

**PURCHASE ORDER TERMS AND CONDITIONS**

- 1. General.** The Seller is the vendor or supplier ("Seller") who is providing Goods (as defined herein) to ThyssenKrupp Steel USA, LLC, its successors, assigns and designees ("Buyer"), pursuant to a Buyer purchase order which specifies these Purchase Order Terms and Conditions ("Terms") and identifies the Seller. Seller shall supply the Goods pursuant to these Terms, Buyer's purchase order document(s) ("Order"), and any other attachment thereto, if any, agreed to in writing by Buyer (collectively "Agreement"). These Terms shall apply to all goods, materials, supplies, tools, facilities, equipment, machinery, work, and services provided by Seller to Buyer ("Goods") pursuant to an Order which references these Terms. If Seller is to perform any work on Buyer's premises, Seller shall comply with all of Buyer's rules and regulations generally applicable to Buyer's on-site contractors, and additionally, Seller will be required to enter into a Buyer on-site services agreement acceptable to Buyer prior to performing any on-site work.
- 2. Acceptance.** Acceptance of the Order is expressly limited to the terms of the Agreement. Shipment and/or delivery by Seller of the items covered by the Agreement with the consent of Buyer shall in all cases constitute an unqualified acceptance of all the terms and conditions of the Agreement by Seller, whether or not Seller has countersigned the Agreement and/or the Order. No additional and/or different terms, including those which appear in any quotation, acceptance, invoice, sales order, or acknowledgment or written confirmation from Seller, shall be of any force or effect. Buyer hereby notifies Seller of Buyer's objection to any additional and/or different terms, unless and to the extent Buyer has expressly agreed to any such additional and/or different terms in a duly executed writing. The Agreement shall constitute the entire agreement between Buyer and Seller unless otherwise expressly agreed to in a writing duly executed by Buyer and Seller.
- 3. Risk of Loss.** Risk of loss of all Goods shall remain with Seller until delivery and acceptance of the Goods at Buyer's delivery address set forth in the Order.
- 4. Delivery. Time, quality and quantity are of the essence with regard to Seller's obligations under the Agreement.** If any Goods are not delivered to Buyer by the time specified in the Agreement, Buyer may at its option refuse acceptance of such Goods, cancel any remaining unshipped portions of the Agreement, and avail itself of any other remedies available to it at law or equity for breach of contract.
- 5. Price; Payment.** All prices shall be inclusive of applicable excises, duties, or any other governmental impositions on or related to the production, sale or transportation of the Goods. Prices are subject to increase only with prior written consent of Buyer. Unless otherwise specified herein, the price of Goods shall be paid after delivery and within forty-five (45) days following receipt by Buyer of an appropriate invoice and other supporting documentation reasonably requested by Buyer. All payments are subject to Buyer's right to withhold an amount reasonably necessary in Buyer's opinion to fully protect and insure itself against any actual or potential liability or damage directly or indirectly related to the Agreement or the Seller's breach or threatened breach of any other contract, or to set-off any amounts owed to Buyer by Seller. Buyer shall have the right to access and review Seller's records and books relating to the supply of the Goods or any payment related thereto.
- 6. Taxes.** Under no circumstances shall sales, use or other tax be added to the Order price unless specifically stated on the Order. Buyer has been issued a State of Alabama Direct Pay Permit (Permit No. SDP-R007472147). As such, Buyer shall be responsible for remitting any applicable State of Alabama or Mobile County sales and use tax.
- 7. Change; Cancellation.** Buyer shall have the right to change from time to time any of the drawings, specifications or instructions for Goods covered by this Agreement, and Seller agrees to comply with such notices. If such changes result in a decrease or increase in the Seller's cost or in the time for performance, Seller shall notify Buyer in writing within seven days after receipt of the change notice. There shall be no adjustment in the price and time for performance unless agreed to by both parties in writing. Buyer may at any time cancel or terminate the Agreement or any Order, with or without cause, upon three days advance written notice to Seller.
- 8. Warranties.** In addition to any other express or implied warranties, Seller expressly warrants that: (a) it has good and marketable title to all Goods furnished under the Agreement and the right to transfer title to such Goods to Buyer free of all liens, claims, and encumbrances; (b) all Goods provided shall be in accordance with all requirements of the Agreement; (c) all Goods shall be of new and first class material and workmanship, shall be fit and satisfactory for the purpose for which they are intended, and shall be of merchantable quality; (d) all Goods furnished shall be free from defect in material, design or workmanship; (e) all work shall be performed in a workmanlike manner and in accordance with industry standards for such work; and (f) the Goods will be properly branded, labeled, tagged, marked and/or registered (if required) in accordance with all applicable laws, rules and regulations. These warranties are in addition to all other warranties, express or implied, at law or equity. The Goods provided hereunder will be subject to inspection and approval by Buyer and any applicable governmental authorities. Buyer's inspection or non-inspection of materials or its receipt, possession or acceptance thereof, will not relieve Seller from any of Seller's obligations and warranties hereunder.
- 9. Remedies.** Seller shall promptly replace or correct defects in the Goods not conforming to this Agreement or any warranty, without expense to Buyer, when notified of such non-conformity by Buyer. Alternatively, Buyer may reject or revoke acceptance, and cover by making any reasonable purchases in substitution for those rejected and the Seller will be liable to Buyer for any additional costs for such substituted material; or Buyer may proceed to correct Seller's nonconforming work by the most expeditious means available, and the costs for such correction shall be for Seller's account; or Buyer may retain the nonconforming material and an equitable adjustment reducing the Order price to reflect the diminished value of such nonconforming material will be made by written revision.
- 10. Intellectual Property.** Seller warrants that the Goods provided hereunder shall not infringe any U.S. and/or foreign patent, trademark, trade name, copyright and/or any other third party intellectual property right. Seller shall, at its expense, defend, indemnify and save Buyer harmless from and against any and all loss, damage, expense or liability that may result by reason of any such infringement or alleged infringement, including, without limitation, attorneys' fees incurred by Buyer in its defense. In the event that any of the Goods furnished to Buyer hereunder or the operation thereof become the subject of an alleged infringement of a U.S. and/or foreign patent and/or any other third party intellectual property right, Seller shall, at its expense, procure for Buyer the right to continue using the Goods or replace or modify the same so that they become non-infringing. Furthermore, Seller hereby grants Buyer at no extra cost a royalty-free, non-exclusive, irrevocable license under any intellectual property rights owned or controlled by Seller in connection with Buyer's use of the Goods, including any repair or subsequent sale of the Goods. If the Goods are to be made pursuant to any innovations, designs, plans, specifications, drawings or the like supplied by or on behalf of Buyer (collectively, "Designs and Drawings"), then such Designs and Drawings shall at all times remain the property of Buyer, and Seller shall have no rights or interest in such Designs and Drawings.
- 11. Compliance with Laws.** Seller warrants and agrees that all Goods furnished hereunder shall comply with all laws, rules, regulations and requirements of all governmental authorities having jurisdiction in connection with the Goods, including but not limited to, compliance with country of origin requirements under the North American Free Trade Agreement and any other duty preference programs; compliance with all licensing, permit, approval and filing requirements; compliance with any child, slave, prisoner or other form of forced or involuntary labor laws. Seller shall promptly notify Buyer in writing of any material or components used by Seller in filling the Order that Seller purchases in a country other than the country in which the Goods are delivered. If Goods are manufactured in a country other than the country in which the Goods are delivered, Seller will mark Goods "Made in [country of origin]". At Buyer's request, Seller shall certify in writing its compliance with this section. Seller agrees to indemnify and hold the Indemnitees (as defined below) from and against any liability claims, demands, fines, penalties or expenses, including attorneys' fees, arising from or relating to Seller's or its subcontractors' noncompliance with this section.
- 12. Hazardous Materials.** Before and at the time the Goods are shipped, Seller will give Buyer sufficient warning in writing (including, without limitation, appropriate labels on all Goods, containers, and packing, disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is an ingredient or part of the Goods, together with any special handling instructions that are needed to advise carriers or Buyer, or their employees, how to take appropriate measures while handling, transporting, processing, using or disposing of the Goods, containers, or packaging. Seller agrees to comply with all applicable laws relating to such materials.
- 13. Indemnity; Insurance.** To the maximum extent permitted by law, Seller will indemnify, protect, defend and hold harmless Buyer, its subsidiaries, successors, partners, directors, officers, employees, agents, assigns, representatives, consultants, affiliates and each of them (hereafter individually and collectively, the "Indemnitees") from and against any and all claims, liabilities, liens, demands, law suits, actions, losses, damages, injuries, judgments, settlements, costs or expenses whether asserted in law or in equity, including but not limited to, attorneys' fees (hereinafter collectively, "Claims") arising out of, or caused in whole or in part by any activity that arises, results from or relates to: (a) any breach by Seller of any term, condition, covenant or warranty contained in the Agreement; (b) any defect in the Goods furnished pursuant to the Agreement; or (c) any negligent act or omission, or willful misconduct of Seller in the course of furnishing the Goods, whether or not such Claims are based upon actual or alleged active or passive negligence of Indemnitees, except that Seller will not be required to indemnify Indemnitees against Claims that are the result of the sole negligence or willful misconduct of Indemnitees. Seller shall be and is responsible for the acts and omissions of Seller's subcontractors and agents. Seller shall at all times during the duration of the Agreement, carry and maintain at its own expense at least the following minimum insurance coverages: (a) workers' compensation insurance with statutory limits in compliance with the laws of the states in which employees are hired or will work, and employer's liability insurance with limits of \$500,000; (b) commercial general liability insurance with limits of \$1,000,000 per occurrence/\$1,000,000 general aggregate, and including but not limited to the following coverages: blanket contractual, products, operations, completed operations, independent contractors; (c) automobile liability insurance covering any auto, with limits of \$1,000,000 combined single limit; (d) umbrella excess liability coverage of \$5,000,000 per occurrence/\$5,000,000 general aggregate beyond each primary policy; and (e) professional liability insurance of \$1,000,000 per occurrence /\$1,000,000 annual aggregate.
- 14. Confidentiality; Publicity.** Any Designs and Drawings, samples, know-how, processes, plans or other similar items or other technical, commercial, or financial information relating to Buyer's business (the "Information") which Seller may obtain or which Buyer may in any way disclose to Seller in connection with the Agreement, shall be deemed to be confidential. Seller shall not use the Information for its own purposes (other than for the Agreement). Seller shall not disclose the Information to any person or firm, other than those that may be specifically authorized by Buyer in writing. Seller shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of the Agreement without prior written consent of Buyer.
- 15. Force Majeure.** Either Buyer or Seller may suspend performance during the occurrence of an excusable delay, which shall mean and include any delay which results from acts of God or public enemy; restrictions, prohibitions, priorities or allocations imposed by governmental authority; embargoes; floods; fires; hurricanes; earthquakes; and epidemics. Excusable delays do not include lockout, strikes, shortage of labor, lack of or inability to obtain raw materials, fuel or supplies or any other industrial disturbance. Notwithstanding the foregoing, in the event of a delay by Seller due to an excusable delay, Buyer may terminate any Order or portion of the Order subject to such delay without further liability or obligation to Seller, except for payments for Goods previously delivered in compliance with the Agreement. Seller shall provide written notice to Buyer no more than two full business days after the occurrence of excusable delay, describing the delay and assuring Buyer of the anticipated duration of the delay and the time that the delay will be cured.
- 16. Law and Jurisdiction; Dispute Resolution.** Any questions arising out of or in connection with the Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without giving effect to its conflict of laws provisions. At Buyer's option, Seller agrees to litigate all claims and actions arising under or otherwise concerning the Agreement in either the Circuit Court of Mobile County, Alabama or the Federal District Court for the Southern District of Alabama, and hereby consents to personal jurisdiction of such courts. Buyer at its option may also invoke binding and exclusive arbitration in Mobile, Alabama under the American Arbitration Association's Commercial Arbitration Rules (as the parties agree that the Agreement impacts or is related to interstate commerce), and Seller agrees to submit to such arbitration and to dismiss any legal proceedings related to the subject matter of such arbitration, in which case Section 17 herein shall not apply. Buyer, at its option, may also invoke non-binding mediation, and Seller agrees to submit to such mediation and to stay or dismiss any legal proceedings relating to the subject matter thereof. Buyer, at its option, may require that Seller continue to supply the Goods pursuant to the terms of the Agreement during any such litigation, arbitration or mediation process.
- 17. WAIVER OF JURY TRIAL.** EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SET-OFF, DEMAND, ACTION OR CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY RELATING TO THE AGREEMENT OR ANY ORDER, OR IN ANY WAY CONNECTED WITH OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES WITH RESPECT TO AN ORDER, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT EITHER OF THEM MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.
- 18. Other Considerations.** Seller acknowledges the importance to Buyer of using Minority-Owned Business Enterprises ("MBEs"), Women-Owned Business Enterprises ("WBEs"), and businesses within the State of Alabama ("LBEs") for the supply of the services and goods necessary for Seller to supply the Goods. Seller is required to use commercially reasonable efforts to obtain bids from MBEs, WBEs, and LBEs with respect to its subcontractors and suppliers. MBEs and WBEs should be certified by a certifying agency that is approved by Buyer. Seller shall be accountable for the usage of MBEs, WBEs, and LBEs through the monitoring and reporting of its MBE and WBE subcontractors and suppliers. Seller shall provide Buyer with appropriate supporting documentation of this requirement upon request by the Buyer.
- 19. Attorneys' Fees.** Buyer shall recover actual and reasonable attorney's fees (including the cost of in-house counsel) in any action arising out of the Order, unless Seller is the prevailing party.
- 20. Miscellaneous.** The Agreement and any payments to be made hereunder shall not be assigned, delegated or transferred by Seller without prior written approval by Buyer. Neither Seller, nor its subcontractors, or the employees or agents of them, shall be deemed to be Buyer's employees or agents, it being understood that Seller and its subcontractors are independent contractors for all purposes and at all times. No amendment, modification, or waiver of any provision of the Agreement shall be effective without the written consent of Buyer. The failure of Buyer to insist upon the performance of any provision of the Agreement shall not be construed as waiving any such provisions. Any provision of the Agreement prohibited by applicable law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof. All covenants and agreements contained in the Agreement by and on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and permitted assigns. Sections 4-5, 8-14, 16-17, and 19-20 shall survive termination of the Order. The United Nations Convention on Contracts for the International Sale of Goods (CIGS) shall not apply to the Agreement.
- 21. Affirmative Action and Equal Employment Opportunity.** Buyer is an equal opportunity and affirmative action employer. The Equal Opportunity and Affirmative Action Clauses of 41 CFR §§ 60-1.4, 60-250 and 60-741 are hereby incorporated by reference. Unless exempted by law, the Seller agrees to take the following actions as required or appropriate: file all required forms and documents, including Standard Form 100 (EEO-1) (41 CFR § 60-1.7), prepare written affirmative action programs (41 CFR §§ 60-140, 60-250.5, 60-741.5), and include this clause in any covered subcontracts, supply agreements, purchase orders or bills of lading relating to the Order.