

**STANDARD TERMS OF SALE AND DELIVERY**  
(ALLGEMEINE VERKAUFS-UND LIEFERBEDINGUNGEN)  
**FOR FISCHER PROFIL GMBH**



October 2011

**1 SCOPE OF APPLICATION**

- 1.1 All our sales, deliveries and other services (hereinafter collectively referred to as "**Deliveries**") will always be subject to the terms and conditions set out below. These terms and conditions are applicable to companies, legal entities organised under public law (*juristische Personen des öffentlichen Rechts*) and special estates governed by public law (*öffentlich-rechtliche Sondervermögen*) ("**Customer**"). By accepting them without objection and/or protest, the Customer agrees to their exclusive applicability to each Delivery and to all successive transactions. We do not accept any conflicting or deviating terms and conditions of the Customer, unless we consent to their applicability explicitly and in writing. Our terms and conditions shall also apply if we execute Deliveries without reservation, although being aware of conflicting or deviating terms and conditions of the Customer.
- 1.2 We reserve the right to amend our General Terms of Sale and Delivery from time to time. The Customer will be deemed to agree to the exclusive applicability of the amended terms and conditions, unless the Customer objects to them in writing within one week after their receipt, provided that we explicitly advised the Customer of the effect of the Customer's silence when we announced the amended terms and conditions.

**2 OFFER, PRODUCT INFORMATION, CONSULTING AND SUPPORT SERVICES, WARRANTIES, CONCLUSION OF CONTRACT**

- 2.1 Any information and data contained in data sheets, product specifications, product descriptions, brochures and advertising materials only serves as guidance and shall only become a binding part of the contract if we consent thereto explicitly and in writing.
- 2.2 Statements as to quality and life period shall only be deemed to be warranties if they are explicitly designated as such. The same shall apply to the assumption of procurement risks.
- 2.3 Unless we provide separately invoiced advice and support in relation to our product's properties and our product's processing properties, including drawings, calculations and lists of materials, it will remain the sole responsibility of the Customer to ascertain the accuracy and completeness and to use our products safely, appropriately and faultlessly.
- 2.4 It is the Customer's sole responsibility to obtain any permits and/or permissions that may be required, as well as to comply with and continue to comply with any other conditions existing under public and administrative law.
- 2.5 Our offers shall not be binding upon us until confirmed (*freibleibend*). The contract will only be binding upon us if we confirm the order in writing and when all permits and/or permissions that may be required (in particular import and export licences) have been granted, and if when sufficient credit insurance and other payment guarantees agreed upon (e.g. letter of credit) is and/or are available and evidenced.

**3 QUALITY, QUANTITY, DELIVERY, PASSING OF RISK, CALL-OFF AND FRAMEWORK CONTRACTS**

- 3.1 Except where otherwise agreed, the appropriate German Industry Standards (European Standard) *DIN-EN* shall apply, otherwise the appropriate German Industry Standards *DIN*. As for the rest, our goods shall be delivered in usual in-trade quality and design, taking into account usual in-trade tolerances as to measurements,

- weights and quality that are inherent in the manufacturing process. References to certain standards, materials specifications (*Werkstoffblätter*) or factory tests shall not constitute any warranty as to certain product characteristics. Public statements made by us, our agents or any manufacturer or manufacturer's agent, including but not limited to those made in advertising materials or websites, regarding characteristics of our goods shall give rise to claims of the Customer part based on defects in quality (*Sachmängelrechte*) only where they have explicitly been made an integral part of a quality agreement (*Beschaffensvereinbarung*).
- 3.2 The parameters determined by us prior to preparation for shipping shall be determinative for quantities, weights and measures of the delivery.
- 3.3 Except where otherwise agreed, it shall be permitted to deliver up to 3% more or less than the quantity or number of items ordered, provided that this is due to reasons inherent in the manufacturing or processing procedures.
- 3.4 Partial delivery and performance shall be permitted, to the extent they are reasonable for the Customer.
- 3.5 Except where otherwise agreed in writing, our Deliveries shall be made at our discretion either ex works or ex stock; this may also be the works or stock of a third party. The risk shall pass to the Customer at the latest at delivery to the forwarder or other carrier; this shall apply even where the goods are delivered by our own employees. The forwarder or carrier shall observe all safety instructions. Where we have not received specific instructions from the Customer, we shall be responsible for selecting an appropriate carrier. The risk shall also pass to the Customer if goods are stored with us at the Customer's request. On the construction site and within the Customer's own sphere, the Customer must make sure that the goods are stored properly and safely. Notwithstanding its other obligations under clause 6.1 the Customer is obligated to examine the goods upon delivery for shipping damages and to draw up a respective record jointly with the carrier. Any damage found has to be communicated to us in writing and without undue delay.
- 3.6 Our obligation to deliver and provide services shall be subject to having received our own supplier's delivery properly and when due.
- 3.7 Statements as to delivery and performance dates shall be deemed to be estimates only, except where otherwise agreed between the parties; in the event of estimated delivery and performance deadlines, the Customer can effectuate the falling due of our delivery and performance no sooner than one month following the expiry of the estimated delivery and performance deadline or, where applicable, following the expiry of the extended deadline pursuant to clause 3.9. In the event of estimated delivery deadlines, the Customer shall accept the goods within a period of two weeks following notification that the goods are ready for taking delivery or shipment.
- 3.8 Delivery times shall commence at sending off the order confirmation, however not before the Customer has delivered all documents, permits, clearances to be obtained by the Customer, and the resolving of all technical matters.

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- 3.9 Delivery times shall automatically extend by a reasonable period in the event of any industrial action, including but not limited to strike and lawful lockout, and in the event of any other hindrance falling outside the sphere of our responsibilities. The same shall apply where any such event occurs on our sub-supplier's part. The above events shall be deemed to fall outside the sphere of our responsibilities even where they occur during default of delivery. We shall inform the Customer as soon as possible of the beginning and end of any such event. If after entering the contract (e.g. due to mobilisation, any measure taken by any governmental authority including foreign trade measures) any event occurs that had not been foreseen by us and that (other than only for a limited duration) renders our performance more difficult, or the balance between performance and consideration is disturbed (other than only for a limited duration) to our disadvantage, then we may request an appropriate adjustment of the contract. If an adjustment of the contract is not possible or is unreasonable for either party, we may rescind the contract. As for the rest, the statutory provisions on a lapse of the obligation to perform, the right of the debtor to refuse performance, on frustration of the foundations of the contract (*Störung der Geschäftsgrundlage*) and the right to terminate for good cause remain unaffected.
- 3.10 If the Customer does not accept delivery or call the goods on time, we may claim compensation for our additional cost and may store the goods at the Customer's cost and risk, notwithstanding our performance claim and any further rights and remedies. If the time of production shifts upon the Customer's request, clause 4.1 shall apply in respect of the price.
- 3.11 The Incoterms as amended at the time of entering into the contract shall apply, except where these Standard Terms of Sale and Delivery contain diverging terms or conditions.
- 4 PRICES AND COST**
- 4.1 Except where otherwise agreed in writing, the price list current upon entering the contract shall apply and all prices shall be ex works or ex stock (also of a third party, as the case may be), without packaging. All prices are based on the cost factors at the time the order is confirmed. If the cost for raw materials, energy, transportation and packaging materials increases materially either for us or our suppliers, resulting in a material increase in our purchase prices or cost prices, we shall be entitled to demand negotiations on a price adjustment immediately, unless it was explicitly confirmed that the price is a fixed price. If an agreement cannot be reached within a reasonable time, we will be released from our obligation to effect outstanding Deliveries.
- 4.2 Statutory value added tax is not included in the prices; it will be separately shown on the invoice at the statutory rate on the invoice date.
- 4.3 Where goods are stored with us at the Customer's request, the resulting cost shall be paid by the Customer.
- 5 PAYMENT, SET-OFF, ASSIGNMENT**
- 5.1 Payments shall be made within 30 days of the date of the invoice. Payments shall be deemed to have been made in due time only if received by us or credited to our account without reservation at that time.
- 5.2 In the event of a payment default, default interest shall become payable at a rate of eight percentage points above the base interest rate, except where we are entitled to a higher rate of interest on any other legal basis. We reserve the right to assert any other or further damage or loss or other statutory default rights and remedies.
- 5.3 If two or more claims against a Customer are outstanding and a payment made by the Customer is insufficient to satisfy all claims, then the amount paid shall be allocated pursuant to the statutory provisions (section 366 para.2 of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*)) even where the Customer has explicitly paid to satisfy a specific claim.
- 5.4 Any set-off and the exercise of any statutory right of retention or right to refuse performance against or on the basis of any counterclaim on the Customer's part (e.g. because of any defect of the goods) that is disputed by us or that has not been awarded in a final and unappealable judgement shall be excluded. The exercise of any right of retention or right to refuse performance shall be excluded also where the Customer's claims are not based on the same contractual relationship.
- 5.5 Where the Customer fails to comply with any payment date or where it becomes apparent for any other reason, after entering into the contract, that our payment claims are endangered by a lack of financial capacity on the Customer's part, we shall have all statutory rights and remedies, including but not limited to the right to refuse our own performance until the consideration is paid or appropriate collateral has been delivered, as the case may be, and the right to rescind the contract.
- 5.6 The Customer may not assign any claims for delivery against us, neither in part nor entirely, to a third party. We shall also not be obliged to effect delivery to a third party at the behest of the Customer.
- 6 NOTIFICATION OF DEFECTS, CLAIMS FOR DEFECTS IN QUALITY AND DEFECTS IN TITLE, CUSTOMER'S INSTRUCTIONS, ADVICE**
- 6.1 Warranty claims of the Customer are subject to the condition that the Customer duly complied with the statutory duty of inspection and duty to notify a defect incumbent on the Customer. In the event of an apparent defect or incompleteness of the goods, complaints shall be notified to us in writing within 2 weeks after receipt of delivery at destination, which notification shall specify the defect exactly and indicate the invoice number. Latent defects shall be notified by the Customer immediately after their discovery. Receipts, samples, packing slips and/or defective goods shall be sent back to us if we request so. Claims of the Customer on the basis of any defect or incompleteness of delivery shall be excluded if the Customer fails to meet such obligation.
- 6.2 If the goods are defective, we will have the option to remedy the defect either by way of supplementary performance (*Nacherfüllung*) or by replacing the goods with a replacement being free of defects. The Customer shall be entitled to withdraw from the contract or to claim a reduction of the purchase price in accordance with the statutory provisions only if those attempts have failed repeatedly or are unreasonable, unless the

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- defects are only minor defects. Section 478 of the German Civil Code shall remain unaffected. The Customer shall be entitled to damages pursuant to clause 6.3.
- As to replacement deliveries and rectification work, a warranty period of three (3) months shall apply, starting as of delivery and/or execution, which shall, however, run at least until the expiry of the warranty period for our initial performance (cf. clause 6.11).
- 6.3 In the event of an explicit assumption of a guarantee or procurement risk, as well as on the basis of any intentional or grossly negligent breach of duty, we shall be liable without limitation under the German Product Liability Act (*Produkthaftungsgesetz*). We shall also be liable without any limitation for any intentional or negligent injury to life, body or health. We shall be liable for a property damage and/or pecuniary loss caused by slight negligence only in the event of a violation of material contractual obligations, the observance of which makes the contract's proper implementation possible in the first place and on the observance of which the Customer can rely on to a special degree; such liability shall, however, be limited to the typical damage or loss considering the type of the contract that could be anticipated upon entering the contract.
- 6.4 Notwithstanding our liability pursuant to clause 6.3, a limitation of liability to three times the price of the Delivery concerned, however not exceeding € 2,500,000 per event of damage or loss and € 5,000,000 per calendar year, shall apply to any property damage and pecuniary loss caused by slight negligence.
- 6.5 Any claims for compensation of a damage or loss of any kind caused as a result of an improper treatment, modification, assembly and/or operation of the items delivered or by any inappropriate advice or instruction by the Customer or failure to observe our technical specifications, in particular in installation manuals, and the technical specifications of our suppliers for purchased parts shall be excluded, except where we are responsible for them. Additionally, the Customer shall be fully responsible for the use of any design, trade mark or trade name appearing on the goods at the Customer's request.
- 6.6 If the Customer is entitled to claim damages instead of performance or to withdraw from the contract, the Customer will have to explain, at our request and within a reasonable period of time, whether and how the Customer intends to make use of those rights. If the Customer fails to provide such explanation in due time and insists on performance, the Customer shall be entitled to exercise those rights only after the expiry of a further effectless reasonable deadline.
- 6.7 Regarding substandard goods and second-rate quality goods, all warranty claims shall be excluded for defects the Customer has knowledge of at the time of entering into the contract. We shall also not be liable for any defects the Customer has failed to become aware of at the time of entering the contract due to the Customer's own gross negligence, except where we had fraudulently concealed such defect or had given a warranty for characteristics of the goods.
- 6.8 Regarding defects resulting from any instruction or specification received from the Customer, we shall be liable pursuant to the statutory provisions and according to these Standard Terms of Sale and Delivery only if we agreed in writing with the Customer to assume the risk of any defect resulting from such instruction or specification.
- The Customer shall be responsible to us that instructions and specifications will not result in any defect of the goods manufactured and/or delivered by us, as the case may be, except where we had assumed the abovementioned risk of defects in writing.
- 6.9 It shall be the Customer's own duty to examine the suitability of the goods for the purpose for which they are intended by the Customer. Any elaboration or planning made by us for the Customer, any advice provided by us and any recommendation made by us shall be provided and/or made without constituting any liability; they are to be carefully examined by the Customer – if necessary by obtaining expert advice from a third party – prior to their implementation.
- 6.10 If upon inspecting any asserted defect it is found that no warranty claim exists, then the Customer shall pay the cost of such inspection.
- 6.11 Any claims because of defects shall become time-barred after 12 months as of the passing of risk. This shall apply *mutatis mutandis* to legal defects. The statutory limitation periods shall apply to any intentional breach of duty, claims in tort, any absence of warranted characteristics, the assumption of procurement risks, as well as any physical injuries to persons. If the performance is intended for a building and if it is the performance that caused such building's defectiveness, the warranty period will be 5 years. Sections 438 para. 3, 479 und 634a para. 3 of the German Civil Code remain unaffected.
- 6.12 Any further liability for damages other than the liability provided for in the preceding paragraphs of this clause 6 shall be excluded – irrespective of the legal nature of the claim asserted.
- 6.13 The above limitations of liability shall also apply, on the merits and in terms of amount, to our legal representatives, employees and other agents (*Erfüllungs- und/oder Verrichtungsgehilfen*).
- 7 PROPRIETARY RIGHTS AND COPYRIGHTS**
- We reserve all and any proprietary rights and copyrights in respect of all and any drawings, illustrations, cost estimates and other documents transmitted by us. Such documents may not be made accessible to any third party nor be used commercially without our prior consent, and shall be returned to us without undue delay upon our request.
- 8 RETENTION OF TITLE AND SECURITY**
- 8.1 We retain the title to the goods (the "Retained Goods") until satisfaction of all our existing and future claims arising from our business relations with the Customer. Where a current account is maintained, this retention of title shall secure our respective balance claim existing at any time.
- 8.2 Any processing or alteration of the Retained Goods by the Customer shall be deemed to be made or performed on our behalf, without resulting in any obligation on our part. Where the goods are processed together with other items that are not our property, we shall become a co-owner of the new item with a share equal to the proportion of the value of the goods to that of the other items processed at the time of the processing. In the event that Retained Goods are combined, mixed or mingled with chattels owned by the Customer in such

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- a way that the Customer's item is to be considered as the main item, the Customer herewith transfers to us its title to the overall item to an extent equal to the proportion of the value of the Retained Goods to that of the other combined, mixed or mingled items. For the event that Retained Goods are combined, mixed or mingled with chattels owned by any third party in such a way that the third party's item is to be considered as the main item, the Customer herewith assigns to us its compensation claim against such third party in an amount equal to the invoice total amount for the Retained Goods.
- The item created through combination or mingling (hereinafter the "New Item") and/or the (co-)ownership rights in the New Item that shall fall and/or be transferred to us under this clause 8.2 and the compensation claims assigned to us under this clause 8.2 shall secure our claims in the same manner as the Retained Goods under clause 8.1.
- 8.3 The Customer may resell the Retained Goods and/or New Item in the ordinary course of business subject to a retention of title. The Customer shall ensure that the claims under such resale transactions can be assigned to us in accordance with clauses 8.4 and 8.5 hereof. The Customer must not dispose of the Retained Goods or New Item in any other way.
- 8.4 The Customer's claims resulting from any resale of the Retained Goods are herewith assigned to us. They shall secure our claims to the same extent as the Retained Goods. Where the Customer sells Retained Goods together with other goods not delivered by us, the assignment of the claim shall be deemed to apply only in the amount of the invoice total relating to the resale of the Retained Goods. In the event of any resale of goods of which we have become a co-owner under clause 8.2 hereof or pursuant to the statutory provisions covering the combination, mixing and mingling of items, the assignment of the claim shall be deemed limited to the amount of our co-ownership share.
- 8.5 Where the Customer includes any claim from the resale of Retained Goods in any current account with any purchaser of the Customer, the Customer herewith assigns to us any resulting recognised balance or final credit balance existing in favour of the Customer in an amount equal to the total of the claims under the resale of such Retained Goods included in such current account. The third and fourth sentences of clause 8.4 hereof shall apply *mutatis mutandis*.
- 8.6 The Customer is authorised to collect the claims assigned to us resulting from the resale of the Retained Goods and/or New Item. The Customer may not assign any such claims resulting from the resale to any third party, including any assignment under a genuine (non-recourse) factoring agreement.
- 8.7 We may revoke the authority to resell the Retained Goods and/or New Item according to clause 8.3 hereof and the authority to collect the claims assigned to us according to clause 8.6 hereof in the event of a payment default or cessation of payments by the Customer and in the event of any petition for the commencement of insolvency proceedings or in other cases where the Customer's credit standing and trustworthiness is impaired. In the event of a revocation of the authority as to the resale and/or collection, the Customer is obliged to inform the Customer's purchasers without undue delay that the claims have been assigned to us and provide us with all and any information and records necessary to collect the claims. In such event, the Customer is further obliged to surrender and/or transfer to us any security the Customer has in respect of claims against the purchasers.
- 8.8 The Customer is obliged to inform us without undue delay of any attachment or seizure or other legal or physical impairment of, or danger to, the Retained Goods or any other security or collateral provided to us.
- 8.9 The Customer undertakes to insure the Retained Goods sufficiently against any damage or loss caused by fire, water and/or theft at replacement value. The Customer herewith assigns to us the Customer's claims under the relevant insurance policies.
- 8.10 In the event of payment default or any other not only marginal breach of contract by the Customer and in the event of the rescission of the contract, the Customer herewith consents that we remove and/or cause to be removed any Retained Goods and/or (where we are the sole owner) the New Item as defined in clause 8.2 hereof which are in the Customer's possession. Such removal shall be construed so as to constitute a rescission of the contract only where we explicitly state this. For the purposes of taking such measures and for the purpose of any general inspection of the Retained Goods and/or the New Item, the Customer shall grant our authorised representative access at all times.
- 8.11 After prior warning, we are entitled to realise such Retained Goods that have been removed, provided that the realisation proceeds (after deduction of reasonable realisation costs) shall be set off against the Customer's debts.
- 8.12 The Customer herewith pledges to our benefit any materials made available to us for the purpose of executing the order and any claims replacing them, as a security for all existing and future claims resulting from the business relationship with the Customer.
- 8.13 To the extent the retention of title or the assignment of claims is invalid or unenforceable due to any mandatory foreign law, the security or collateral equivalent to the retention of title or assignment of claims in such region shall be deemed to have been agreed. If this requires the Customer's co-operation, the Customer shall take all steps necessary to create and maintain such security or collateral.
- 9 TOOLS**
- To the extent we manufacture or acquire tools for Deliveries to the Customer, these tools shall remain our property even where the Customer pays the cost of such tools fully or in part. The tools shall be used exclusively for Deliveries to the Customer as long as the Customer satisfies his contractual obligations as towards us. If twenty-four (24) months have expired since the last Delivery was made or if the Customer's contribution to the acquisition of the tool has been amortised, we may elect to use the tool for other purposes or scrap it.
- 10 OBSERVANCE OF SAFETY AND OTHER RULES**
- 10.1 Except where otherwise agreed in the individual case, the Customer shall be responsible for complying with statutory and other official rules and regulations, as well

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as generally accepted practices, as to the import, transport, storage, handling, use and disposal of the goods.

- 10.2 Additionally, the Customer is obliged
- to become familiar with the entire product information provided by us,
  - to sufficiently instruct the Customer's employees, contractors, agencies and customers as to how to handle the products,
  - to take appropriate measures to prevent dangers for persons and assets that may be caused by our goods.

10.3 If the Customer violates the duties set out in clauses 10.1 and 10.2 hereof more than marginally, we will be entitled to withdraw from the contract after prior warning (*Abmahnung*).

10.4 The Customer is liable to us for any damage or loss caused as a result of any non-observance of safety instructions or regulations by the Customer and indemnifies us from and against any corresponding recourse by third parties.

**11 MISCELLANEOUS**

11.1 Any verbal collateral agreement, divergence from, or exclusion of, these General Terms must be confirmed in writing in order to be valid. This shall also apply to any abrogation of this written form clause.

11.2 If any term or condition hereof or any other term or condition of the contract is or becomes invalid, then the rest of the contract shall remain valid. The parties are obliged to replace such invalid term or condition by that valid term or condition which as closely as possible attains the commercial result intended to be attained by the invalid term or condition.

11.3 We expect our Customers to act impeccably from an ethical standpoint and we have committed ourselves to comply with Tata Steel's code of ethical conduct, which we will be happy to make available upon request.

**12 PLACE OF PERFORMANCE, LEGAL VENUE, GOVERNING LAW**

12.1 The place of performance for our Deliveries is the factory or storage where the goods are held ready for taking delivery or from which they are shipped; this may also be the factory or storage of a third party. Place of performance for payments shall be Netphen.

12.2 If the Customer is a businessperson (*Kaufmann*), a legal entity organised under public law (*juristische Personen des öffentlichen Rechts*) or a special estate governed by public law (*öffentlich-rechtliches Sondervermögen*), or does not have a general legal venue in the Federal Republic of Germany, Netphen shall be the exclusive legal venue for any dispute arising under the business relationship. However, we shall be entitled to elect to bring any such dispute before any other court that has jurisdiction pursuant to the law.

12.3 The laws of the Federal Republic of Germany shall apply hereto, to the exclusion of the UN Convention on the International Sale of Goods.

such processing, such data may also be transmitted to other companies within the Tata Steel group.

**NOTICE**

**We electronically store and process the data of Customers and any third parties involved to the extent necessary for the due and proper performance of the contract. In the course of**