

TATA STEEL



General sales conditions North America

Strip products from IJmuiden

Effective April 1, 2013

General sales conditions

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1. Preamble

- a. Every offer or Memorandum of Understanding of Tata Steel IJmuiden BV (Seller) and/or every sales contract (the Contract) between Seller and any Buyer is subject to these conditions unless agreed otherwise in writing by both parties. Seller does not accept any reference by Buyer to its own purchase conditions.
- b. Seller's offers are without engagement. The Contract shall be deemed to have been entered into at the earlier of when the Contract has been signed by both Seller and Buyer or when Seller has sent a written confirmation of the acceptance of the order to Buyer. Notwithstanding the foregoing, the price or prices payable by the Buyer are subject to change in accordance with the price/prices in effect as of the date of shipment, unless expressly stated otherwise.
- c. Unless expressly agreed otherwise in writing Seller shall only be obliged to sell and deliver goods manufactured in the plants of Seller and its agents.
- d. The goods are fabricated and delivered with a tolerance in quantity and weight of plus or minus 10% unless otherwise agreed upon by Seller in writing. The determination of the weight takes place at the factory and if Buyer wishes in its presence. Seller has the choice to determine the weight by weighing the wagon or the lorry empty and full, by gauging the ship empty or full, or by weighing with weighing bridges checked by the inspection office of weights and measures (het IJkwezen). Only these weights determined before or at shipment are exclusively the base for the obligation to pay and to deliver. No guarantee is given for the right number of goods.

2. Specifications

- a. Buyer's written specifications must have been received by Seller within one week following the date of placing the order unless expressly agreed otherwise in writing.
- b. If Buyer fails to present a specification within the fixed time Seller shall be entitled to terminate the Contract or the part thereof for which no specification has been received without giving notice to Buyer and without requiring the consent of any court and without prejudice to the rights of Seller to be indemnified for any loss and/or damages resulting from Buyer's failure to comply with its obligation to provide timely written specifications.
- c. The goods can be delivered by Seller immediately after receipt of the specification, unless expressly agreed otherwise in writing.
- d. It is Buyer's responsibility, unless otherwise agreed upon in writing, that the products ordered are suitable for their intended purpose.

3. Inspection

- a. Buyer is entitled to inspect material of commercial quality on stow to determine the visible features. When special quality requirements have been agreed upon the goods can be inspected before shipment at the factory.
- b. Buyer shall give notice to Seller at the time of placing the order that he wishes to inspect the goods. In case such an inspection leads to extra costs for Seller, these costs will be for the account of Buyer even if Buyer does not attend the inspection.
- c. When Buyer has notified Seller that Buyer wishes to inspect the goods, Buyer shall inspect the goods within 7 days from Seller's notice of the goods being ready for inspection. If Buyer does not inspect the goods within the aforementioned period, Buyer shall conclusively be deemed to have accepted the goods as being in accordance with the Contract and shall not be entitled to reject the goods on the grounds of anything which such inspection has or would have revealed.

4. The Delivery Period and Force Majeure

- a. The delivery periods mentioned in Seller's order confirmations are only given as an indication and by approximation. Unless otherwise agreed the delivery periods shall apply to delivery "exWorks" or delivery ex warehouse to be indicated by Seller. The periods shall only commence after the Contract enters into force and after receipt by Seller of all necessary data to enable the delivery.

Delay of delivery for whatever reason shall not in any circumstances entitle Buyer to claim for loss or damage and shall be without prejudice to any accrued or future rights of Seller against Buyer whether under the Contract for the sale of the goods or under any other Contract between Seller and Buyer. Without prejudice to its other rights Seller can extend the delivery periods for a time equal to the period during which Buyer fails to fulfill any of its obligations towards Seller. Buyer will be in default - without being given notice or put in default - through its failure to fulfill any of its obligations towards Seller, which shall be the case through the mere passing of the period in which Buyer should have fulfilled such obligation.

- b.** In case of force majeure, Seller shall promptly notify Buyer on the occurrence of the force majeure situation. If the force majeure situation lasts longer than three consecutive months from the date of the aforementioned notification by Seller, Seller shall be entitled to terminate the Contract or to cancel wholly or partly the quantity of goods that should have been delivered during such three-month period. Neither in case of force majeure nor in case of termination or cancellation as referred to above shall Seller have any liability to Buyer whatsoever whether for loss, damage or otherwise. After the expiration of the above-mentioned period of three months Buyer is entitled to demand that Seller declares whether or not Seller intends to terminate or to cancel the Contract.
- c.** As cases of force majeure - such cases listed by way of illustration and not by way of limitation - will be regarded war, danger of war, mobilization, insurrection, fire, frost, difficulties or immobilization of transport, shortage of appropriate vehicles, wagons and/or shipping facilities, blockade, occupation of the premises, strikes and/or lock out, embargo, import/export restrictions, trade actions, acts of government and difficulties or stagnation in the production of Seller and/or a supplier of raw materials and/or products auxiliary to products for sale by Seller.

5. Title: Risk of Loss

- a.** Upon delivery of the goods at the agreed point all risk of loss, damage and other incidents shall pass immediately to Buyer.
- b.** Title to the goods passes to Buyer upon effecting of payment.

6. Price

- a.** The price or prices shall be agreed and shall be firm, unless expressly stated otherwise.
- b.** Prices specified include taxes or duties payable on account of this transaction, unless expressly stated otherwise.
- c.** Prices established in foreign currency shall bring about actual payment in the currency mentioned in the Contract regardless of the rate of exchange at the time of delivery and/or payment, unless expressly stated otherwise.

7. Payment

- a.** Unless expressly stated otherwise payment shall be effected by Buyer within thirty days after completion of discharge in port of discharge in the USA. Buyer is obligated to pay the purchase price at the time agreed regardless of any complaint Buyer may have in relation to the goods.
- b.** Seller may at any time, either before the Contract has been entered into or after (partial) execution thereof, require from Buyer, a payment either wholly or partly in advance or require a guarantee in a form acceptable to Seller that Buyer will fulfill its obligations towards Seller to the satisfaction of Seller. Seller shall not be required to justify its requirement for such payment in advance or guarantee.
- c.** Failure of Buyer to fulfill any of its financial obligations to Seller - which shall include (without limitation) failure of Buyer to make payments due to Seller by the due date - shall entitle Seller to suspend all deliveries, under all Contracts between Seller and Buyer, and to terminate the said Contracts without giving notice and shall be without prejudice to the right of Seller to be indemnified by Buyer for all damage and loss.

- d. If payment is not made when due, Seller shall rightfully and without giving notice be entitled to charge interest upon the unpaid amount at the maximum rate permitted by law or the prime rate in effect by Citibank, N.A. on the first of the month for each month +3.5%, whichever is less.
- e. If payment is not made when due and Seller decides to collect the sum due the costs of collection shall be for account of Buyer. The costs of collection include amongst others costs of legal procedures, attorneys, process-writ servers and other assistance.
- f. No order by Buyer may be canceled by Buyer either in whole or in part, without Seller's prior written consent and without payment of such reasonable cancellation charge as Seller shall specify (to include costs and expenses incurred by Seller in processing the order to the date of cancellation).

8. Warranty/Default

Claims. SELLER MAKES NO WARRANTY OF FITNESS OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, except that, subject to the limitations on liability hereafter stated, Seller warrants that the goods sold hereunder conform to the specifications set forth herein; provided, however, that Seller shall under no circumstances be liable for any loss or damage resulting from the use of the goods sold hereunder. Buyer shall satisfy itself that the goods are suitable for any product or application for which they are to be used before the goods are incorporated into such product or application.

All claims for breach of warranty must be made in writing to Seller within thirty (30) days after receipt of the goods. Buyer will segregate all goods claimed to be in breach of warranty and will permit Seller to inspect such goods. No goods shall be returned to Seller until after inspection and approval by Seller and receipt by Buyer of written shipping instructions from Seller. No claim hereunder shall be allowed with respect to goods already processed.

BUYER HEREBY EXPRESSLY WAIVES ANY RIGHT TO RECOVER CONSEQUENTIAL OR PUNITIVE DAMAGES AS A RESULT OF ANY BREACH BY SELLER OF THIS CONTRACT OR ANY WARRANTY HEREIN STATED OR IMPOSED BY LAW. SELLER'S SOLE LIABILITY FOR DAMAGES OR OTHERWISE SHALL BE LIMITED TO REPLACEMENT OF NON-CONFORMING GOODS SOLD TO BUYER HEREUNDER, OR, IN THE SOLE DISCRETION OF SELLER, REPAYMENT TO BUYER OF THE COST OF SUCH GOODS AND THE INLAND FREIGHT TO BUYER'S WAREHOUSE.

Buyer shall hold Seller completely free from any claim by third parties in connection with the goods delivered under this Contract and refund Seller all monies Seller would be obliged to pay. Neither Seller nor any other producer from which Seller sells and delivers the goods shall be liable for any costs, damages and interests whatsoever in connection with the goods delivered under this Contract. Buyer shall hold Seller or any other producer from which Seller sells and delivers the goods free from all costs, damages and interests, which might arise either directly or indirectly from any claim or claims of third parties in connection with the goods delivered under this Contract.

Any action resulting from Seller's breach of this Contract must be commenced within one year after the cause of action has occurred.

Notwithstanding the foregoing provisions of this paragraph 8, goods sold as "secondary material" are sold in their actual state, AS IS, without warranty and with all faults whether or not the goods have been inspected by Buyer prior to delivery. Any statement, specification, description or other information provided by Seller in respect of such goods is given in good faith but Seller can accept no responsibility for its accuracy. Under no circumstances will Seller be under an obligation to replace or make good such goods or entertain any claim whatsoever in respect thereof. If Buyer re-sells such goods Buyer shall ensure that a provision in similar form to this condition is incorporated in the re-sale agreement.

Advise and assistance provided without charge is given in good faith and to the best of Seller's knowledge but without responsibility.

9. Miscellaneous

- a.** Buyer acknowledges that any company in which the holding company of Seller holds, directly or indirectly, at least 50% of the share capital or which is otherwise a member of the same group as Seller, shall be entitled jointly and severally with Seller to exercise all present and future rights of Seller against Buyer, and as joint creditors and individually shall be entitled to set off amounts owed by any one or more of them to Buyer against any amounts owed to any one or more of them by Buyer, although Seller alone shall be entitled to rescind the provisions of this paragraph 9a.
- b.** Unless otherwise agreed, the rules of the Incoterms latest edition issued by the International Chamber of Commerce in Paris shall apply to all deliveries.
- c.** When it has been agreed that the goods shall be collected by Buyer within an agreed period and the goods have not been collected within such period Seller has the right at its option either to terminate the Contract either in whole or as to the part which remains to be executed without giving any notice and without requiring the consent of any court or to store the goods at the risk and expense of Buyer. By such storage Seller shall be deemed to have fulfilled its obligations under the Contract.
- d.** In case the transported goods are insured by Seller wholly or partly on Buyer's behalf, Buyer shall notify Seller promptly and in writing of damage to the goods. Such notice shall be without prejudice to Buyer's obligation to hold the carriers, bailees, stevedores or other parties involved in the transportation of the goods liable for such damage. The compensation to be paid to Buyer shall in no event exceed the amount which Seller receives from the insurer.

10. Applicable Law

This Contract shall be governed by and interpreted in accordance with the laws of the State of Illinois, which are in force on the date of this Agreement. Whenever a term defined by the Uniform Commercial Code as adopted in the State of Illinois is used in this Contract, the definition in said Uniform Commercial Code shall control. All actions or proceedings arising directly or indirectly or otherwise in connection with, out of, related to or from this Contract shall be brought only in the Circuit Court of Cook County in the State of Illinois or in the U.S. District Court for the Northern District of Illinois, Eastern division and Buyer hereby consents and submits to the jurisdiction of such courts for the purpose of such actions or proceedings.

11. JURY WAIVER

IN ANY CONTROVERSY OR CLAIMS ARISING OUT OF OR RELATING TO THE CONTRACT OR THESE TERMS AND CONDITIONS, BOTH THE SELLER AND THE BUYER WAIVE THEIR RIGHT TO TRIAL BY JURY.

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IS:USA:03/2013