

General Terms and Conditions of Purchase of thyssenkrupp Materials Processing Europe GmbH

1. Purchaser's terms and conditions of purchase shall apply exclusively to and for all – including future – orders for goods, services and work. Supplier's terms and conditions which deviate from Purchaser's conditions of purchase shall not be recognized by Purchaser unless Purchaser expressly consents to their validity in writing.
2. The terms and conditions of purchase shall also apply exclusively if Purchaser accepts or pays for supplies/services in full awareness of contradictory or varying terms and conditions of Supplier.
3. The respectively valid INCOTERMS shall be decisive for the interpretation of trade terms.

I. Purchase orders

1. Purchase orders shall be binding only if they are placed by Purchaser in writing. Verbal agreements – including subsequent amendments and additions to these terms and conditions of purchase – must be confirmed in writing by Purchaser for them to become valid.
2. For the period of their validity, cost estimates shall form a binding basis for resultant orders. They shall not be remunerated unless expressly agreed otherwise.
3. Documents used by Supplier in business dealings with Purchaser shall indicate at least: purchase order number, commission order number, plant, place of receipt, full article text/item description, volumes and volume units as well as VAT ID (for imports from the EU).

II. Prices

1. The prices are fixed prices. They are inclusive of everything Supplier has to do to fulfill his supply/service obligation.
2. In case of pricing based on „free domicile“, „free ...destination „and other“ free/franco „deliveries, the price includes freight and packaging costs. We shall only pay packaging if and insofar as remuneration has been expressly agreed in this respect.
3. In the case of non-free delivery, we shall only bear the most favorable freight costs, unless we have specified a special type of shipment.

III. Scope of supply/service; ownership; usage rights

1. As part of the scope of supply/service
 - Supplier shall transfer to Purchaser ownership of all technical documents (also for subcontractors) and other documents needed for manufacture, maintenance and operation. Said technical documents shall be in German and shall be based on the international SI standard system.
 - Supplier shall grant Purchaser non-exclusive and irrevocable usage rights that are unrestricted in terms of location, time and content to all protectable supplies/services for all known and as yet unknown types of use; [in particular Purchaser shall be entitled without restriction to duplicate, edit, disseminate in unaltered and altered form and publish via wire-based or wireless technology all supplies/services, and to transfer all contractually granted usage rights to third parties with or without charge].
 - Supplier shall grant Purchaser exclusive usage and utilization rights in the scope described above to those supplies/services he produces specifically for Purchaser.
 - Supplier pledges to strictly observe the provisions of the Employee Inventions Act and file claims to the corresponding inventions in due form and time. This shall also apply insofar as Supplier does not employ his own staff, but rather commissions third parties in the framework of the permitted employment of temporary workers.
 - Purchaser shall have the unconditional authority to carry out or have carried out by third parties repairs and modifications to the purchased supplies/services, and also to manufacture spare parts or have them manufactured by third parties.
2. If the scope of supply/service is to differ from that agreed, Supplier shall be entitled to additional claims or schedule changes only if a corresponding supplementary agreement is concluded in writing with Purchaser prior to performance of the order.
3. The ordered volumes are binding. In the event of excess supplies/services, Purchaser shall be entitled to refuse these at the expense and cost of Supplier.

IV. Quality

Supplier shall install and maintain a state-of-the-art, documented quality system of suitable type and scope. Supplier shall prepare records, in particular of quality inspections, and make these available to Purchaser on request. Supplier hereby agrees to quality audits being carried out by Purchaser or Purchaser's representative to assess the efficiency of said quality system.

V. Supply and service periods/deadlines

1. Agreed delivery dates are binding. In the event that agreed deadlines are not met, statutory provisions shall apply unless stipulated otherwise in these General Terms and Conditions of Purchase. The delivery period begins with the date of the legally binding purchase order, unless agreed otherwise in writing. Supplies/services provided before the agreed delivery dates shall entitle Purchaser to refuse supply/service until it is due.
2. The receipt of the goods by Purchaser shall be decisive for compliance with the delivery date or the delivery period, unless agreed otherwise in writing. This also applies to all shipping documents, operating instructions and other certificates forming part of Supplier's fulfillment of the delivery.
3. If Supplier becomes aware that an agreed deadline cannot be met, he must inform Purchaser in writing without delay, stating the reasons and the expected duration of the delay. Supplier shall at the same time make suggestions to Purchaser for avoiding the consequences thereof.
4. Unreserved acceptance of the delayed supplies/services may not be construed as relinquishment of any compensation to which Purchaser is entitled; this shall apply until full payment of the fee owed by Purchaser for the supply/service concerned has been made.

VI. Delivery/performance and storage, bearing of risk

1. Insofar as Supplier and Purchaser agree validity of one of the "Incoterms" of the International Chamber of Commerce (ICC) for the contract, the currently valid version thereof shall apply. They shall apply only insofar as they do not contradict the provisions of these general terms and conditions of purchase and other concluded agreements. Unless otherwise agreed in writing, the supply/service shall be "delivered duty paid" (Incoterms: DDP) to the place of delivery/performance or use indicated in the purchase order. Supplier shall bear the risk of accidental loss and accidental deterioration, also in the case of „franco" and „free domicile" deliveries, until the goods are handed over at their destination.
2. Supplies/services must be shipped to the addresses indicated. Delivery to/performance at a place of receipt other than that designated by Purchaser shall not constitute transfer of risk to Purchaser even if said place of receipt accepts the delivery/service. Supplier shall bear the additional costs of Purchaser resulting from the delivery being made to/service performed at an address differing from the agreed place of receipt.
3. Part supplies/services are not permitted unless Purchaser has expressly consented thereto. Part supplies/services are to be marked as such, delivery/service notes shall be submitted in triplicate.
4. Excess or short deliveries will only be permitted within the commercially customary scope.
5. If weighing is necessary, the weight determined on the calibrated scales of Purchaser shall apply.
6. Insofar as Supplier has the right to have the packaging needed for shipment/services returned, this shall be clearly marked on the delivery/service documents. In the absence of such marking, Purchaser shall dispose of the packaging at the cost of Supplier; in this case Supplier's right to have the packaging returned shall expire.
7. Items needed for the fulfillment of an order may be stored on the premises of Purchaser in allocated storage areas only. For such items Supplier shall bear the full responsibility and risk of the entire order until the transfer of risk.
8. During transportation the statutory provisions, in particular the provisions of the law on the transportation of hazardous goods and the applicable hazardous goods directives including the respective annexes and appendices must be complied with.
9. The declaration of the goods in the consignment notes for shipment by rail shall comply with the valid provisions of the railways. Costs and damages incurred due to incorrect declaration or failure to declare shall be at the expense of Supplier.
10. Supplier shall have the receipt of deliveries confirmed in writing by the indicated place of receipt.
11. Supplier shall bear the risk of accidental loss and accidental deterioration, also in the case of „franco" and „free domicile" deliveries, until the goods are handed over at their destination.
12. Packaging costs shall be borne by Supplier, unless agreed otherwise in writing. If Supplier bears the cost of the packaging in individual cases, Purchaser shall be charged for this at the lowest possible cost. The obligations to accept returns shall be in accordance with the Packaging Ordinance dated 21 August 1998. In the case of freight-paid return of the packaging, said packaging shall be credited with 2/3 of the calculated value.

VII. Execution, subsuppliers, assignment

Insofar as supplies/services are provided under work and labor contracts,

1. Supplier shall not be entitled to transfer the execution of the contract in whole or in part to third parties.
2. Supplier is obligated to name his subcontractors to Purchaser on request.
3. Supplier shall not be entitled to assign his contractual claims vis-à-vis Purchaser to third parties or permit third parties to collect same. This shall not apply for legally established or uncontested claims.

VIII. Termination

1. Purchaser shall be entitled to terminate the contract in full or in part without giving reasons. In such an event, Purchaser is obligated to pay for all supplies/services completed up to that point and make appropriate payment for material procured and work/services performed; in this case § 649, Sentence 2 of the German Civil Code (BGB) shall apply. Further claims of Supplier are excluded.
2. Purchaser is entitled to terminate the contract with immediate effect for cause in particular where a material deterioration in the financial situation of Supplier occurs or threatens to occur and thus endangers the fulfillment of commitments vis-à-vis Purchaser. In this case Purchaser has the right to acquire material and/or semi-finished products including any special equipment on reasonable terms and conditions.

IX. Invoicing, payment, offsetting

1. In the absence of any other agreement or more favorable conditions of Supplier, payment shall fall due within 14 days minus 3% cash discount or net within 30 days of receipt of an invoice according to § 14 of the German Value Added Tax Act (UStG). The invoice shall be paid at the latest within 30 days of delivery/service and receipt. Any delivery/service effected and accepted before the agreed date shall not affect the payment period tied to this delivery date.
2. Payment and cash discount periods will commence on receipt of invoice, however not before receipt of the goods or, where services are concerned, before completed acceptance inspection, or, should documentation, test certificates (e.g. factory certification) or similar documents form part of the contractual scope, before the contractually stipulated delivery thereof to Purchaser.

3. Purchaser shall pay by check or bank transfer. Payment shall be deemed punctually effected if the check was sent by post on the due date or the transfer was instructed at the bank on the due date.
4. Interest after due date shall be excluded. The rate of default interest shall be 5 percentage points above the base interest rate pursuant to § 247 German Civil Code (BGB). Purchaser shall at all events have entitlement to provide evidence that the damage resulting from default amounts to less than respectively claimed by Supplier.
5. Purchaser shall have entitlement to set-off and retention rights to the statutory extent. Supplier may only set off against undisputed or legally established claims; Supplier shall only have entitlement to rights of retention insofar as they are based on the same legal relationship.
6. On the basis of authorizations issued to Purchaser by the companies belonging to Purchaser's corporate group in accordance with § 18 of the German Stock Corporation Act (AktG *), Purchaser may set off against any and all claims of Supplier – irrespective of their legal grounds – against Purchaser or companies belonging to Purchaser's corporate group. This shall also apply in the event that cash payment has been agreed on the one side and payment in bills of exchange or another method has been agreed on the other side on account of performance. Where applicable, these agreements shall only apply to the balance. Should such claims have different maturities, the claims of Purchaser shall be due for payment at the latest by the maturity date of Purchaser's liabilities and accounted at the value date.

X. Claims under liability for defects

1. Supplier guarantees on a fault basis that his supplies/services exhibit the agreed properties and fulfill the intended purpose and correspond to the generally recognized rules of technology and the agreed characteristics and standards. In the event that Purchaser incurs costs such as transport/travel, working and material costs or contractual penalties as a consequence of defective supplies/services, Supplier shall bear said costs.
2. Supplier shall only supply Purchaser with goods that are free of any signs of ionizing radiation. Supplier shall be liable for any and all costs and damage resulting from any breach of this obligation.
3. All defects which are notified within the period of limitation shall be remedied or delivered /rendered again by Supplier at the discretion of Purchaser without delay and at no cost to Purchaser. The costs of remedying goods or supplying/performing replacements, including all incidental costs (e.g. freight), shall be borne by Supplier in accordance with the statutory provisions. In the event that Supplier does not meet his remediation obligation within an appropriate period defined by Purchaser, Purchaser shall be entitled to eliminate the defects himself and demand reimbursement of the required expense or a corresponding advance from Supplier. This shall not affect statutory rights of withdrawal, purchase price reduction or compensation for damages. Any reworking on the part of Supplier shall already be deemed to have failed after the first unsuccessful attempt.
4. The limitation period for defect liability claims shall begin with the full supply/performance of the scope of supply/service or, if acceptance testing is agreed, on acceptance.
5. The limitation period for defect claims is 36 months; longer statutory limitation periods shall remain unaffected by this. The limitation period shall start anew for newly supplied/performed parts, but for repaired parts only insofar as the same defect or the consequences of inadequate remediation are concerned, remediation would involve a wider scope, a significant amount of time or higher costs, and Supplier has not remedied the defect expressly only out of goodwill, to avoid disputes or in the interests of continuing the supply relationship. Purchaser – or, in the case of drop shipments, Purchaser's customer – shall check the goods on receipt for quality and completeness, doing so to the extent reasonably and technically possible, and submit prompt notice of complaint if any defects are discovered. At all events the notification is deemed to be in good time insofar as it arrives at Supplier by letter, fax, eMail or telephone within a period of eight working days of receipt of goods and a longer period has not been agreed in the individual case, or – for hidden defects – from the time of discovery. For defects notified within the limitation period, the period shall end no earlier than six months after the assertion of the notice of defects. Supplier shall not object on the grounds of delayed notification (§§ 377, 381, (2) German Commercial Code (HGB)) for all other than obvious defects.
6. Purchaser may demand compensation from Supplier for the expenses arising in connection with a defect which Purchaser has to bear in respect of his customer if the defect already existed at the time of the transfer of the risk to the Purchaser.

XI. Guarantees/indemnification

1. Supplier pledges to Purchaser that he shall comply with the provisions of the German Minimum Wage Act (MiLoG) and indemnify Purchaser against claims by third parties, in particular claims pursuant to § 13 MiLoG.
2. In the event that existing compensation claims by third parties can be asserted vis-à-vis Purchaser due to supplies/services of Supplier, Supplier shall on first demand indemnify Purchaser against the full amount of such claims and pledge to cover reasonable legal and court fees of Purchaser.
3. Supplier further pledges that goods produced, stored and transported on behalf of Purchaser, supplied to Purchaser or accepted by same shall be produced, stored, processed and loaded at secure operating and handling facilities, and protected from unauthorized access during production, storage, processing, loading and transportation. Supplier pledges that the employees involved in the production, storage, processing, loading, transportation and acceptance of such goods are reliable and that they have been checked against the currently valid EU sanction lists. Supplier further pledges that all business partners acting on his behalf have been informed that they also need to take measures to secure the aforementioned supply chain. Supplier agrees to his data being checked against the currently valid versions of the EU sanction lists.

XII. Place of fulfillment, legal venue

1. Place of fulfillment for all supplies/services shall be the place of receipt indicated by Purchaser unless agreed otherwise with the respective plant of Purchaser.
2. The legal venue shall be the domicile of Purchaser, or at Purchaser's choice, Supplier's general legal venue.

XIII. Applicable law

All legal relations between Purchaser and Supplier shall be governed by the prevailing substantive law of the Federal Republic of Germany to the exclusion of the United Nations' Convention of April 11, 1980 on the Contracts for the International Sale of Goods (CISG) in the currently valid version.

XIV. Prohibition of advertising/secretary

1. The use of the thyssenkrupp logo/logotype and any mention of the thyssenkrupp Group, thyssenkrupp AG or individual Group companies as reference customers of Supplier requires the express prior consent in writing of thyssenkrupp AG in each individual case.
2. Supplier shall maintain secrecy vis-à-vis third parties in respect of all operational events, facilities, plants, documents, etc. used at Purchaser's premises or those of his customers which become known to Supplier in connection with his activities for Purchaser, also after submission of the corresponding offers and after completion of the contract. Supplier shall impose corresponding obligations on his agents.

XV. Retention of title

1. We only recognize any simple retention of title by the contracting party if the ownership of the goods passes to us on payment and we are authorized to resell and forward such goods in the ordinary course of business. Special forms of retention of title, in particular forwarded, downstream or extended retention of title, current account reservation and group reservation will not be accepted. Conflicting terms and conditions of the contract partner will not be recognized by us; they are hereby expressly contradicted and shall not become part of the contract.
2. On the basis of the reservation of title, the contract partner may only demand the return of the goods if he has withdrawn from the contract beforehand.

XVI. Severability/written form

Should individual provisions of these conditions become entirely or partly invalid, the remaining provisions shall remain valid. The same shall apply for the corresponding contract. Insofar as these General Terms and Conditions of Purchase demand declarations by the contractual parties to be made in writing, simple text form shall be sufficient.

XVII. Data protection

Purchaser points out in accordance with § 33 of the Federal Data Protection Act (BDSG) that he shall store data relating to Supplier on the basis of the Federal Data Protection Act.

XVIII. REACH clause

Supplier must fulfill all specifications and measures resulting from the REACH directive for all materials, prepared materials and products supplied/provided to Purchaser.

XIX. Declaration of origin

The following shall apply in the event that Supplier makes declarations on the origin of the sold product:

1. Supplier shall enable the customs authority to verify the substantiation of origin and provide both the necessary information as well as any necessary confirmations.
2. Supplier shall compensate for any damage caused by the fact that the competent authority does not recognize the declared origin due to deficient certification or lack of verification possibilities, unless he is not responsible for such consequences.

XX. Force majeure

Force majeure, Industrial disputes, unrest, official measures and other unforeseeable and unavoidable events and serious occurrences shall release the parties from their contractual obligations for the duration and to the extent of such disruption. This shall also apply if such events occur at a time when the affected contracting party is in default. The contracting parties shall, within reasonable bounds, promptly provide all necessary information and adapt their obligations to the changed circumstances in good faith.

XXI. Applicable version

Insofar as these General Terms and Conditions of Purchase are made available in another language, the German version shall take precedence.

*) This in particular applies to:
thyssenkrupp Steel Europe AG, Duisburg
thyssenkrupp Materials Services GmbH, Essen
thyssenkrupp Materials Trading EMEA GmbH, Essen
thyssenkrupp Schulte GmbH
thyssenkrupp Plastics GmbH, Essen
Jacob Bek GmbH, Ulm