

# Standard Terms and Conditions for the Sale of Slewing Bearings and Rings of thyssenkrupp Rothe Erde GmbH

## I. Validity

- These Terms and Conditions shall apply to any person executing the Agreement in his or her capacity as an agent for a commercial enterprise or as an independent contractor (businessperson), as well as any public-law entity or public-law special-purpose entity.
- The following terms and conditions of sale shall apply for all sales transactions to the exclusion of all previous versions.

## II. General

- All deliveries and services shall be governed by these Terms and Conditions, as well as by any separate agreements. Any deviating terms and conditions of purchase on Customer's part shall not be incorporated into the contractual agreement with Customer, even upon the acceptance of an order.
- Our offers shall be subject to change. In the absence of a separate arrangement, an agreement shall be deemed to have been entered into when we have confirmed Customer's order in writing.
- These Terms and Conditions shall also apply as to sales made on the basis of standard terms and conditions of trade, including, without limitation, on the basis of Incoterms; such standard terms and conditions of trade shall only apply to the extent that they are not in conflict with these Terms and Conditions.
- Unless we expressly indicate that they are binding, the information and illustrations portrayed in brochures and catalogues represent approximations that are considered standard for the industry.
- Any and all ownership rights and intellectual property rights to samples, cost estimates, drawings and similar information, whether tangible or intangible, are our property and may not be made accessible to third parties. We agree not to make accessible to third parties any information or documentation that Customer has identified as confidential.

## III. Prices, Payment Terms

- All prices shall be plus the statutory value-added tax.
- Except as otherwise agreed upon, all prices shall be ex works, as set forth in Incoterm FCA (latest version).
- Unless agreed otherwise in individual agreements, the purchase price shall be paid into the bank account indicated by us, without cash discount and to the exclusion of offsetting or retention, within 14 days from delivery ex works. Customer shall not be entitled to offset any payments unless Customer's claim is undisputed or has become res iudicata.
- In the event of delay in payment, default interest shall be charged as from the due date of payment as per the respective bank rates for overdrafts, however at least in the amount of 9 percentage points above the respective base rate of the European Central Bank. Besides this we shall have entitlement to a flat-rate amount of EUR 40.
- Any and all of our claims shall fall due immediately in the event of Customer's non-compliance with the terms and conditions of payment or should we become aware of circumstances which could affect Customer's creditworthiness.
- On the basis of the authorization issued to us by the companies belonging to our Group as per Section 18 of the German Stock Corporation Act (AktG), we shall have entitlement to offset against any and all claims, on whatever legal grounds, against us or one of said Group companies. This shall also apply if cash payment has been agreed by one side and payment by bill of exchange or other arrangements by the other on account of performance. Where applicable, such agreements shall only relate to the balance. Should such claims have different due dates, our claims shall fall due at the latest on the due date thereof and be settled in accordance with the respective value dates.

## IV. Security

We shall be entitled to security that is standard for the type and scope of our claims, even to the extent that such claims are conditional or subject to a time limit. If Customer fails to make any advance payments that were agreed upon, or if we after executing the Agreement become aware of circumstances that appear likely to impair Customer's solvency, we shall be entitled, without prejudice to any further claims, to refuse service and to give Customer a reasonable time limit in which to effect payment or furnish security in exchange for delivery. If Customer refuses or the time limit expires to no avail, we shall be entitled to rescind the Agreement and claim damages.

## V. Partial Delivery

We shall be entitled to make partial deliveries if it is reasonable to expect Customer to accept such partial deliveries. Any additional costs that we incur shall not be borne by Customer if we are responsible for the additional costs. The price shall not be affected hereby.

## VI. Delivery Time/Service Time, Liability for Delays in Delivery/Service

- Delivery periods shall begin as of the date we confirm the order, provided, however, that they shall not begin prior to the complete clarification between the Parties of all business and technical details associated with the order and the performance of all obligations incumbent upon Customer, including, without limitation, the provision of all required official permits or certificates or the provision of any advance payments. In such cases the delivery period shall be extended by a reasonable amount of time. It shall not be extended in cases where we are responsible for the delay. Deliveries shall be deemed to have been made within the delivery period if, prior to the end of such period, the delivery has left our production facility or Customer has been notified of its readiness for shipment.
- Our ability to make deliveries within the delivery period shall depend on accurate and on-time deliveries from our own suppliers. We shall inform Customer as soon as possible of any apparent delays.
- Delivery/service periods shall be extended by a reasonable amount of time if circumstances for which we are not responsible cause a delay. Such circumstances include, without limitation, force majeure, labor disputes, delays caused by Customer (such as from failure to provide documentation or permits in a timely manner or from changes made by Customer to the delivery and service parameters agreed upon) and any other obstacles that are beyond our control.
- If shipment or acceptance of the delivery item is delayed for reasons for which Customer is responsible, Customer shall bear the costs incurred as a result of such delay, starting one month after notice of readiness for shipment or readiness for acceptance is given.
- If there is a delivery or service delay within the meaning of this Section as a result of which Customer can prove to have suffered harm, Customer shall be entitled to demand a lump-sum compensation for the harm suffered. Such compensation shall be in the amount of 0.5% for each full week of the delay, but shall not, altogether, total more than 5% of the value of that part of the entire delivery that could not be used in a timely manner or as agreed upon. If, taking into account the exceptional cases provided for by law, Customer sets a time limit in which we are to effect performance, but we do not meet such time limit, Customer shall be entitled to rescind the Agreement if we are responsible for our failure to meet the deadline.
- In no case of delayed delivery, or failure to meet any deadline set for delivery, shall the claims for damages on the part of Customer for the delay or in place of performance be allowed to exceed the limits set forth in Section VI.5 and the claims for damages for the delay or in place of performance exceeding such limits are excluded even after the lapse of a time limit set by the Customer. This shall not apply to the extent that mandatory liability exists in cases of intent, gross negligence, injury to life, body or health, or violation of essential contractual obligations; this shall not give rise to any change in the burden of proof to the disadvantage of Customer.

## VII. Delays in Acceptance

- If Customer does not take delivery at the agreed upon time (acceptance delay), we shall be entitled to store the contents of the order, at Customer's risk and expense, at a place of our choosing. If we store the items at our own facilities, we shall charge, in addition to our other fees, a monthly storage fee, calculated from the day notice of readiness for shipment was given.
- We shall be entitled to claim damages, if Customer definitively refuses to have the order delivered or to accept the delivery, or if Customer is silent in respect of a written request to have the order delivered or to accept the delivery within a 2-week grace period, which period is deemed reasonable. The amount of damages shall be determined on the basis of the costs we incur, but at least 15% of the purchase price. Customer shall retain the right to prove that the actual damages were less or that no damages were suffered. Our statutory rights to performance or rescission shall be unaffected hereby.

## VIII. Passing of Risk

Except as otherwise agreed upon, the risk shall pass to Customer in accordance with Incoterm FCA (latest version), even in cases of partial deliveries or in cases where we assume other responsibilities, including, without limitation, shipping and handling or the costs of shipping and handling. If shipment is delayed for reasons for which Customer is responsible, the risk shall pass to Customer as of the day that notice of readiness for shipment is given.

## IX. Retention of Title

- All goods delivered shall remain our property (goods subject to retention of title) until such time as all claims arising from the business relationship with Customer have been satisfied, including, without limitation, any payment claims. This shall also apply in respect of future and conditional claims, such as would arise from inverted bills of exchange.
- Any treatment or processing of goods subject to retention of title shall be effected on our behalf as the manufacturer in accordance with § 950 of the German Civil Code, without our incurring any obligations thereby. The treated and processed goods shall be deemed to be goods subject to retention of title within the above meaning.
- In the event that the goods subject to retention of title are processed with, connected to or mixed with other goods by Customer, we shall be entitled to joint ownership of the new article in the ratio of the invoiced value of the goods subject to retention of title to the invoiced value of the other goods used. If our ownership expires because of such connecting, mixing or processing, Customer agrees to assign to us and protect for us free of charge, with immediate effect, any property rights or inchoate rights to the new inventory or article in keeping with the invoiced value of the goods subject to retention of title or, in the case of processing, in the ratio of the invoiced value of the goods subject to retention of title to the invoiced value of the other goods used. Our joint ownership rights shall be deemed to be goods subject to retention of title within the above meaning.
- Customer shall be entitled to resell the goods subject to retention of title only if Customer is not in default and only in the ordinary course of Customer's business and on Customer's standard's terms and conditions; customer must retain title to the goods subject to retention of title and must assign to us any claims arising from the sale as security. Customer shall not be entitled to dispose of the goods subject to retention of title in any other way. Use of the goods subject to retention of title for the performance of a contract for work and services or a contract for work and materials shall also be deemed a resale. Customer's claims as arising from the resale of the goods subject to retention of title shall be assigned to us with immediate effect. We hereby accept such assignment. The claims assigned shall serve as security to the same extent as the goods subject to retention of title.

- If Customer resells the goods subject to retention of title along with other goods, the claims arising from the resale shall be assigned to us in the ratio of the invoiced value of the goods subject to retention of title to the invoiced value of the other goods sold. In the event that goods in which we have joint ownership are sold, a portion of the claim in keeping with our joint ownership shall be assigned to us. If Customer defaults on its obligations to us, we shall be entitled to forbid the resale and processing of the goods delivered, and to demand, at Customer's expense, the return of the goods delivered or the transfer of the indirect ownership in the goods delivered, and to retract any authorization given to Customer to collect debts. Customer shall authorize us, with immediate effect, to enter Customer's premises in the cases mentioned and to seize the delivered goods; such seizure shall not be deemed as a rescission of the Agreement.
- Customer shall be entitled to collect debts arising from the resale, unless we revoke Customer's authorization to do so. At our request, Customer agrees to inform its customers that debts have been assigned to us - to the extent we do not do so ourselves - and Customer shall provide us with the information and documents necessary for collecting the debts.
- Customer shall not be entitled to assign the receivables to any other party; this provision shall also apply to any and all kinds of factoring, which our authorization to collect does not permit Customer to engage in. Customer must notify us immediately of any attachment or other restriction imposed by third parties.
- If the existing security should exceed the total amount of secured claims by more than 10%, we are obligated in this respect to release the security of our choosing at Customer's request.

## X. Shipping

- In the absence of other instructions from Customer, we shall be entitled to make shipping arrangements, including, without limitation, the execution of agreements with haulage contractors and freight forwarders in Customer's name and for Customer's account, and shall exercise standard business practices when doing so.
- The material shall be packed in accordance with standard business practices for the material in question. We shall provide packing, protection and/or shipping aids in accordance with our experience and, except as otherwise agreed upon, at Customer's expense. In cases of damage incurred during shipping, Customer shall make immediate arrangements for a fact-finding and shall keep us informed without delay.

## XI. Liability for Defects and Accessory Obligations

Except as provided in Section XIV, our liability for defects shall be as follows, with any further claims excluded:

- The quality of the goods shall depend exclusively on the technical delivery instructions agreed upon. If our delivery shall be based on drawings, specifications, samples, etc. provided by Customer, Customer shall assume the risk that the goods are suited for their intended purpose. In respect of the condition of the goods as agreed upon under contract, the time that the goods are given to the freight forwarder or haulage contractor shall govern; at the very latest, the time that the goods leave our production facilities shall govern.
- Complaints on the part of Customer must be submitted to us in text form promptly after receipt of the goods at the place of destination, but shall not give rise to entitlement to withhold payment of the invoiced amounts. Treatment and processing must cease as soon as any defects became apparent.
- Any parts that are found to be defective because of a circumstance that predates the passing of risk shall be repaired or replaced by us free of charge, with the choice between repairing and replacing the parts being at our discretion. Parts that have been replaced shall become our property.
- Customer shall give us the opportunity to convince ourselves of the defect and, at our request, shall provide us, without delay, with either the goods in question or samples thereof. After consulting with us, Customer shall also give us adequate time and opportunity to make the repairs or replacements that appear necessary to us; if Customer does not give us adequate time and opportunity, we shall not be held liable for the ensuing consequences. Customer shall not be entitled to remedy the defect itself or to have professionals remedy the defect and then demand that we reimburse the necessary expenses unless the defect constitutes, and we have been notified that the defect constitutes, an emergency that threatens operational safety or that threatens to cause excessive damage.
- To the extent provided for by statutory provisions, Customer has a right to rescind the Agreement if we, taking into account the exceptional cases provided for by law, fail to make a repair or replacement, as necessitated by a defect, within a reasonable grace period. If the defect is not material, Customer's only recourse shall be a reduction in the purchase price. In all other respects, a reduction in the purchase price shall be excluded. Any additional claims shall be governed by Section XIV.2 of these Terms and Conditions.
- Claims based on material defects shall become statute-barred after twelve months as from receipt of the goods in question at the place of destination, but no later than after 14 months as from notice of readiness for dispatch. This shall not apply to the extent that the law requires longer periods, especially as for defects in a building or for defects in delivery items that were used in a building in accordance with their standard use and caused the building to be faulty.
- Without limitation, we shall not be held liable for improper or unsuitable use or for faulty assembly or faulty commissioning on the part of Customer or third parties; further, we shall not be held liable for normal wear and tear, improper or negligent handling, unsuitable machinery or equipment, or any chemical, electrochemical or electrical influences, to the extent that we are not responsible therefor.
- Our warranty shall expire if any modifications, changes or work associated with commissioning the delivery items are performed without our prior consent. Our warranty shall further expire if our guidelines concerning the installation, maintenance and lubrication of our large-diameter antifriction bearings are not followed.
- For reasons of preserving evidence, this shall also apply to situations where the large-diameter antifriction bearings are opened without our prior consent.

## XII. Intellectual Property Rights, Legal Imperfections in Title

- We declare that we do not have any knowledge of third-party intellectual property rights existing in the country of manufacture at the time of the Agreement's execution that would hinder our supplying Customer with these products. We shall not be held responsible if the products we deliver violate any intellectual property rights outside of the Federal Republic of Germany and/or violate any intellectual property rights because Customer uses the material delivered for a purpose for which the material was not expressly supplied.
- If use of the delivery items leads to a violation of domestic intellectual property rights, we shall secure, at our expense, Customer's right to continue to use the items or we shall modify the items in a way that is reasonable with respect to Customer and that causes the delivery items to no longer be in violation of such intellectual property rights. If we are unable to do so on economically reasonable terms or within a reasonable timeframe, Customer shall be entitled to rescind the Agreement. Under such circumstances, we shall also be entitled to rescind the Agreement. We shall further indemnify and hold Customer harmless from and against claims on the part of the parties entitled to the intellectual property rights that are undisputed or have been determined to be legally valid.
- Except as set forth in Section XIV.2, our sole and exclusive obligations with respect to any violation of intellectual property rights are those set forth in this Section XII. Such obligations shall only be binding so long as Customer notifies us immediately of any claims concerning the violation of intellectual property rights. Customer provides us with a reasonable level of support in our efforts to defend ourselves against the alleged violations or makes it possible for us to perform the modifications as set forth in Section XII.2, we retain the right to take any and all measures to defend ourselves, including, without limitation, to negotiate out of court, the imperfection in title is not based on orders given by Customer and the violation is not a result thereof, and Customer has not made any unauthorized changes to the delivery items or has not used the items in a manner that is inconsistent with the agreed-upon manner.

## XIII. Relinquishing of Documents, Confidentiality

- Any drawings, models, samples or other documentation made available to Customer or produced by us in accordance with Customer's instructions may only be used for processing our offer or for using the products and services ordered, and may not be made available to third parties without our prior written consent.
- Customer shall further keep in confidence and shall not disclose to third parties any and all of our and our sub-contractors' operating procedures, devices, equipment, etc., which become known to Customer in the course of our deliveries or services, and Customer shall continue to keep these confidential even after our offers are tendered or the order is filled.

## XIV. General Liability

- The provisions of Sections XI and XIV.2 shall apply analogously and exclusively if Customer cannot use the delivery items in the agreed upon manner as a result of our fault to follow or to properly follow the recommendations and advice provided before and after execution of the Agreement or as a result of our violation of other collateral obligations, including, without limitation, instruction for operating or maintenance procedures for the delivery items.
- Our liability for damages that were not suffered to the delivery items themselves shall be limited, irrespective of the cause in law, to damages caused by or relating to a) intentional misconduct, b) the gross negligence of one of our directors or executives, c) culpable injury to life, body or health, d) fraudulent concealment of defects or defects that we guaranteed against and e) defects in the delivery items for which the German Product Liability Act stipulates liability in cases of personal injury and property damage to privately used goods. In cases of the culpable violation of material provisions of the Agreement, we shall also be held accountable for the gross negligence of non-executive employees and for ordinary negligence, provided, however, that our liability for ordinary negligence be limited to damages that are reasonably predictable and that are typical of these kinds of agreements. Any and all other claims shall be excluded.

## XV. Proof of Export

- Customer must present us with proof of export, required for tax purposes, if Customer or an agent of Customer is picking up goods that are not intended for use within the Federal Republic of Germany. Otherwise Customer must pay us an amount equivalent to the value-added tax that would be levied on the invoiced amount in the case of domestic deliveries.
- According to § 17a and 17c of the Value Added Tax Implementation Ordinance the Purchaser is obligated to provide us with an evidence of the actual receiving of the goods for every VAT-exempt EU delivery ex Germany to another EU member state (Entry certificate). Such evidence shall be provided on a form furnished by us. If the evidence is not provided the Purchaser shall be required to pay the value added tax as calculated on the basis of the previous (net-) invoice amount at the rate applicable to deliveries within the Federal Republic of Germany.

## XVI. Place of Performance/Governing Law/Venue/Miscellaneous Provisions

- The place of performance for any obligations arising out of agreements executed with us shall be our principal place of business in Dortmund.
- Conclusion, content, interpretation of and supplements to the Agreement shall be governed by the substantive law of the Federal Republic of Germany to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980.
- Venue for any and all disputes arising in connection with our products and services or in any other connection with the contractual relationship shall be Dortmund.
- Should any of the provisions of these Standard Terms and Conditions of Sale be unenforceable, in whole or in part, the remaining provisions shall remain in full effect and force.

## XVII. supplier/provider/vendor information according to Art. 13 of the Regulation (EU) 2016/679

According to Art. 13 of the General Data Protection Regulation (GDPR) we inform our business partners about the storage and usage of personal data. The information where personal data are collected from the data subject according to Art. 13 DSGVO could be found at <http://www.thyssenkrupp-rotheerde.com/D/datenschutz.shtm>