

Purchasing General Terms & Conditions for Works and Goods*

*shall not apply to supply for serial production



I. Definitions & Application of T&Cs

1. These Purchasing General Terms & Conditions ("GTC") shall apply to all supply contracts of thyssenkrupp System Engineering, Inc. and its commonly owned or controlled affiliates ("Buyer") for works such as installation or construction works, mechanical engineering, services etc. ("Works") and delivery of goods and machines ("Goods").
2. These GTC shall apply exclusively. Deviating, contradictory or additional terms & conditions of Supplier shall only and insofar become part of the Contract as Buyer expressly agrees to their application in text form (email or telefax to be sufficient). The acceptance of Works/Goods as well as payment does not constitute such an agreement.

II. Purchase Orders / Purchase Order Amendment

Unless otherwise agreed, the Contract is entered upon Buyer issuing a standard purchase order, blanket or framework order (any of which being a "Purchase Order") or Purchase Order Amendment and Supplier issuing a corresponding Purchase Order Confirmation or Supplier starting to perform Works/ supply of Goods determined in the Purchase Order or Purchase Order Amendment. Buyer may cancel the Purchase Order or Purchase Order Amendment if Buyer has not received the Purchase Order Confirmation of Supplier within two days of Supplier receiving the Purchase Order or Purchase Order Amendment.

III. Scope of Supply

1. The Contract is to be understood as a "turn-key contract" and Supplier is responsible to carry out all measures deemed necessary to attain the contractual purpose and to provide Works/Goods in fully working condition without further remuneration, no matter if these measures have been explicitly mentioned in the contractual documents or not.
 - a. These are among others:
 - (1) Provide specialists and skilled staff capable to provide obligations,
 - (2) Ensure the implementation of latest technology, incorporating best product quality, energy consumption and operator safety,
 - (3) Provide Goods in brand-new unused manner made from best materials with first class workmanship,
 - (4) Obtain all administrative permissions necessary for the Works/Goods, unless otherwise expressly agreed in text form, and
 - (5) Supplier confirms to be a technical expert and to be fully aware of technical requirements of Buyer and Buyer's customer.
 - b. In addition, if the scope of supply includes any Works on Buyer's or Buyer's customer's site, these are among others:
 - (1) Arrange for and provide all equipment, tools, lifting gear, vehicles – whatsoever necessary,
 - (2) Cleaning of the site and waste disposal,
 - (3) Maintain sufficient insurance cover for transport, assembly, commissioning,
 - (4) Protect work area against theft, damages, accidents, and
 - (5) Scope of work must be carried out without impeding production operations at Buyer or Buyer's customer.
2. Supplier shall be responsible for compliance with
 - a. all applicable laws & administrative regulations including but not limited to environmental, such as REACH etc.,
 - b. Buyer's Supplier Code of Conduct, available at [Supplier Code of Conduct](https://www.thyssenkrupp.com/de/unternehmen/compliance/code-of-conduct/) <<https://www.thyssenkrupp.com/de/unternehmen/compliance/code-of-conduct/>>,
 - c. all applicable export control, customs and foreign trade regulations and
 - d. health & safety regulations of Buyer and Buyer's customer while working at their premises.
3. Supplier shall be obliged to inform Buyer about any export control regulations, especially but not limited to those of the Federal Republic of Germany, the European Union or the United States of America effecting the (re-)export of Works/Goods.

IV. Delivery Terms, Title, Inspection, Delay

1. Unless otherwise agreed, Supplier shall deliver DDP (address specified in PO), according to Incoterms® 2010.
2. Title in the Works/Goods shall pass to Buyer free from any liens and other encumbrances upon delivery. In the event of payment of Buyer prior to delivery of Works/Goods, Supplier shall partially transfer the title in the Works/Goods proportionally in relation of the payments effected to the total Contract Price. However, in no event shall risks pass to Buyer prior to final acceptance for Works/Goods or prior to delivery at the designated place for Goods whose nature does not entail final acceptance.
3. Delivered Goods are inspected by Buyer upon delivery only with regard to type and quantity and for externally visible damage, especially transport damage. Buyer shall notify Supplier of any defects without undue delay.
4. Partial deliveries are not permitted unless expressly agreed in text form.
5. Supplier is obliged to inform Buyer without undue delay in text form if timely performance is endangered and shall take all endeavors to reduce or avoid any delay.

6. Time is of the essence. If Supplier fails for any reason whatsoever – except for reasons due to Force Majeure as defined in Section 5 or for reasons solely attributable to Buyer – to meet the delivery date and other key-milestone dates specified in the Purchase Order or other contractual documents, Buyer shall be entitled to a penalty for each commenced week of delay of 1% of the Total Contract Price up to a maximum of 5% of the Total Contract Price.
7. In addition, Buyer shall be entitled to all proven actual and consequential losses and damages arising from the delayed performance exceeding the agreed penalty. The delivery of any documentation to be provided by Supplier shall be prerequisite for a complete delivery and payment.

V. Force Majeure

Neither Party shall be liable for any delay in performing or for failure to perform its obligations under a Contract if the delay or failure results from an event of "Force Majeure". For clarification, Force Majeure means an event that was not foreseeable by the affected Party at the time of execution of the respective Contract, is unavoidable and outside the reasonable control of the affected Party, and for which the affected Party is not responsible, provided such event prevents the affected party from performing its obligations under the respective Contract despite all reasonable efforts, and the affected Party provides notice to the other Party within five (5) calendar days from occurrence of the respective event of Force Majeure. Should the force majeure event effecting one party continue for two months, the other party shall be entitled to (partially or fully) rescind the Contract without being obliged for compensation except for work already fully completed.

VI. Inspection, Audit and Assessment

1. If requested by Buyer, Supplier will permit Buyer during the term of the Contract and for a period of 7 years following final acceptance or complete delivery of Works/Goods not entailing final acceptance to: (i) examine and copy all pertinent documents, data and other information relating to the Works/Goods and the Contract, (ii) inspect, audit and assess any facility or process relating to the Works/Goods.
2. Any on-site visit will be conducted during normal business hours.
3. Supplier will ensure that Buyer will be entitled to exercise all rights under XI.1. and XI.2. also with regards to sub-suppliers of Supplier.

VII. Acceptance

1. For all Works/Goods whose nature entails final acceptance, final acceptance shall be effected by issuance of a final acceptance protocol after complete performance of Works/Goods and successful acceptance test.
2. Use of the Works/Goods or payment shall not constitute final acceptance.

VIII. Invoicing, Payment

1. Unless otherwise stated in the Contract, all prices for the Works/Goods are (i) firm, (ii) inclusive of all taxes and any duties, customs, tariffs, imposts and government imposed surcharges and credits or benefits resulting from the Purchase Order, including trade credits, export credits or the refund of duties, taxes, or fees, belong to Buyer, (iii) includes all storage, handling, packaging, shipping, delivery and all other expenses and charges of Supplier, and (iv) not subject to price escalation for any reason whatsoever.
2. Unless otherwise agreed, payment terms are net sixty (60) days from the later date of invoice or delivery.
3. Despite payment terms in Purchase Order or otherwise agreed, no payment shall become due prior to receipt of a respective auditable invoice according to the applicable legal requirements.
4. Buyer shall be entitled to set off any sum of money payable by Supplier to Buyer or any of its affiliate companies against any amount payable by Buyer to Supplier.

IX. Non-Conforming Works/Goods, Warranty, Spare Parts

1. Supplier represents and warrants that the Works/Goods conform to the requirements of the Contract and the Specifications and that they are new, of good design, material and workmanship, free from defects, and fit and safe for the purpose intended. These warranties shall be in addition to all other warranties, expressed, implied or statutory. Payment for, inspection of, or receipt of the Works/Goods does not constitute a waiver of any of Buyer's rights in the event of any breach of warranty.
2. The Warranty Period shall be 36 months beginning with final acceptance – or if the nature of the Works/Goods does not entail final acceptance – 36 month after complete delivery. The Warranty Period shall be suspended for the defective part from notice of defect until complete rectification of it. For any replaced or repaired Works/Goods, the Warranty Period shall re-start after successful rectification.
3. Supplier shall rectify all defects identified and notified within Warranty Period at Suppliers expense at Buyer's discretion by either repair or replacement of the defective parts of Work/ Goods. In the event that Supplier fails to rectify the defect within a reasonable period of time determined by Buyer, Buyer shall be entitled to rescind the Contract in whole or in part, demand reduction in price or remedy the defect itself at Supplier's expenses. Supplier shall indemnify Buyer from all damages incurred due to the defects.
4. Rectification according to 3) shall include coverage of any costs and expenses, such as costs of disassembly and re-assembly, all labor costs, travel expenses etc.

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5. Buyer shall immediately be entitled but not obliged to rectify defects itself at Supplier's costs in the event that it is not reasonable for Buyer to request the Supplier to rectify the defect within reasonable time in order to mitigate potential damages, e.g. material damages due to down-times at Buyer or Buyer's customer or penalties for delay etc.
6. Supplier ensures provision of spare and wear parts for at least 15 years after delivery.

X. BUYER's Property/ Supplies

1. All equipment, materials, tooling, and other supplies owned by Buyer or Buyer's customer that Buyer provides to Supplier ("Supplies"), is and shall remain the property of Buyer. Such Supplies shall not be made available to any third party without the prior consent of Buyer in text form. Supplier shall use such Supplies solely for the contractually agreed purpose and shall return such Supplies in good and working order to Buyer upon request. In the event of termination or expiration of this Agreement, Supplier shall return such Supplies within ten (10) days after the effective date of termination or expiration.
2. Supplier shall store these Supplies separately from its own property and mark it as property of Buyer or Buyer's customer as the case may be. Supplier shall provide for sufficient insurance against ordinary risks (e.g. theft, fire etc.).
3. Supplier shall inspect all Supplies owned by Buyer or Buyer's customer immediately after their receipt. If Supplier fails in doing so, the Supplies are deemed accepted and to correspond to the specification/ drawings etc.

XI. Intellectual Property Rights / Indemnification

1. Unless otherwise agreed, all rights of use under copyrights law, commercial intellectual property rights and legal positions similar to intellectual property rights created during the provision of the Works/Goods under the Contract shall be transferred to Buyer on creation without any further conditions and without any additional remuneration. Buyer shall be exclusively entitled to these rights with no geographical, temporal or content restrictions and they may be extended, transferred, revised, adjusted, amended, reproduced or published by Buyer without Supplier's consent.
2. If Supplier creates or adapts software during execution of the Contract, the rights of use, commercial intellectual property rights and legal positions similar to intellectual property rights as set out in XI.1. shall not be limited to the object-code but shall also extend to the source-code as well as the documentation for the created and amended software programs.
3. Buyer obtains a non-exclusive, irrevocable, unlimited, transferable license to use any commercial property rights, copyrights and legal positions similar to intellectual property rights of Supplier already existing prior to performance of the scope of service as far as necessary for the use of Works/Goods and the copyrights, commercial property rights and legal positions similar to intellectual property rights described in XI.1.
4. The use of the Works/Goods shall be free of charge for Buyer. Buyer shall be entitled to file patentable work-results for patent.
5. Supplier guarantees that any and all Works/Goods are free of third party rights.

XII. Confidentiality, Publicity

- Supplier shall be obliged with respect to any and all information – irrespective from its nature, content or form of its materialization – that it will obtain from Buyer in relation to the provision of Works/ supply of Goods, e.g. drawings, blueprints, layouts, schemes, descriptions, specifications ("Confidential Information") to
1. keep the Confidential Information strictly confidentially, refrain from disclosing it to third parties and refrain from making unauthorized copies of it, and
 2. use the Confidential Information solely to facilitate the Contract.

XIII. Termination

1. Termination for Convenience
If the Contract includes supply Works, Buyer shall be entitled to terminate the Contract as a whole or in part at any time in which case Supplier shall be entitled to payment for all Works completed according to the specifications as well as material procured in line with the agreed spending curve. However, in any event the compensation shall be limited to the Contract Price.

2. Termination for Default

Buyer is entitled to terminate the Contract for cause in the event of Supplier committing a material breach of contract.

In addition, Buyer may terminate the Contract in the event of a significant deterioration or danger of such deterioration in Supplier's financial situation jeopardizing the fulfillment of commitments towards Buyer.

Upon request of Buyer following termination, Supplier shall hand over to Buyer all work results including materials, subassemblies, special devices and/or tools at agreed prices – or if prices have not been determined – at market costs. Payments already effected by Buyer to be deducted.

XIV. General Indemnity and Insurance

1. Should in connection with the provision of Works/Goods of Supplier any claims be asserted against Buyer, e.g. for damages to property of others or for personal injury or for infringements of third parties' rights, Supplier shall indemnify and hold harmless Buyer on first demand against the full amount of such claims. In addition, Supplier shall reimburse Buyer for any and all costs and expenses incurred by it in this connection, including legal and court fees.
2. Supplier shall maintain commercial general liability insurance with a minimum of USD 5 Mio per event with a reputable insurance company and will upon request provide Buyer with relevant insurance certificates.

XV. Miscellaneous

1. Amendment
No modification, amendment or waiver of these GTCs and the Contract shall be effective unless in text form and signed/ confirmed by both parties. This also applies to any amendments to this Clause.
2. Governing Law
These GTCs, the Contract and all rights and obligations hereunder, shall be governed by and construed in accordance with the laws of the state of Michigan, excluding its provisions regarding conflict of laws as well as the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. Place of Venue and Jurisdiction
Relevant court of jurisdiction shall be in the state or federal courts of Michigan.
Deviating from this, any disputes between Buyer and any Supplier having its registered office outside the EU, Norway, Switzerland or Iceland shall be finally and exclusively settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce. The arbitration shall be held in Auburn Hills, Michigan.
4. Non-Assignment
Supplier shall not assign any rights, delegate any duties or subcontract any Work/Goods without Buyer's prior consent in text form (which consent BUYER may grant or withhold in Buyer's sole and absolute discretion), and that any attempt to do so is void and has no effect. No assignment shall relieve Supplier of its obligations under the Contract.
5. No Waiver
The failure of Buyer to enforce a provision, exercise a right or pursue a default shall not be considered a waiver. The express waiver of a provision is to be effective only in the specific instance, and as to the specific purpose, for which it was given.
6. Severability
If any provision of these GTCs is determined to be invalid, illegal or unenforceable, the remaining provisions remain in full force and effect so long as the essential terms and conditions reflect the original intent of the parties and remain valid, legal and enforceable. This provision also applies in case the Contract turns out to be incomplete.
7. Change of Control
In case of a Change of Control concerning the Supplier's ownership structure, including any parent companies, the Supplier is obliged to give prompt notice in text form of same to Buyer. Buyer is entitled to terminate the Agreement without notice.
8. Entire Agreement
The above clauses constitute the entire agreement of the parties in respect of its subject matter and supersedes any agreements, contracts, representations and understandings, oral or in text form, made prior to or after issuance of the Purchase Order, unless expressly referred to in the Purchase Order.