

**GENERAL SALES AND DELIVERY CONDITIONS  
HWS - AKTIENGESELLSCHAFT HANDEL - WIRTSCHAFT - SERVICES****I. General information**

1. These General Terms and Conditions of Sale and Delivery shall become part of the purchase or delivery contract. Amendments and supplements must be in text form to be effective; this also applies to a cancellation of this text form requirement. Conflicting or supplementary terms and conditions of purchase or other restrictions of the buyer will not be recognized unless the seller has expressly agreed to them in writing in individual cases.

**II. Offers, orders, assignment**

1. Offers of the seller are subject to change without notice regarding price, quantity, delivery period and delivery possibility.
2. Orders of the buyer become binding for the seller exclusively by confirmation of the seller. The confirmation is in text form.
3. Rights from purchase and delivery contracts with the seller cannot be assigned by the buyer without prior written consent of the seller.

**III. Calculation**

1. The determination of the weight decisive for the calculation shall be made at the shipping point of the Seller's delivery works, unless the buyer requests weighing at the station of departure at his own expense. The basis for calculation of the agreed prices is the purchase price for the necessary input material. If the seller can prove that the officially quoted raw material price for the required input material, quoted on the LME, published in the London Metal Bulletin, deviates by more than 5% from the calculated purchase price, the agreed selling price shall increase accordingly.

**IV. Terms of payment, payment transactions.**

1. The buyer must check the invoice within 10 days of receipt. If there is no objection within this period, the invoice is considered as accepted.
2. The statutory provisions shall apply to default of payment; in addition, the seller shall be entitled to withhold further deliveries or partial deliveries - even those already confirmed - and to make them dependent on advance payment of the purchase price or provision of a reasonable security, at the seller's discretion. If the buyer is in default with at least two payments from the business relationship with the seller, all payment obligations of the buyer from all business relationships with the seller shall become due immediately.
3. Down payments and advance payments are to be made plus any legally applicable value added tax that may be applicable. The buyer shall be liable for the legally applicable value-added tax in the amount of the legally applicable value-added tax in the event of non-invoicing of this tax in the case of actual domestic deliveries within the meaning of the German VAT Act, in particular in the event of collection and subsequent failure to provide the seller with the required proofs of export/transfer.
4. Payments shall only be deemed to have been made when the amount has been finally credited to an account of the seller.
5. The buyer may only offset or assert rights of retention with legally binding or undisputed claims. The Buyer shall also only be entitled to rights of retention insofar as his counterclaims are based on the same contractual relationship.

**V. Deterioration of assets**

1. If it becomes apparent after conclusion of a contract with the buyer that due to his financial situation the fulfillment of his contractual obligations is endangered (in particular in the event of cessation of payments, application for insolvency proceedings, seizure or execution measures, raising of bill or cheque protests and return of direct debits, also to or against third parties), the seller is entitled, at the seller's discretion, to withhold delivery until advance payment of the purchase price or provision of appropriate security. This shall also apply if, because of the buyer's default in payment, there are reasonable doubts about the buyer's solvency or creditworthiness.
2. If a current account relationship exists within the framework of the business relationship, the seller shall also be entitled in the cases of item IV.1 to withhold deliveries until receipt of all payments from acknowledged balances or provision of appropriate security.
3. If the advance payment or provision of security pursuant to clause V.1 is not made by the buyer within two weeks, the seller shall be entitled to withdraw from the respective contract.

**VI. Delivery, risk assumption**

1. Unless otherwise agreed, deliveries shall be "EXW" (Incoterms © 2010). If the parties have agreed in individual cases to dispatch the goods to a different location, the seller reserves the right to choose the dispatch route and method. Additional costs caused by special shipping requests of the buyer shall be borne by the buyer. The same applies to increases in freight rates occurring after conclusion of the contract, any additional costs for detour, storage costs, etc., unless carriage paid delivery has been agreed.
2. The delivery dates are stated in the respective order confirmation and are only valid subject to correct and timely delivery to the seller.
3. If a fixed delivery date has been agreed upon, the buyer shall, in the event default to set a reasonable deadline for subsequent performance. Only after the

unsuccessful expiration of this period may the buyer withdraw from the contract, unless a grace period is legally dispensable by way of exception.

4. The risk of destruction, loss or damage to the goods shall pass to the buyer when the goods are made available for collection on the agreed delivery date. If shipment has been agreed in individual cases, the risk shall pass to the Buyer upon dispatch of the goods. Goods that are not accepted on time are stored at the expense and risk of the buyer.

**VII. Force Majeure**

Force majeure of any kind, such as war, terrorism, riots, fire, flooding or other unforeseeable circumstances beyond the control of the party obliged to perform, in particular disruptions in operations, traffic or shipping, shortages of labor, energy or raw materials, strikes, lockouts, official decrees or incorrect or untimely self-supply, which prevent the party obliged to perform from fulfilling its contractual obligations, shall release the party obliged to perform from its contractual obligations for the duration and to the extent of the impediment. The party obliged to perform shall notify the other party of the circumstances of the impediment and the expected duration of the delay. If the hindrance lasts for more than eight weeks, both parties shall be entitled to withdraw from the contract. In the event of partial or complete loss of the seller's sources of supply, the seller shall not be obliged to obtain supplies from third-party suppliers; in this case, the seller shall be entitled to distribute the available quantities of goods in the order of the orders received by him.

**VIII. Reservation of title**

1. The delivered goods shall only become the property of the buyer when the buyer has fulfilled all his obligations arising from the business relationship with the seller (including incidental claims, claims for damages and the cashing of cheques or bills of exchange). If there is a current account relationship within the scope of the business relationship, the ownership of the delivered goods shall only pass to the buyer upon receipt of all payments from acknowledged balances.
2. The seller shall be entitled to withdraw from the contract after granting a reasonable grace period and to demand the return of the goods delivered under reservation of title ("reserved goods") from the buyer, if the buyer acts in breach of contract, in particular in the event of default in payment.
3. After taking back the goods subject to retention of title, the seller shall be entitled, after having threatened to do so in advance, to realize them appropriately; the proceeds of such realization shall be set off against the buyer's liabilities, less reasonable realization costs.
4. In case of processing of the reserved goods, the buyer shall act on behalf of the seller. If the goods subject to retention of title are processed, transformed, mixed or combined with goods not owned by the seller, the seller shall acquire co-ownership of the resulting products in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other processed, transformed, mixed or combined goods at the time of processing, transformation, mixing or combining. In all other respects, the same shall apply to the resulting product as to the reserved goods. If the combination or mixing is carried out with a main item of the buyer, the buyer hereby assigns to the seller a pro rata co-ownership of the new item.
5. The buyer is obliged to keep the reserved goods carefully for the seller, to maintain and repair them at his own expense and to insure them at his own expense against loss and damage to the extent required by a prudent businessman. He hereby assigns his claims from the insurance contracts to the seller in advance.
6. As long as the buyer duly fulfils his obligations to the seller, he shall be entitled to dispose of the reserved goods in the ordinary course of business; this entitlement shall not apply to buyers of the buyer who have excluded or limited the assignment of payment claims against them. The buyer is not authorized to pledge, transfer by way of security or otherwise encumber the reserved goods. In the case of resale, the buyer must make the transfer of ownership dependent on the full payment of the goods by his customers.
7. The buyer hereby assigns to the seller in advance all claims against his customers resulting from a resale of the goods subject to retention of title, including all ancillary and security rights, as security for all claims against the buyer arising from the framework of the business relationship. If a current account relationship exists within the framework of the business relationship between the buyer and his customer in accordance with § 355 of the German Commercial Code (HGB), the assignment shall also include the acknowledged balance. The seller accepts the assignment. If reserved goods are sold together with other items at a total price, the assignment shall be limited to the pro-rata amount of the seller's invoice for the reserved goods also sold. If goods are sold in which the seller has a co-ownership share in accordance with Section VIII.4, the assignment shall be limited to that part of the claim which corresponds to the seller's co-ownership share. If the buyer uses the goods subject to retention of title to process goods owned by third parties against payment, he hereby assigns in advance his claim for remuneration against the third party to the seller for the aforementioned security purpose.
8. As long as the buyer fulfils his payment obligations from the collected proceeds in due time and in particular does not has filed an application for the opening of insolvency proceedings and has not suspended his payments, he remains entitled after the assignment to collect the claim from a resale or processing himself. The right of the seller to collect the claims remains unaffected. The buyer is not authorized to pledge or assign the claims assigned to the seller to third parties.
9. If it appears to the seller that the realization of his claims due to a of the cases mentioned in No. VIII.8, first sentence, the buyer shall, at the seller's request, inform his customers of the assignment and provide the seller with all information and

documents necessary for the collection of the claim. Upon the occurrence of such a case, the buyer's right to collect the claims shall expire.

10. The buyer shall notify the seller immediately of any access by third parties to the reserved goods and the assigned claims. In addition, the buyer shall inform these third parties of the seller's rights to the reserved goods or the assigned claims. Insofar as the third party is not in a position to reimburse the seller for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the buyer shall be liable for the loss incurred by the seller.

11. If the value of the securities to which the seller is entitled exceeds the seller's claims against the buyer to be secured by more than 20%, the seller is obliged to release the securities at the buyer's request. The choice of the security to be released is made by the seller.

#### **IX. Claims for damages**

1. The seller's liability for damages in the case of simple negligence is limited to damages resulting from the violation of essential contractual obligations, the fulfillment of which is essential for the proper execution of the contract and on the fulfillment of which the contractual partner regularly relies and may rely; in this case, however, the liability is limited to the typical foreseeable damage. This limitation of liability shall apply in the same way to damages caused by gross negligence by employees or agents of the seller who are not organs or executive employees of the seller.

2. The limitation period shall be two years after the point in time at which the claim arose and the buyer became aware of the circumstances giving rise to the claim. Irrespective of the buyer's knowledge, the claim shall become time-barred three years after the event causing the damage. The limitation period for claims for damages due to defects shall be governed by section X.

3. The limitations of liability shall apply to all claims for damages irrespective of their legal basis with the exception of claims for damages by buyer (i) due to intent, (ii) under the German Product Liability Act, (iii) due to fraudulently concealed defects, (iv) due to defects in respect of which a quality guarantee has been given, (v) due to injury to life, body or health or (vi) due to gross negligence on the part of Seller's executive bodies or senior executives.

#### **X. Complaints**

1. Notices of defects shall only be considered if they are notified to the seller in writing without delay, but at the latest within ten days of the arrival of the goods, giving specific details of the defect. The buyer shall specify the notice of defect by sending in receipts, samples, packing slips and indicating the invoice number and date. A further condition is that 80% of the delivered goods must be available for inspection by the seller in unopened condition.

2. In the case of hidden defects, the written complaint must follow immediately, but at the latest within ten days after the defect has been discovered; the burden of proof that the defect is hidden lies with the buyer.

3. Rejected goods may only be returned with the express consent of the seller.

#### **XI. Claims for defects**

1. In the case of justified claims for defects, the buyer is initially entitled to claims for subsequent performance, whereby the seller has the right to choose between rectification of defects and subsequent delivery; subsequent performance is effected without recognition of a legal obligation. If the subsequent performance by the seller fails, the buyer can reduce the purchase price or withdraw from the contract at his discretion. Claims of the buyer for the expenses necessary for the purpose of subsequent performance, in particular transport, travel, labor and material costs, are excluded if the expenses increase because the object of the delivery has subsequently been taken to a place other than the buyer's branch office, unless the transfer corresponds to its intended use; the seller may invoice the buyer for the additional costs incurred as a result.

2. Claims for damages according to clause VIII remain unaffected. The buyer shall not be entitled to any further claims for defects.

3. The buyer shall bear the reasonable costs of any unjustified assertion of claims for defects (e.g. if the goods were not defective).

4. Claims for defects shall become time-barred one year after delivery. This limitation shall not apply, however, if (i) a defect has been fraudulently concealed or (ii) a guarantee for the quality of a product has been given.

5. In the event of claims for damages, this limitation shall still not apply in the following cases: (i) injury to life, body or health, (ii) intent, and (iii) gross negligence of organs or executive employees of Seller. The agreement of a guarantee must be in writing to be effective. A guarantee declaration is only effective if it describes the content of the guarantee as well as the duration and the territorial scope of the guarantee protection in a sufficiently defined manner.

#### **XII. Nature of the goods, technical advice, use and processing**

1. The quality of the goods shall exclusively be the quality described in the seller's specifications. Any advice given by the seller on application technology, whether verbally, in writing or by way of trials, is given to the best of the seller's knowledge, but shall be deemed to be only non-binding information, also with regard to any third-party industrial property rights, and shall not release the buyer from the obligation to examine the goods delivered by the seller himself to determine their suitability for the intended processes and purposes. Application, use and processing of the goods are beyond the control of the seller and are therefore exclusively the responsibility of the buyer.

2. The seller has registered the substance for certain uses in accordance with the REACH regulation, where necessary. Whether the use intended by buyer is also registered is the sole responsibility of buyer. Any use for non-registered purposes is prohibited. The buyer is solely and unrestrictedly liable for violations.

#### **XIII. Trademarks**

1. It is inadmissible to offer or supply substitute products instead of the seller's products by reference to these products, as well as to associate the seller's product designations, whether protected or not, with the word "substitute" in price lists and similar business documents or to compare them with the designations of substitute products.

2. It is further prohibited, when using the seller's products for manufacturing purposes or during further processing, to use the seller's product designations, in particular the seller's trademarks, on such goods or their packaging or in the associated printed matter and advertising material without the prior consent of the seller, in particular as component designations. The supply of products under a trademark shall not be deemed to constitute consent to the use of such trademark for the products manufactured therefrom.

#### **XIV. Export Control**

1. The buyer undertakes to comply with the relevant national and international export control regulations, in particular Regulation (EC) 2580/2001 and Regulation (EC) 881/2002 as amended from time to time, as well as, if relevant, the U.S. Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR) and other end use/end user-related controls ("catch-all"). The buyer shall obtain in a timely manner all necessary permits and licenses as well as any other permits required for the use or export of the goods under all such applicable laws.

2. The Buyer undertakes to issue End Use Certificates and to provide any other documents required for application to the competent authorities, if requested by the seller.

3. The buyer shall be liable to the seller for breaches of the obligations under clause XIV.1 and clause XIV.2, as well as for damage resulting from official measures that result directly from incorrect information provided by the buyer.

#### **XV. Applicable law, place of jurisdiction, miscellaneous**

1. All legal relations in connection with the contract shall be governed exclusively by the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

2. Clauses customary in trade for the delivery of goods shall be construed in accordance with the Incoterms © 2010.

3. If it has been agreed that the seller shall bear customs and import duties in the country of destination, any increases in such duties which come into force between the date of the order confirmation and delivery of the goods shall be borne by the buyer. The declaration of customs and import duties is in any case the responsibility of the buyer. All other fees, taxes and costs associated with the purchase, export and import of the goods are also borne by the buyer.

4. Should individual clauses of these terms and conditions of sale and delivery be or become ineffective, this does not affect the effectiveness of the remaining clauses. The parties shall replace an invalid provision by a provision which comes closest to the economic purpose of the invalid provision and is valid.

5. Place of performance for the respective delivery is the place of delivery or dispatch, for payment it is Düsseldorf.

6. Exclusive place of jurisdiction is Düsseldorf.

7. The buyer shall bear all fees, costs and expenses incurred in connection with any legal action taken against him outside Germany that is legally successful.

Düsseldorf, October 2020