

General Purchasing Terms and Conditions of thyssenkrupp Materials Trading North America

1. Scope

- 1.1 These General Purchasing Terms and Conditions shall apply to all present and future purchase orders for goods or services and their execution. Seller's terms and conditions are expressly rejected and shall not be recognized or agreed to by Buyer unless Buyer expressly consents to their validity in a document signed by Buyer. Acceptance of goods does not constitute an acceptance of any of Seller's terms and conditions.
- 1.2 Following written acceptance of this purchase order by the Seller, this purchase order will represent the entire agreement between the parties hereto. Thereafter, this purchase order may not be amended, supplemented, or otherwise modified except by written instrument which makes reference hereto and which is signed by the parties hereto.
- 1.3 Any oral agreements made by or with Buyer's employees will not bind Buyer unless and until confirmed by Buyer in writing.
- 1.4 Quotes/offers shall be prepared free of charge to Buyer and will not bind Buyer.
- 1.5 Unless otherwise agreed, delivery terms will be pursuant to the INCOTERMS 2010 as amended from time to time.

2. Payment

- 2.1 In no event will payment periods will commence until all documentation, including but not limited to test certificates (e.g., mill certificates) or similar documents have been delivered to Buyer.
- 2.2 No interest may be claimed for late payments.
- 2.3 Buyer will be entitled to offset any amounts owed to Buyer against amounts Buyer owes Seller.
- 2.4 Seller shall not assign any of its rights or obligations to a third party without Buyer's prior written consent.

3. Delivery

- 3.1 TIME IS OF THE ESSENCE FOR ALL DELIVERIES. All shipments must be made by the date(s) specified on the face of the purchase order. Partial shipments and early shipments will be subject to Buyer's written consent. Any impending delays in delivery shall be promptly communicated in writing to Buyer, proposing suitable counteractions to avert repercussions of the delay. Excess or short shipments will only be accepted in Buyer's sole discretion.
- 3.2 All shipping documents and other certificates forming part of Seller's obligations, including without limitation the documents referenced in section 5, below, (together, "Seller's Documents"), shall be sent to Buyer by the shipment date. If delayed delivery by Seller (including late transmittal of any of Seller's Documents completed in full compliance with this purchase order) causes any payment collateral to expire, Buyer may, AT ITS SOLE OPTION (a) waive one or more of such discrepancies, (b) agree to amend the terms of any payment collateral, (c) renegotiate the purchase order in whole or in part, or (d) terminate the purchase order in whole or in part, including any lots.
- 3.3 Notwithstanding any other provisions in this contract, Seller guarantees that the vessel nominated for shipment of the goods and her owners are financially sound and solvent, and free from any obligation, encumbrance, claim or lien of a financial nature or otherwise that would interfere in any way with the vessel's performance of the voyage and the delivery of the cargo to its final destination with the utmost dispatch. In the event the vessel or cargo is liened, arrested, detained or attached during the pendency of this purchase order (or after completion of discharge in respect of the cargo), Seller agrees to take immediate action to release the vessel/cargo, and to remain fully responsible for all costs, damages and consequences incurred by Buyer as a result of any such attachment, lien, arrest, detention or interruption of the vessel's voyage, including without limitation all expenses, discharge and transshipment expenses, attorney's fees, loss of market and market value as a result of any delays in delivery caused by breach of this clause.
- 3.4 All legal rights and remedies provided to Buyer are cumulative. Buyer's failure at any time to require performance by Seller of any provision of these terms and conditions will in no way impair the right to require such performance at any time thereafter, and no course of conduct or failure or delay in exercising or enforcing any right or remedy shall waive any provision of these terms and conditions. No waiver shall be effective unless made through a written amendment signed by Buyer's authorized representative.
- 3.5 Any early delivery made without Buyer's consent will not affect the term of payment.
- 3.6 In the event an antidumping and / or countervailing duty petition is filed with the United States International Trade Commission and / or United States Department of Commerce against the merchandise covered under this purchase order, Buyer reserves the right to cancel or renegotiate this purchase order.

4. Documentation

- 4.1 The following shall apply in cases where Seller makes any statements on the origin of the goods sold:
 - i. Seller agrees to (a) permit any documentary evidence of origin to be verified by the customs authorities and (b) provide all information and/or confirmations or endorsements that may be required.
 - ii. Seller will be obligated to indemnify Buyer for any loss caused by a certificate of origin declared inappropriate or non-verifiable by the local authorities, unless any such consequential loss is beyond Seller's control.
- 4.2 Seller shall, at its own cost and expense and without undue delay, ensure that all documents required for the effectiveness of the contract or order, including without limitation export permits, licenses, approvals, etc., are available and remain valid while the order or contract is in progress. Failure by Seller to meet this obligation shall entitle Buyer to cancel or rescind the contract in whole or in part and to claim damages from Seller. The same shall apply if despite Seller's efforts the required documents are (a) not granted within a period reasonably acceptable to us or (b) withdrawn or become invalid while the order or contract is in progress.

5. Quality; Testing; and Audit

- 5.1 Seller shall maintain an effective written quality control system which ensures compliance with the Order requirements.
- 5.2 Buyer may enter Seller's facility at any time to inspect the facility, goods, materials, and any of the property related to the purchase order. Buyer's inspection does not constitute acceptance of any work-in-process or finished goods, does not relieve Seller of any of its responsibilities or warranties.
- 5.3 Buyer may utilize test reports, outside laboratory testing, specifications, and dimensional verification as appropriate. All appropriate paperwork, i.e., mill test reports, packing lists and statistical data as required, must accompany each shipment and must be present at delivery. Goods found to be non-conforming at any time may be returned to Seller. Buyer shall not be required to submit suspect material to 100% inspection.
- 5.4 Should mill test reports ("Mill Report") be required on the purchase order, the Mill Report must be signed or stamped by an authorized representative of the mill. It must contain, as a minimum, supplier name and address, Buyer's part number, purchase order number, quantity, date shipped, heat/lot number, all acceptance criteria for specification and list all of the specifications, i.e., MIL-P, AMS, ASTM, etc., which would apply to the shipment. All material shipped is to be the latest revision available. All Mill Reports must reference revision level of material shipped.

- 5.5 Seller shall establish and maintain documented procedures for identification of individual product heat/lots. This identification must be recorded, and be made available to Buyer's personnel, customers or any appropriate regulatory agency upon request.
- 5.6 Upon reasonable notice to Seller, either Buyer or Buyer's direct or indirect customers (or a third party designee) may audit Seller's production facility, goods and any other property (including all pertinent documents, data and other information) related to the purchase order at Seller's facility for the purpose of verifying its compliance with its obligations under the purchase order.

6. Warranty; Liability for defects

- 6.1 All goods provided hereunder shall be new, shall conform to this purchase order in all respects, and shall be free and clear of any defects in materials or workmanship and third-party rights, interests or liens. The warranty period is the longer of: (a) four (4) years from the date Buyer, or its customer, accepts the goods; or (b) the warranty period provided by applicable law.
- 6.2 If any defective or non-conforming goods are shipped to and rejected by Buyer or Buyer's customer, either at the time of delivery or at any time during the warranty period specified section 6.1, the quantities under the purchase order will be reduced, unless Buyer otherwise notifies Seller. Following rejection of any non-conforming goods, Seller shall, without prejudice to any other right or remedy of Buyer, at Buyers' sole discretion and at Seller's sole expense: (a) accept return of the goods to Seller at full invoice price, plus transportation charges; (b) repair the goods; or (c) replace the goods with conforming goods. In addition, Seller will correct prior to shipment from Seller's facility any unshipped goods that fail to meet the requirements of the purchase order. For any repaired or replaced goods, the applicable warranty period shall recommence to run from the time of such repair or replacement.
- 6.3 Seller shall indemnify and hold Buyer harmless, including its parents, subsidiaries, affiliates, officers, directors, shareholders, members, managers, employees, agents, representatives, successors and assigns (each, an "Indemnified Party"), from and against all direct and indirect damages, losses, injuries, fines, costs and expenses (including legal and other professional fees and costs) (collectively, the "Losses") that an Indemnified Party might sustain or incur as a result of any acts or omissions of Seller or Seller's parents, subsidiaries, affiliates, officers, directors, shareholders, members, managers, employees, agents, representatives, successors and assigns, including without limitation those resulting from (a) a breach of any obligation or warranty under these terms and conditions; (b) nonconforming products; (c) production interruptions or delivery failures, (d) voluntary or involuntary recall campaign or other corrective service action; and (e) personal injury, including death, or property damage.

7. Force Majeure

Any delay or failure of either party to perform its obligations will be excused if and to the extent that the party is unable to perform specifically due to an event or occurrence beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; inability to obtain power; or court injunction or order. The change in cost or availability of materials, components or services based on market conditions, supplier actions, labor disruptions or contract disputes will not excuse Seller's performance, and Seller assumes these risks. As soon as possible (but no more than one full business day) after the occurrence, Seller will provide written notice describing such delay and assuring us of the anticipated duration of the delay and the time that the delay will be cured. During the delay or failure to perform by Seller, Buyer may at its sole option and at Seller's expense: (a) purchase goods from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (b) require Seller to deliver to Buyer at Buyer's expense all finished goods, work in process and parts and materials produced or acquired for work under the purchase order; or (c) have Seller provide goods from other sources in quantities and at a time requested by Buyer and at the price set forth in the purchase order. In addition, Seller, at its expense, will take all necessary actions to ensure the supply of goods to Buyer for a period of at least thirty (30) days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts.

8. Arbitration

This purchase order shall be governed by and construed in accordance with the U.N. Convention on Contracts for the International Sale of Goods. The parties will attempt to settle any dispute arising in connection with this purchase order by friendly negotiation. If no such settlement can be reached within twenty (20) days after any such dispute arises, all disputes arising in connection with the present purchase order shall be finally settled under the rules of conciliation and arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The arbitration shall be conducted in Chicago, Illinois, USA in the English language. If the parties cannot agree on a single arbitrator, each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator.

9. Place of performance and jurisdiction, applicable law, etc.

- 10.1 The laws of the State of Illinois, excluding its conflict of laws principles, shall govern the interpretation and construction of any order and the rights and obligations of the parties hereunder. Any litigation or claims arising from any order may be brought by us in any court having jurisdiction over you, or at our option, in any court having jurisdiction over any of our U.S. locations specified in the applicable order, in which event you consents to personal jurisdiction and service of process in accordance with applicable procedures and irrevocably waives all objections to any such venue, including without limitation any objection that the place where such court is located is an inconvenient forum. Any litigation or claims by you against us arising from any order must be brought by you exclusively in the state or federal courts in the United States having jurisdiction over us. **YOU IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO AN ORDER.**
- 10.2 The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 10.3 Should any provision of these terms and conditions be or become ineffective or invalid, the effectiveness and validity of the remaining provisions shall not be affected thereby and the balance of the terms and conditions or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.
- 10.4 These terms and conditions shall apply mutatis mutandis to any hybrid contract forms (e.g., work performance contracts, contracts for work, combined contract of sale and work, etc.).