be the place identified under these Conditions at which delivery and collection of the Goods will be taken and made by the Buyer from the Seller and may include that place at which the Goods are stored.

1.3 Any reference in these Conditions to any statutory provision shall mean a reference to that provision as amended, re-enacted or extended.

1.4 If any provision of the Contract is held by the Court to be void, illegal, unenforceable or otherwise invalid in whole or in part, such provision shall be deemed not to form part of the Contract but the remainder of the Contract shall continue to be fully binding.

2. Sale and Purchase

2.1. The Seller shall sell and deliver to the Buyer who shall buy and take delivery of the Goods from the Seller in accordance with the description and specification of the Goods identified in this Contract and which sale and delivery shall be subject to this Contract.

2.2. All Goods shall be delivered Delivery Duty Paid ("DDP") as defined in the Incoterms 2020 unless otherwise agreed in writing between the Buyer and the Seller.

2.3 These Conditions shall prevail to the extent that they conflict with any other standard purchasing document including without limitation any standard terms of the Buyer and which are to be excluded. No variation to these Conditions shall take effect unless agreed in writing.

2.4. This Contract contains the entire understanding of the Seller and the Buyer to the exclusion of any and all prior agreements, representations or understandings whether oral or written. Both Seller and Buyer agree that each will have no remedy in respect of any representation, statement, or warranty that is not expressly set out in this Contract.

3. Delivery, Title and Risk

3.1 Where Delivery is to take place at the Buyer's Premises then delivery shall occur and risk shall pass to the Buyer when the vehicle transporting the Goods arrives at the Buyer's Premises and made available to the Buyer for unloading. The Buyer shall be responsible for and pay the costs of unloading the Goods from the vehicle.

3.2. Where delivery is to take place at the Seller's Premises delivery shall occur and risk shall pass to the Buyer when the Goods are placed at their disposal and made available for collection by the Buyer.

3.3. The Seller shall pass good title in the Goods and which shall be free of all encumbrances and liens. Title to the Goods shall pass to the Buyer upon payment for the Goods in full by the Buyer to the Seller.

4. Failure to take Delivery and Non-delivery

4.1. All dates and periods identified in these Conditions for the delivery of the Goods by the Seller to the Buyer are estimates only and time for delivery by the Seller to the Buyer shall not be regarded as "of the essence". The Buyer acknowledges that the Goods to be purchased might require the Seller to procure the Goods through import from a third party and that the Seller cannot guarantee that delivery dates and periods will be met, but will use all reasonable endeavours to do so and will from time to time notify the Buyer of any changes to the delivery dates or periods.

4.2. Upon receipt by the Seller of the Goods the Seller shall use reasonable endeavours to arrange to deliver the Goods to the Buyer's Premises by the latest delivery date or within the latest period notified to the Buyer under the Conditions of the Contract.

4.3. Failure by the Buyer to take delivery of the Goods shall occur when:

4.31 the Conditions provide for the Buyer to take delivery of and collect the Goods at the Seller's Premises by the agreed delivery date or within a period or that the Goods are to be called forward by the Buyer by written notice to be given by the Buyer on a specified date for the purposes of taking delivery of and collecting the Goods at the Seller's Premises and the Buyer fails to; take delivery of and collect the Goods either:-

4.31.1. within 7 calendar days after the Buyer is notified in writing by the Seller that the Goods are available ready for delivery and collection or where within that 7 calendar days the Buyer fails to give a notice for calling forward by the Buyer to enable the Buyer to collect and take delivery of the Goods; or

4.31.2. within that period identified in these Conditions as being the period during which the Goods are to be stored free of charge.

4.3.2. Where the Conditions provide for delivery to take place at the Buyer's Premises and the Buyer fails to take delivery of the Goods upon the Goods being made available for unloading at the Buyer's Premises.

4.4. Where there has been a failure by the Buyer to take delivery of the Goods the Seller shall be entitled to give notice to the Buyer within 7 days of that failure that it will proceed to sell the Goods and the Buyer shall be liable to the Seller for all costs, expenses and damages incurred as a result including without limitation:-

4.4.1 any additional storage charges or haulage and freight cost and expenses incurred by the Seller in being required to store, maintain and otherwise secure and dispose of the Goods; and

4.4.2. any costs and expenses incurred by reason of moving the Goods to any alternative storage; and



- 4.4.3 the positive difference between the Price at which the Goods were to be sold and delivered to the Buyer when there is deducted from the Price that price at which the Seller is able to sell the Goods or the market value of such Goods if such Goods are not sold plus all sale, and freight costs and expenses incurred by reason of the actual sale or attempts to sell the Goods in the market and all reasonable costs incurred by the Seller in attempting to mitigate its losses.
- 4.5. Where the Buyer considers there has been a failure to deliver the Buyer shall give written notice of that failure within 7 days after the date or after the period by or with which delivery was to be made by the Seller to the Buyer.
- 5. Storage**
- 5.1. The Seller shall provide free storage for the Goods for an agreed period. After that period has expired the Seller shall be entitled to charge the Buyer for the additional storage period during which the Buyer has not taken delivery of the Goods. The Seller shall be entitled to deliver monthly invoices for the additional storage charges.
- 6. Price and Payment**
- 6.1. The Buyer shall pay both the Price for all the Goods and for such sums identified in the invoice within the terms stipulated in this Contract and presentation of the Seller's invoice which may, in the Seller's discretion be presented in copy or original form. Payment shall be made without any set off, deduction of withholding which rights are excluded.
- 6.2. The Seller shall issue an invoice for the Goods at any of the following times:-
- 6.2.1. upon the arrival of the Goods in the United Kingdom and/or the Republic of Ireland and following customs clearance; or
- 6.2.2. on or as soon as possible after the agreed date for the Buyer to take delivery where delivery is to be taken from the Seller's Premises; or
- 6.2.3. on or as soon as possible after the date of delivery of the Goods at the Buyer's premises.
- 6.3. Any delay in making any payment due under these Conditions shall entitle the Seller to claim interest from the Buyer on a daily basis on any overdue payments at the rate of 4% per annum over the base rate of Santander in force during the period between the date when payment becomes due and the date when payment is made.
- 6.4. The Price for the Goods shall be inclusive of the costs incurred of transport, insurance, unloading, VAT, or import or other taxes, transport and dock charges and dues and any storage which the Seller shall identify and list on the invoice.
- 6.5. If there has been any increase in the said costs incurred by the Seller and listed under clause 6.4 namely, insurance, transportation charges, dock charges, duties or taxes and are incurred or paid for after the date when the Buyer and the Seller agreed the price, the seller shall have the right to require payment of additional costs incurred from the Buyer and, if so requested by the Buyer, the Seller shall provide to the Buyer reasonable evidence of such increase.
- 6.6. Upon the Buyer's request the Seller may agree to deliver the Goods to a place other than that specified in the Contract but only upon the Buyer agreeing to paying those additional costs to be incurred by the Seller and any other reasonable terms requested by the Seller.
- 7. Retention of Title**
- 7.1. Title and property in the Goods, including full legal and beneficial ownership, shall not pass to the Buyer until the Seller has been paid in full for the Goods.
- 7.2. Until title in the Goods passes to the Buyer, the Buyer shall hold the Goods as bailee for the Seller, and shall where practicable keep and store the Goods separately from those goods of the Buyer and any third party and shall adequately protect, insure, clearly mark and identify the Goods as the Seller's property. Until title passes the Buyer shall only be entitled to use or resell the Goods if it provides evidence to the Seller, in a form reasonably acceptable to the Seller, that the Seller's title to such Goods will be preserved notwithstanding such resale or use.
- 7.3. Until title in the Goods pass to the Buyer the Seller shall, without prejudice to any other rights under the Contract, be entitled to give written notice to the Buyer that requires the Buyer to deliver up the Goods to the Seller. In the event that the Buyer fails to confirm its agreement to deliver up the Goods within 7 days of such written notice the Buyer agrees that the Seller be entitled to enter upon the Buyer premises where the Goods are stored and repossess the Goods.
- 7.4. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller in respect of the Goods shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.5. The Seller's rights under this Clause 7 are without prejudice to any other rights the Seller has including the right to maintain an action for the price of any Goods.
- 8. Force Majeure**
- 8.1. The Seller shall not be liable to the Buyer for any delay in performing or breach of its obligations under the Contract where delay or breach is caused by event or circumstances outside the Seller's reasonable control ("Force Majeure Events"). Force Majeure Events shall include but shall not be limited to fire, flood, earthquake, acts of God, acts of war, restrictions, regulations, prohibitions or measures of any kind by any governmental or other competent authority, industrial disputes of any kind, fire, explosion, lightning, storm, ice, severe weather conditions, accidents of navigation, acts of terrorism, sabotage.
- 8.2. If as a result of the Force Majeure Event the Seller is unable to meet its contractual obligations under this Contract or any other contractual obligation with a third party cannot be met by either the Seller or that third party, the Seller shall act with reasonable commercial endeavours in mitigating losses for all of those third parties and the Buyer.
- 8.3. Failure for whatever reason by the Seller to deliver Goods due to the failure of any supplier of the same to the Seller or due to the operations of any third party hindering or preventing the ability of the Seller to take delivery of the same shall constitute a Force Majeure Event.
- 8.4. In the event that the Seller wishes to claim relief under this clause the Seller shall give notice to such effect as early as practicable after the Force Majeure Event has occurred and which notice may be given orally and confirmed in writing and shall give any further notices of any change in the situation as may be appropriate from time to time.
- 8.5. If by reason of a Force Majeure Event or by reason of the Buyer's breach of these Conditions the Seller is unable or prevented to make the Goods available for collection by the Buyer at the Seller's Premises or unable to deliver the Goods to the Buyer at the Buyer's Premises the Seller shall be entitled to store the Goods in such manner as is reasonably practical in all the circumstances. The Buyer shall indemnify the Seller for all costs and expenses incurred in arranging any such additional storage and supervision of the Goods and the Seller shall have a lien on the Goods for any such cost and expense incurred in arranging such storage and supervision.
- 8.6. Where the Force Majeure Events prevents or delays the Seller from performing any of its obligations under the Contract to deliver Goods for a period of 90 days from the



date of notice given under clause 8.4, the Seller shall be entitled to cancel the obligation to deliver those Goods without any liability to the Buyer for damages or costs.

- 8.7 This clause shall not apply to the obligation of the Buyer to pay sums due under any invoice delivered for the payment for the Goods delivered.

9. Weights or Measurements

- 9.1 The weight and lengths of the Goods shall, be determined by any one of the following methods at the Seller's option:-
- 9.1.1 the Seller using the most reasonable standard procedure used in the market; or by providing the evidence of the weight provided by the producer of the Goods, or
- 9.1.2 a tested weigh-bridge, or
- 9.1.3 such other current industry standards and methodology as is reasonable in all the circumstances.

- 9.2. The evidence provided by the Seller to ascertain the weight under any of clauses 9.1.1-3 shall be final and binding on both the Seller and the Buyer except in the case of manifest error or fraud and save that where the invoices prices the Goods by reference to the weight or the number of pieces and the weight identified in such evidence shall not be final and binding.

- 9.3 The Seller shall not be liable for any discrepancies in the weight between that specified in the Contract and the weight of the Goods as delivered unless the Buyer gives the Seller written notice of the difference within seven days of receipt of the Goods and gives the Seller a reasonable opportunity of witnessing and re- weighing the Goods before they are used, processed or sold.

- 9.4 Unless otherwise agreed and specified in writing, the quantity of Goods actually delivered shall be subject to a tolerance of +/- 10% from the quantities specified in the Contract. Any variation within that range shall not constitute a breach of Contract and no claim alleging such failure shall be made against the Seller in respect of any variation within such limits.

10. Quality Acceptance

- 10.1 The Buyer shall have deemed to have conclusively accepted that the Goods conform to the specification, and description of the Goods identified in the Contract unless: where any defect in the quality of the Goods would be apparent upon careful inspection or with respects to any loss or damage to the Goods during the course of transport within three working days after taking delivery of the Goods, but prior to their use or re-sale, the Buyer gives written notice to the Seller specifying how the alleged defect in quality amounts to a non-compliance or non-conformity of the Goods with the Contract; or

- 10.1.2. where any defect in the quality of the Goods would not be apparent upon careful inspection or testing the Buyer gives the Seller written notice of such defect forthwith upon its discovery, but in any event any such defect will be irrefutably presumed not to have existed if not made apparent **no later than three months from free release date of the Goods to the Buyer.**

- 10.2 If the Contract provides (or the Seller the Buyer agree in writing) for testing or inspection of the Goods by or on behalf of the Buyer before delivery such testing and inspection shall be the Buyer's final opportunity of examining whether they conform with the Contract The Buyer shall be conclusively:

- 10.3 deemed to have accepted the Goods as being in conformity with the Contract if upon reasonable notice the Buyer does not inspect or test the Goods or if having inspected or tested the Goods the Buyer does not **within seven days thereafter notify the Seller in writing of any claim** that the Goods are not in conformity with the Contract, and specifying the alleged non-compliance The Buyer shall not thereafter be entitled to reject or require replacement of the Goods or to claim compensation in respect of any such non-compliance.

11. Warranties and Liabilities

- 11.1 The Seller warrants that the Goods shall be substantially in conformity with the description and specification set out in the Contract. All other warranties or conditions which would, but for these terms, be implied by statute or otherwise (including without limitation, any warranty or condition relating to description, satisfactory quality, merchantability, or fitness for purpose), are excluded to the extent permitted by law.

- 11.2 Neither Seller or Buyer shall be liable for the following; loss of profit, business interruption, loss of revenue, loss of contract, loss of goodwill, loss of production, loss of reputation, increased cost of working and any indirect or consequential loss arising directly or indirectly from any failure or delay in the performing of any obligation under this Contract.

- 11.2.2 Neither Seller nor Buyer shall be liable to the other whether for breach or by way of an indemnity in respect of any losses where such losses could have been avoided by the other party acting in a commercially reasonable manner to minimise its losses.

- 11.3 Where Goods are described in the Contract as "non-prime" it is understood and agreed by the Buyer that the Goods are to be sold and delivered in their actual state, "as seen" and which shall not be subject to any warranty or condition as to quality or description set out in this Contract. Such Goods will be subject to all faults and deficiencies existing, whether apparent or non-apparent on inspection, in the Goods whether seen or not seen and whether or not inspected by the Buyer at any time prior to delivery.

- 11.4. Any statement, specification, description or other information provided by the Seller in respect of such Goods described as "non-prime" is provided for guidance only and given in good faith but is not intended to be relied upon by the Seller (or by any third party) who shall purchase and take delivery of the Goods only as "as seen" and subject to the terms set out in clause 11.3.

- 11.5 Without prejudice to the foregoing, no statement or undertaking contained in any British Standard, Euronorm, ISO Recommendation, or other standard or technical specification as to the suitability of "non-prime" Goods for any purpose shall be used and relied upon by the Buyer when purchasing such Goods under the Contract. The Buyer shall satisfy itself that the Goods are suitable for any product or application for which they are to be used.

- 11.6. Where the Goods are either packed or protected in the manner specified in the Contract, or if there is no such specification, delivered to the Buyer with packing or protection the Seller shall not be liable for any damage to or deterioration of the Goods during the carriage of the Goods and their delivery to the Buyer.

12. Termination

- 12.1 The Seller by written notice to take effect for a period no less than one day after the date of the written notice may either terminate this Contract or to suspend any further deliveries under the Contract wholly or in part in any of the following events:

- 12.1.1 any sum due payable by the Buyer under any invoice issued by the Seller remains outstanding by the Buyer or the Buyer has committed a material breach of any term under the Contract and after the Seller has sent a further 7 day notice required the Buyer to either pay the sum due or, in the case of a material breach, to remedy the breach within the 7 day period; or

- 12.1.2 the Buyer has failed to provide a letter of credit as required and specified in the Contract any bills of exchange or any other security required by the Contract: or

- 12.1.3 the Buyer becomes insolvent or, in the case of a body corporate or a partnership a resolution is passed for its winding up (except solely for the purpose of amalgamation or reconstruction) or an order of the court for its winding up is made or a Receiver is appointed (whether administrative

or otherwise), or in the case of an individual or partnership, he is or they are adjudicated bankrupt or payment of his or their debts is suspended in whole or in part or the Buyer convenes a meeting of or proposes or enters into any composition or arrangement with its creditors or a comparable act occurs under another jurisdiction.

- 12.2. Each of the events identified under 12.1-.1. – 12.1.3 shall be regarded as repudiatory breaches of the Contract and which the Seller accepts upon giving notice under clause 12.1.
- 12.3. Without prejudice to the Seller's right to claim damages for such repudiatory breach, upon termination:
- 12.3.1 the Buyer shall be required to deliver up or take immediate steps to arrange to have delivered up to the Seller all Goods delivered to the Buyer and which are unpaid for; and
- 12.3.2. All future deliveries of the goods to the Buyer shall be deemed to be terminated.

13. Data Protection

- 13.1 If and to the extent that the Data Protection Act 1998 applies to the Seller and/or the Buyer each party shall comply with their respective obligations thereunder.

14. General

- 14.1 No waiver by the Seller in respect of any breach of this Contract by the Buyer shall operate as a waiver in respect of any subsequent breach.
- 14.2 The Buyer shall indemnify the Seller against all claims, demands, damages, penalties, costs and expenses and other liabilities for which the Seller may become liable by reason of;
 - 14.2.1 the infringement or alleged infringement of any patent design trademark or other industrial or other intellectual property rights arising as a result of compliance by the Seller with the Buyer's specifications, or
 - 14.2.2 any act, omission or negligence of the Buyer, its servants, agents, employees or sub-contractors.
- 14.3 the Seller's aggregate liability to the Buyer under or arising out of the Contract (in contract, tort or negligence) shall not exceed the amount equal to the total of the Price of the Goods to be delivered under the Contract.
- 14.4 Any notices given under this Contract shall be sufficiently given if given in writing.
 - 14.4.1 Each notice in writing shall be deemed to be given:-
 - 14.4.1.1 if served personally on or left at the registered office or principal place of business of the party on whom it is served then on the date upon which the notice was served or left;
 - 14.4.1.2 If sent by facsimile transmission, telex, e-mail, or other electronic communication, on receipt by the sending party of evidence that the communication has been transmitted in full to the receiving party;
 - 14.4.1.3 if sent by recorded or registered delivery pre-paid first class or air mail letter post to the party on whom it is served at its registered office or principal place of business. A notice shall in the case of posting be deemed to have been served at the expiration of forty eight hours after posting to a United Kingdom destination or four days after posting to a destination outside the United Kingdom.
- 14.5 The Contract shall be construed in accordance with English law and all matters and disputes arising out of or under this Contract shall be the subject of the exclusive jurisdiction of the English Court.
- 14.6 Any rights of any other person to enforce the terms of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.