

Vossloh Group

General Purchasing Terms & Conditions

1. Applicability

- 1.1 Exclusively the general purchasing terms and conditions herein (the "Purchasing Terms") shall apply to purchase orders issued by any Vossloh Group company. Unless otherwise specified in Vossloh's purchase order (set) or expressly accepted in writing by Vossloh, no terms or conditions in derogation hereof shall apply, even in cases where Vossloh is or becomes aware of differing Supplier terms and conditions.
- 1.2 If neither these Purchasing Terms nor the purchase order (P/O) provide for a certain case, the provisions of German law shall apply in addition.

2. Requirements of form

- 2.1 Vossloh purchase orders require the written form (including fax) or an electronic format according to Art. 126a German Civil Code ("BGB"). The same shall apply to Supplier's order acceptance, the unconditional contract execution within the agreed period being tantamount thereto.
- 2.2 Any amendment to the contract (incl. these Purchasing Terms) shall require the form specified in § 2.1 hereof.
- 2.3 Even a waiver of the requirements of form under the terms of § 2.1 or 2.2 shall satisfy the conditions set out in § 2.1 hereof.

3. Order acceptance and adherence to specifications

- 3.1 The order acceptance and any other contract-related document shall duly quote Vossloh's P/O details (P/O, order and article numbers, plant).
- 3.2 A shipping note, as well as goods-related documents (incl. without limitation safety data sheets) shall accompany each consignment of goods, failure of which will entitle Vossloh to refuse acceptance of the shipment. Any such refusal to take delivery shall be declared promptly.
- 3.3 Subject to any more detailed P/O specifications, Supplier shall perform the contract in good merchantable quality and, where existing, in conformity with industrial norms, standard specifications according to DIN, DVGW, VDE, VDI and/or equivalent, as well as with any agreed inspection/approval certificates.
- 3.4 Supplier shall ensure that all substances to which the EC Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) applies have been registered or authorised for the use envisaged by Vossloh according to the contract. On request, Supplier shall provide proof to Vossloh, that these obligations have been fulfilled

4. Prices, invoices and payment

- 4.1 Agreed prices are fixed prices. Unless otherwise agreed, prices shall include any and all costs incurred by Supplier for and in connection with the shipment of the goods to the place of delivery, including (without being limited to) freight charges, packaging and transport-proofing costs and transport insurance.
- 4.2 Invoices shall not accompany the consignment but be sent under separate cover. Invoices will not be processed unless they are presented in duplicate and state the statutory value-added tax amount and rate (where applicable), the full P/O and call-off numbers, the delivery date, and place of payment.
- 4.3 Unless otherwise agreed, payment will be made
 - (a) at 3% cash discount if the contractually conforming goods (the "Conforming Goods") and the invoice made out according to § 4.2 (the "Conforming Invoice") are received
 - by the 10th day of a calendar month: on the 20th of the same month;
 - by the 20th of a calendar month: on the 30th of the same month;
 - by the 30th of a calendar month: on the 10th of the succeeding month;or
 - (b) at 2% cash discount by the 25th day of the month succeeding receipt of the Conforming Goods and the Conforming Invoice;
 - or
 - (c) within 90 days net cash after receipt of the Conforming Goods and the Conforming Invoice.If the Conforming Goods and the Conforming Invoice are not received by Vossloh on the same day, payment shall be governed by the later date of receipt of either. If (i) the parties have agreed on a specific delivery date and (ii) Supplier delivers both the Conforming Goods and the Conforming Invoice prior to such agreed date, the payment term shall nonetheless be governed by the originally agreed delivery date.
- 4.4 Vossloh will be entitled to the rights of offset and retention to the statutory extent.
- 4.5 Unless approved in writing by Vossloh, no assignment of receivables due to Supplier under the business relationship with Vossloh shall be effective. However, subject to the provisions of § 10 hereof, such approval shall be deemed granted if any such receivable is assigned under an agreed seller's lien on, or other extended reservation of title to, goods received by Supplier from any upstream vendor.

5. Compliance with delivery terms and legal effects of delays

- 5.1 Agreed delivery dates and periods are binding on, and shall be duly kept by, Supplier. Any partial or early shipment shall be subject to Vossloh's prior approval.

- 5.2 If adherence to a delivery period or date appears to be at risk, Supplier shall promptly notify Vossloh accordingly, duly stating and substantiating the reason or cause and indicating the estimated duration of delay, even if the delay is beyond Supplier's control (such as due to force majeure or to any excusable industrial action or labor dispute). Such notification will not release Supplier from its obligation to keep agreed delivery periods or dates.
- 5.3 Any failure by Supplier to comply with its obligation to notify Vossloh according to § 5.2 will bar Supplier from claiming that a delay has been beyond Supplier's control.
- 5.4 If the agreed delivery date or the delivery period is not kept for reasons attributable to Supplier, Vossloh is entitled to claim for each day of delay a penalty equivalent to 0.25% of the net total order value, up to an aggregate 10% thereof. In derogation of Art. 341(3) BGB, Vossloh may claim such penalty up to the date of final payment, however, without prejudice to Vossloh's right to any further claims in addition to such penalty. If Supplier substantiates that its failure to keep the delivery date or period has caused no or a significantly lower loss than the penalty determined in accordance with the first clause of this § 5.4, such penalty damages shall be reduced accordingly.
- 5.5 If a delivery date or period is exceeded for reasons beyond Supplier's control (such as due to force majeure, industrial action or labor dispute), Vossloh may, at its discretion, insist on the performance of Supplier's delivery obligations at a later date (without entitling Supplier to any separate claims) or, after expiration of a reasonable extension, rescind the contract.
- 5.6 Unless otherwise agreed in writing, the goods shall be delivered free address of the Vossloh branch indicated in the purchase order or, if not indicated, free address of the ordering Vossloh branch.
- 5.7 If Vossloh is prevented from receiving, or cannot reasonably be expected to take delivery of, the consignment at the agreed place of destination due to any event of force majeure or for reasons beyond Vossloh's control (including any industrial action or labor dispute), Vossloh has the right to require that the goods be delivered to another, newly indicated address.

6. Packaging, passage of risk

- 6.1 Unless otherwise agreed in writing, Supplier shall at its own cost and expense duly and properly transport-proof (conserve) and package the goods.
- 6.2 Risk shall not pass from Supplier to Vossloh until and unless the goods have been physically delivered to, and received at, the agreed delivery address.

7. Obligatory inspection and notification

- 7.1 Vossloh's obligation to inspect and/or notify any nonconformance shall not commence before complete and full delivery of the goods. The recognition of any shipment as complete is conditional on the supply of the documents specified in § 3.2.
- 7.2 Supplier accepts that, by random inspecting a representative sample of a consignment, Vossloh has met its obligation to inspect the goods. The goods shall be inspected visually for apparent quality within a reasonable period of time to the extent practicable or expedient in the ordinary course of business. This duty of inspection shall not extend to cover functional testing or verifying properties, quality characteristics or dimensions that are not visually identifiable. Any defects found on inspection or at a later date shall be notified within 14 days after detection.

8. Warranty

- 8.1 If the documents indicated in § 3.2 are not supplied completely, Supplier's performance is considered nonconforming, too.
- 8.2 Supplier warrants that the goods (even in cases of customized or special manufacture) meet public, official and statutory requirements, including (without limitation) the applicable occupational safety, industrial health and accident prevention regulations.
- 8.3 Vossloh shall have the right, at Supplier's cost and expense, to directly remedy any defect if urgency prevents Vossloh from notifying Supplier of the defect and any impending loss or damage, as well as from granting Supplier an (albeit short) period for remedy. In this case, Supplier shall promptly be notified of Vossloh's own remedy of a defect.
- 8.4 Unless otherwise agreed between the parties, warranty claims will become statute-barred 36 months after passage of risk.
- 8.5 Any direct remedy by Vossloh of a defect according to § 8.3 will interrupt the running of the limitation period for the duration of such remedial work.

9. Product liability

- 9.1 Where Supplier is liable for any product-related loss or damage, Supplier shall indemnify and hold Vossloh harmless for any third-party claims for damages to the extent that (i) the cause of such loss or damage is attributed to a circumstance within Supplier's control and organization and (ii) Supplier is held liable in the relationship to third parties.
- 9.2 In the scope of the liability for loss or damage for the purposes of § 9.1, Supplier is also obligated to reimburse Vossloh for any expenses incurred under the terms of Arts. 683, 670 BGB and/or Arts. 830, 840, 426 BGB for or in connection with a recall action by Vossloh. To the extent practicable and reasonably acceptable,

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- Vossloh will brief Supplier on details and scope of any recall action, offering Supplier the opportunity to comment thereon.
- 9.3 Supplier undertakes and agrees for the duration of this contract (i.e., until warranty claims become statute-barred) to maintain product liability insurance coverage for not less than €10 million per event of personal injury or property damage. This applies without prejudice to any further claims for damages Vossloh may have or be entitled to.
- 10. Reservation of Supplier's title and ownership**
- 10.1 If so stipulated, Supplier has the right to reserve title to, and ownership of, goods delivered (the "Conditional Goods") provided that (i) such reservation expires when the agreed price has been paid and (ii) Vossloh is entitled to resell any Conditional Goods in the ordinary course of business.
- 10.2 With a view to safeguarding Supplier's rights to and interests in Conditional Goods to be processed downstream and resold subsequently, if Supplier has effectively reserved title thereto and ownership thereof according to § 10.1, Vossloh hereby assigns to Supplier the receivable due to Vossloh from its customer for the resale of the asset newly created by incorporating any Conditional Goods, the amount so assigned being capped at the invoice value of the Conditional Goods delivered by Supplier. If Vossloh keeps a current account with its customer, the assignment shall correspond to the equivalent portion of the current account balance (including the final current account balance).
- 10.3 Supplier hereby reassigns to Vossloh the receivables assigned by Vossloh for the purposes of § 10.2 subject to the condition precedent that Vossloh pays to Supplier the agreed price for the Conditional Goods concerned.
- 10.4 An assignment to Supplier according to § 10.2 shall not affect Vossloh's right to collect such receivables. This collection right in Vossloh's favor may not be effectively revoked unless and until Vossloh defaults on its payment obligations from the transaction underlying delivery of the respective Conditional Goods. Any such default will also entitle Supplier to require that Vossloh (i) disclose the receivables assigned and their debtor(s) and (ii) notify the debtor(s) of such assignment.
- 11. Reservation of Vossloh's title and ownership**
- 11.1 Any parts provided to Supplier by Vossloh shall remain Vossloh's property, title thereto expressly being retained (the "Conditional Assets"). Any conversion or transformation of Conditional Assets is made for and on behalf of Vossloh. If a Conditional Asset is processed or converted with other products not owned by Vossloh to create a new asset, Vossloh acquires co-ownership of the new asset at the ratio the Conditional Asset's value (purchase price plus VAT) bears to the value of the other products at the time of conversion.
- 11.2 If a Conditional Asset is inseparably combined with other products not owned by Vossloh, Vossloh acquires co-ownership of the new asset at the ratio the Conditional Asset's value (purchase price plus VAT) bears to the value of the other combined products at the time of combination. If any such combination creates an asset that is essentially Supplier's, it is understood and agreed that Supplier assigns to Vossloh co-ownership pro rata; Supplier shall keep the solely owned or co-owned asset in custody for and on behalf of Vossloh.
- 11.3 With respect to tools, Vossloh retains all title and ownership. Supplier is obligated to use such tools exclusively for the manufacture of goods ordered by Vossloh, and shall, at Supplier's own cost and expense, insure the tools at replacement value against fire, water and theft risks. Supplier hereby assigns to Vossloh, which accepts, any and all claims against such insurer. At its own cost and expense, Supplier shall timely perform all maintenance, inspection, service and repair work on the tools, and promptly notify Vossloh of any malfunction. Failure by Supplier to so notify Vossloh due to Supplier's willful or ordinary negligence will entitle Vossloh to claim damages from Supplier.
- 11.4 At Supplier's request, Vossloh shall release any security interests assigned to Vossloh under §§ 11.1 and 11.2 to the extent that they exceed the cost price of all unpaid Conditional Goods by more than 10%.
- 12. Supplier's rights of offset or retaining liens**
- Supplier will not be entitled to any retaining liens, rights of refusal of performance and/or equivalent claims against Vossloh. Supplier may not offset any claims against Vossloh's unless undisputed, uncontested or finally adjudged (res judicata).
- 13. Treatment of documents, models, specimens, etc.**
- 13.1 Any drawings, models, specimens, samples, design documents, components, etc. made available to Supplier (the "Contract Material") shall (i) remain Vossloh's property, (ii) be duly and properly kept, and insured against loss, damage, fire and theft risks, by Supplier, (iii) be used by Supplier only for processing Vossloh's purchase order, and (iv) be returned to Vossloh on first demand or unsolicited directly after execution of the related order, whichever is earlier. The same shall apply to any drawings made according to Vossloh's instructions. The reproduction in whatsoever form of any Contract Material is prohibited, even after termination of the contract relationship with Vossloh.
- 13.2 While the Contract Material relating to a purchase order shall be binding on Supplier, Supplier shall duly examine it for any deficiencies and promptly notify Vossloh in writing of any identified or suspected errors; failure to do so will prevent Supplier from claiming the existence of any identifiable deficiencies (errors).
- 14. Supplier's advertising**
- Any reference whatsoever in Supplier's advertising to the business relationship with, shall require the express prior written approval from, Vossloh.
- 15. Secrecy**
- 15.1 Any and all technical and economic data disclosed by Vossloh to, shall be kept secret by, Supplier unless such data is anyway generally known. Such data shall only (i) be used for establishing a contractual relationship with, or performing a contract for, Vossloh and (ii) only be disclosed on a need-to-know basis to Supplier's employees whose involvement is essential to Supplier's operations. Supplier shall commit such employees to secrecy in accordance with the preceding two clauses. At Vossloh's request, Supplier shall submit to Vossloh due written proof of such employee secrecy commitments.
- 15.2 Where Supplier involves any subcontractor, any disclosure of the data mentioned in the 1st clause of § 15.1 shall require Vossloh's prior written consent. Supplier shall commit the subcontractor to secrecy in accordance with § 15.1. At Vossloh's request, Supplier shall submit to Vossloh due written proof of such secrecy commitments signed by subcontractor and the latter's staff.
- 16. Third-party rights and interests**
- 16.1 Supplier warrants and represents that no product delivered by Supplier directly or indirectly infringes upon any third-party rights, including (without limitation) any property rights such as patents, trademarks, brands, utility models or copyrights. If Vossloh is nonetheless held liable for any such infringement in connection with goods delivered by Supplier, Supplier shall on first written demand indemnify and hold Vossloh harmless for any such claims and reimburse Vossloh for any and all related expenses incurred by Vossloh.
- 16.2 Claims under the terms of § 16.1 will become statute-barred 10 years after delivery to Vossloh.
- 17. Applicable law, place of jurisdiction and performance**
- 17.1 This contract and hence any and all disputes arising from or in connection with it shall be governed by, and be subject to, the laws of the Federal Republic of Germany, with the exclusion of (i) conflict of laws provisions and (ii) the United Nations Convention on Contracts for the International Sale of Goods (CISG). Delivery clauses shall be interpreted in accordance with the Incoterms 2000.
- 17.2 While the exclusive place of jurisdiction for any disputes arising from or in connection with the contract made between Vossloh and Supplier shall be the registered office of the contracting Vossloh Group company, Vossloh is also entitled to bring any action against Supplier before a court within Supplier's general jurisdiction.
- 17.3 Unless otherwise stated in the purchase order, the delivery place according to § 5.6 shall also be the place of performance for Supplier's obligations.
- 18. Supplier-related data**
- Vossloh is entitled to electronically store, as well as to use and process for its own business purposes in accordance with the law, any Supplier-related data.
- 19. German version prevailing**
- If these Purchasing Terms are available in different languages, the German version shall prevail for interpretation issues.