

# ThyssenKrupp Stahlkontor

## General Conditions of Delivery and Payment (simultaneously applicable as Terms of Contract for Work)

### I. Scope/offers

1. These General Conditions of Delivery and Payment apply to all – including future – contracts with businesses, legal entities under public law and public-law special assets for deliveries and other services including contracts for work. The purchaser's terms of delivery and payment shall not be applied even if we do not again specifically reject them after taking delivery at our plant.
2. Our offers are made without engagement. Verbal agreements, commitments, assurances and guarantees entered into by our employees in connection with the contract shall only be rendered binding through a written confirmation from us.
3. In case of doubt, the interpretation of trade clauses shall be governed by the Incoterms in their latest version.
4. All details such as dimensions, weights, illustrations, descriptions, assembly drawings and drawings in samples books, price lists and other printed matter are only approximate, but are determined to the best of our ability, and to this extent are not binding on us. The same applies to information on the plants; drawings are to remain our property.
5. "Purchaser" as defined by these conditions is also the "ordering party" in the case of contracts for work.

### II. Prices

1. Prices are to be understood ex-works or ex-depot plus freight and value added tax.
2. Unless agreed otherwise, the prices and terms apply as in the price list valid at the time of concluding the contract. The goods are calculated "gross" for "net".
3. If taxes/duties or other external costs included in the agreed price are altered more than four weeks after conclusion of the contract, or if new ones are introduced, we shall be entitled to amend the price correspondingly.
4. We reserve the right to increase the agreed prices for quantities not yet delivered if, due to a change in the raw material and/or economic situations, circumstances arise which materially render the production and/or purchasing of the product substantially more expensive than at the time the price agreements were prepared. In this case the customer may cancel the contracts concerned within four weeks of being notified of the price increase.

### III. Payment and offsetting

1. Unless agreed otherwise or stated on our invoices, the purchase price is due immediately after delivery without discount and is payable such that we are able to access the money on the due date. The purchaser shall bear the costs incurred through the payment. The purchaser shall only be entitled to a right of retention and permission to offset to the extent that his counterclaims are uncontested or legally established.
2. On passing the payment deadline or in case of default, we shall charge interest at eight percentage points above the base rate of the European Central Bank unless higher rates of interest are agreed. We reserve the right to assert further losses as a result of payment default.
3. The purchaser shall be in default by at the latest 10 days after the due date and receipt of the invoice/statement or service.
4. Based on the authority granted us by the companies within our group (§ 18 /AktG)\* we are entitled to set off all claims of the purchaser against us or one of these group companies, irrespective of legal grounds. This also applies if it has been agreed that one party should pay in cash and the other should pay in bills of exchange or other "services" on account of performance. Where appropriate, these agreements shall only refer to the balances. If the claims have different due dates, our claims shall become due at the latest on the date our liability becomes due and shall be charged on the value date.



5. If after concluding the contract it becomes apparent that our claim to payment is put at risk because of the purchaser's inability to pay, we shall be entitled to the rights from section 321 of the German Civil Code/BGB (defense of uncertainty). We shall then also be entitled to render the purchaser due to pay all claims from the current business relationship with the purchaser that are not time-barred. The defense of uncertainty also extends to cover all other outstanding deliveries and services arising through the business relationship with the purchaser.
6. An agreed discount always refers only to the invoice value excluding freight and depends on the full settlement of all due liabilities by the purchaser at the time the discount is granted.

#### **IV. Execution of deliveries, delivery terms and deadlines**

1. Our obligation to deliver is subject to correct and punctual delivery to us, unless incorrect or delayed delivery to us is our fault.
2. Details of delivery times are approximate. Delivery terms commence on the date of our order confirmation and apply only on condition that all details of the order are clarified punctually and there is punctual performance of all the purchaser's obligations such as, for example, provision of all official certificates, furnishing of letters of credit and guarantees or rendering of advance payments.
3. The date of shipment from the plant or depot governs adherence to delivery times and deadlines. They shall be deemed to have been adhered to on notification of readiness for delivery provided we are not at fault for failure to consign the goods punctually.
4. Events of force majeure entitle us to postpone delivery for the duration of the hindrance plus a reasonable lead time. This also applies if such events arise during an existing delay. Force majeure shall be construed to include currency measures, trade policy measures and other measures taken by public authorities, strikes, lock-outs, operational disturbances for which we are not at fault (e.g. fire, machine or roller breakdown, raw material or energy shortages), obstacles on the transport routes, delay in import/customs clearance and all other circumstances which, without being our fault, render deliveries substantially more difficult or impossible. In this case it is irrelevant whether these circumstances arise at our plant, the delivery plant or our supplier. If execution of the contract becomes unreasonable for one of the contracting parties because of the aforementioned events, and in particular if substantial portions of the contract execution are subject to more than six months' delay, then the party concerned may cancel the contract.

#### **V. Retention of title**

1. All goods delivered shall remain our property (conditional commodities) until satisfaction of all claims, in particular also claims to balances due to us from the business relationship (current account reservation) and claims based on grounds unilaterally given by the insolvency administrator. This also applies to conditional receivables and those arising in future, e.g. from acceptor's bills and also if payments are made in respect of specially designated receivables. This current account reservation shall be finally extinguished on settlement of all receivables still outstanding at the time of payment and covered by the current account reservation.
2. For us as manufacturer as defined in section 950 of the German Civil Code/BGB, the handling and processing of conditional commodities takes place without putting us under obligation. The handled and processed goods are deemed to be conditional commodities within the meaning of point 1. above. On processing, joining and mixing conditional commodities with other goods by the purchaser, we shall be entitled to share ownership of the new article in the proportion of the invoice value of the conditional commodities to the invoice value of the other goods used. If our ownership is extinguished by the joining or mixing, the purchaser shall transfer to us as of now the rights of ownership to the new stock or article to which he is entitled up to the amount of the invoice value of the conditional commodities and shall store them for us free of charge. Our co-ownership rights are deemed to be conditional commodities as defined in point 1. above.
3. The purchaser may only sell the conditional commodity as part of normal business under his normal terms and as long as he is not in default, provided the claims arising from resale in accordance with points 4. to 6. are transferred to us. He has no other entitlement to dispose of the conditional commodity.
4. The claims arising from the resale of the conditional commodity, together with all collateral acquired by the purchaser for the claim, are assigned to us as of now. They shall serve as collateral to the same extent as the conditional commodity. If the purchaser sells the conditional commodity together with other goods not sold by us, the claim arising from the resale shall be assigned to us in the ratio of the invoice value of the conditional commodity to that of the other goods sold. On the sale of goods in which we hold a co-ownership share in accordance with point 2. above, a portion corresponding to our co-ownership share shall be assigned to us. If the purchaser makes use of the conditional commodity to perform a contract for work, the claim arising from the contract for work shall be assigned to us in advance to the same extent.

5. The purchaser is entitled to collect receivables arising through the resale. This authorization to collect is extinguished in the event of our revocation, but at the latest on payment default, non-redemption of a bill of exchange or application to open bankruptcy proceedings. We shall only make use of our right of revocation if it becomes apparent after concluding the contract that our claim to payment from this contract or other contracts made with the purchaser is jeopardized by his lack of ability to pay. At our request the purchaser is obliged to notify his customers immediately of the assignment to us and to surrender to us the documents required by collection.
6. It is inadmissible to assign receivables from resale unless it is an assignment by way of genuine factoring which is notified to us and in the case of which the factoring proceeds exceed the value of our secured receivable. Our receivable becomes due immediately the factoring proceeds are credited.
7. The purchaser must notify us immediately of any pledges or other adverse impact through third parties. The purchaser bears all the requisite costs expended to suspend the intervention or to obtain return of the conditional commodity unless they are refunded by third parties.
8. If the purchaser gets into default with payment or does not redeem a bill when due, we are entitled to take back the conditional commodity and to enter the purchaser's plant if necessary for this purpose. The same applies if it becomes apparent after concluding the contract that our claim to payment from this or other contracts with the purchaser is jeopardized by the purchaser's inability to pay. This taking back does not constitute a withdrawal from the contract. This does not affect the provisions of the German Insolvency Statute.
9. If the invoice value of the existing collateral in total exceeds the secured receivables including ancillary receivables (interest; costs or similar) by more than 50%, we shall be obliged to release collateral at our discretion if requested to do so by the purchaser.

#### **VI. Qualities, dimensions and weights**

1. Qualities and dimensions shall be determined by the agreed standards and in the absence of such agreed standards by the DIN/EN standards or materials sheets agreed at the start of the contract, and if there are no such standards or material sheets by commercial practice. References to standards, plant standards, materials sheets or test certificates and to qualities, dimensions, weights and usability do not constitute assurances or guarantees; this also applies to declarations of conformity, manufacturers' declarations and corresponding marks such as CE and GS.
2. The weighting undertaken by us or by our suppliers determines the weights. Provided legally permissible, weights can be determined without weighing according to the standard (theoretically). This has no effect on the additions and deductions (trade weights) common in the steel industry of the Federal Republic of Germany. Piece numbers, numbers of bundles and similar specified in the delivery advice are not binding in the case of merchandise which is sold by weight. If, contrary to the norm, an individual weighing is made, the total weight of the consignment shall apply. Differences from the theoretical individual weights are distributed over them proportionately.

#### **VII. Acceptance tests**

1. If an acceptance test has been agreed, it may only take place at the supply plant or our depot directly after readiness for acceptance has been notified. The manpower costs of acceptance testing shall be borne by the purchaser and the material acceptance costs shall be charged to the purchaser according to our price list or the price list of the supply plant.
2. If acceptance testing is not performed or is not carried out punctually or fully and we are not at fault for this, we shall be entitled to consign the goods without an acceptance test or to store them at the purchaser's cost and risk and to charge the purchaser accordingly.

#### **VIII. Dispatch, passage of risk, packaging, part-deliveries**

1. We decide on the dispatch route and means as well as on the forwarder and freight carrier.
2. If transport is impossible or is substantially more difficult on the envisaged route or at the envisaged place in the envisaged time and this is not our fault, we shall be entitled to make delivery via a different route or to a different place; the additional costs incurred shall be borne by the purchaser. The purchaser shall be given opportunity to react beforehand.
3. On handover of the goods to a forwarder or freight carrier, but at the latest on leaving the depot or the supply plant, the risk, including that of seizure of the goods, is transferred to the purchaser in all transactions, unless deviating agreements have been made. We shall only arrange insurance on instruction from the purchaser at his cost. The obligation to unload and the cost thereof shall be charged to the purchaser.

4. The goods shall be delivered unpacked and without rust protection. If customary in the trade, we deliver the goods packed. We shall provide as dictated by our experience packaging, protection and/or transport aids at the purchaser's cost. These will be taken back to our depot. We shall not bear the purchaser's costs for return transport or for him to dispose of the packaging.
5. To a reasonable extent we are entitled to make partial deliveries. Additional or reduced shipments of the agreed quantities are permissible as customary in the branch. The provision of an approximate quantity entitles us to make over- or under-delivery and impose a corresponding charge of up to 10%.

#### **IX. Call orders**

1. In the case of call orders, goods reported as ready for consignment must be called forward immediately, otherwise we are entitled to dispatch them after reminder at the cost and risk of the purchaser or at our discretion to store them and immediately charge for them.
2. In the case of contracts involving progressive dispatch, call-forwards and type classification are to be submitted to us for approximately equal monthly quantities; otherwise we shall use our own discretion to make such decisions.
3. If the total individual call-forwards exceed the contracted quantity, we shall be entitled but not obliged to deliver the additional quantity. We may charge the additional quantity at the prices valid on call-forward or on delivery.

#### **X. Liability for physical defects**

1. Physical defects in the goods must be notified immediately in writing but at the latest seven days after the goods are delivered. Physical defects which cannot be discovered within this time limit even with the most careful scrutiny must be notified in writing immediately they are discovered – with immediate cessation of any treatment or processing – and at the latest before the agreed or statutory period of limitation expires. In the event of a minor reduction in the value or usefulness of the goods, our liability for physical defects no longer applies. If the goods have already been sold on or reworked, the purchaser shall only be entitled to the right to reduce the price.
2. After performing an agreed acceptance test on the goods by the purchaser, any complaints of physical defects which were apparent during the agreed type of acceptance test shall be excluded.
3. In the case of justified, punctual complaints, we may at our discretion rectify the defect or supply an article which is free of defects (post-performance). In the event of failure or refusal of post-performance, the purchaser may reduce the purchase price or, after setting an appropriate time limit which passes without performance, he may cancel the contract. If the defect is a minor one, he only has a right to reduce the price.
4. If the purchaser does not immediately give us the opportunity to verify the physical defects, and if in particular he does not immediately make the article or samples featuring in the complaint available when requested, all rights relating to the physical defects shall be forfeited.
5. In the case of goods that have been sold as declassified material, e.g. so-called Ila material, the purchaser is not entitled to any rights arising from physical defects regarding the stated declassification reasons and those which one would normally expect. On the sale of Ila material, our liability in any case – where legally permissible – is excluded in the matter of physical defects. Declassified material as well as Ila material is deemed to have been delivered as per the contract at the time it leaves the plant.
6. We shall only bear expenses in connection with post-performance in so far as they are appropriate to the individual instance, in particular in relation to the purchase price of the goods, but never for more than 150% of the value of the goods. Costs related to the installation and removal of the defective article are excluded, as are the costs incurred by the purchaser for removal of the defect by himself without the statutory requirements being present for this. We shall not bear expenses arising from the fact that the sold goods have been transported to a site other than the registered office or branch office of the purchaser unless this accords with their contractual use.
7. This does not affect the purchaser's rights of recourse under section 478 of the German Civil Code.
8. In the case of commission orders we are only liable up to a maximum of the amount of the corresponding wage costs, provided this is legally admissible.
9. We do not provide a guarantee for a particular use or particular suitability of the goods unless a specific written deviation from this arrangement is agreed; in other respects the use and deployment risks are borne exclusively by the purchaser.

**XI. General limitation on liability**

1. We, including our senior management and other agents, shall only be held liable in cases of intent and gross negligence for violation of contractual and non-contractual obligations, in particular for lack of feasibility, default, fault in the case of competing for the contract and inadmissible conduct; this is limited to the damage or loss typical of such contracts which could be predicted at the time of concluding the contract.
2. These restrictions do not apply in the case of culpable violation of material contract obligations if achievement of the purpose of the contract is jeopardized thereby, in cases of mandatory liability under the Product Liability Act, in the case of injury to life, bodily injury or health and also if we have maliciously concealed defects in the article or have guaranteed their absence. The rules on the burden of proof remain unaffected by this.
3. Unless agreed otherwise, contractual claims by the purchaser on us because of or in connection with the supply of the goods shall become statute-barred one year after delivery of the goods provided they do not include compensation for damage to health or bodily injury or a typical predictable damage or loss or are not based on intent or gross negligence on the part of the vendor. This does not affect our liability for intentional and grossly negligent violations of duty and the statute-barring of statutory claims to recourse. In the cases of post-performance the limitation period is not started anew.

**XII. Place of performance, place of jurisdiction and applicable law**

1. The place of performance for our deliveries is the supply plant in the case of ex-works delivery and for other deliveries our depot. At our discretion, the place of jurisdiction shall be the registered office of our main branch or of the purchaser.
2. For all legal relations between us and the purchaser the German non-standardized substantive law shall apply in supplement to these terms and conditions. The provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) do not apply.

**XIII. Miscellaneous**

1. If a purchaser domiciled outside the Federal Republic of Germany (foreign customer) or his agent collects goods or transports or consigns them abroad, the purchaser must provide us with the export certificate which is required for tax purposes. If this certificate is not provided the purchaser must pay the VAT on the invoice amount applicable to deliveries within the Federal Republic.
  2. In the case of deliveries from the Federal Republic of Germany to other member states of the EU, before delivery takes place the purchaser must notify us of his VAT registration number under which he pays tax on purchases within the EU. Otherwise he must pay the VAT for which we are due by law on our deliveries in addition to the agreed purchase price.
  3. When billing deliveries from the Federal Republic of Germany to other member states of the EU the rules on VAT of the respective recipient member state are applicable if either the purchaser is registered for VAT purposes in a different member state of the EU or if we are registered for VAT in the member state of the recipient.
  4. Should any provision of these General Conditions of Delivery and Payment be or become invalid, this shall not affect the validity of the remaining conditions.
- \*) This includes in particular:  
ThyssenKrupp Steel Europe AG, Duisburg  
ThyssenKrupp Materials International GmbH, Essen  
ThyssenKrupp Mannex GmbH, Essen  
ThyssenKrupp Nirosta GmbH, Krefeld  
Jakob Bek GmbH, Ulm  
Otto Wolff Handelsgesellschaft mbH, Essen

Translation: The German version has priority