

# General Terms and Conditions of Sale as of October 2010

## Peter Cremer GmbH ("CREMER STEEL")

### I. General Terms

- These terms and conditions of sale are binding for all contracts. Buyer's Purchasing Terms and Conditions are hereby rejected and considered null and void, even if no express objection is being made by CREMER STEEL when the order is confirmed.
- Offers by CREMER STEEL shall not be binding and subject to their written confirmation, if not otherwise agreed in writing. It is in any case subject to written confirmation by CREMER STEEL upon receipt of Buyer's order.
- All supplementary agreements and amendments to the contract must be made in writing to be valid.
- CREMER STEEL does not warrant that the contracted materials are suitable for any specific use or purpose.
- Weights or other contract units ascertained at the works and/ or warehouse shall be binding for invoicing purposes.
- The examination or testing of the goods by the Buyer shall be subject to prior written agreement. Should there be no such agreement or should Buyer fail to comply with such agreement within the time stipulated therein, the goods shall be considered in accordance with the contract terms as soon as they leave the works and/ or warehouse.
- Shipping clauses such as "FAS", "FOB", "CFR" or "CIF" shall apply according to the definitions as laid down in the INCOTERMS as in force at the time the contract was signed, unless otherwise agreed in writing. Section 1.9 remains unaffected.
- The delivery will be deemed to take place when the goods are delivered to the Buyer at the place of performance.
- Place of performance for CREMER STEEL's deliveries shall be the location of the works or warehouse from which CREMER STEEL delivers, for payments it shall be Hamburg, Germany.
- In these terms and conditions the headings are for reference only and will not affect their interpretation.

### II. Prices and Taxes

- Quotations are given in USD (US\$) or EUR (€) as indicated and if not stated otherwise.
- Prices quoted cover normal unhindered transportation or shipment. Any additional costs incurred by reason of impeded transportation or shipment shall be borne by Buyer.
- Any increase or imposition of new taxes, which affects the export and comes into force after the signing of the contract will be for Buyer's account or will entitle CREMER STEEL to cancel the contract. The same shall apply to freight increases or any other circumstances which may affect contract price.

### III. Payments

- All payments payable to CREMER STEEL under the contract will become due without deduction immediately on delivery of the goods unless otherwise agreed in writing.
- The Buyer will be in default at the latest 10 days after payment is due and without the need for a reminder.
- If Buyer fails to pay CREMER STEEL any amount due pursuant to the contract, CREMER STEEL reserves the right to charge interest from the due date for payment at the prevailing interest-rate.
- Buyer's failure to effect payment against any delivery within the terms of the contract or receipt of any unfavourable information concerning Buyer's financial standing and/ or concerning problems with the transfer of payments will entitle CREMER STEEL to either demand from Buyer security in CREMER STEEL's choice without delay or demand immediate payment or to cancel any undelivered contract or part thereof and/ or to postpone delivery.
- Buyer shall generally have no right to set-off or to withhold payments of any amount payable under the contract to CREMER STEEL due to any claim by Buyer in respect of defective materials and/ or any other alleged breach of contract. Buyer is only entitled to set-off or withhold payments when his claim is either undisputed or has become res judicata.
- CREMER STEEL may set-off any claim by Buyer against their own claims against the Buyer resulting from any transactions between Buyer and CREMER STEEL.
- The provisions of clause III.6. shall apply accordingly for claims by the CREMER STEEL branch offices or affiliated companies.

### IV. Delivery

- Delivery dates stated by CREMER STEEL shall be approximate and not binding on CREMER STEEL.
- All contracts are sold under the condition that Suppliers are delivering the materials as contractually agreed with CREMER STEEL.
- If any administrative confirmations, foreign exchange permits and/ other official approvals are necessary these will have no bearing on the contract and it is Buyer's duty to obtain them and bear the costs.
- Unless otherwise agreed in writing, part deliveries shall be permissible.
- CREMER STEEL shall not be liable for rusting and/ or bending of the goods. Remarks in the Bill of Lading, such as "unprotected", "wet before shipment", "atmospherically rusty", "top sheets rusty", "edges bent", "slightly bent" will not involve CREMER STEEL in any liability. Such Bills of Lading are to be accepted by Buyer as if being issued "clean".
- If Buyer is responsible for the transport of goods, those goods have to be called off by Buyer immediately after they have been reported ready for shipment and the purchase price will be due for payment. Otherwise CREMER STEEL shall be entitled to store them for Buyer's account without liability, if necessary in the open, or to sell them for Buyer's account. Any costs and risks will be borne by Buyer.
- If Buyer is responsible for the transport the risk of accidental loss and deterioration of the goods shall be transferred to the Buyer upon the transfer to the person or agent designated to execute the shipment.

### V. Force Majeure

- In case of prohibition of export, blockade or hostilities or in case of any executive or legislative act executed by and/ or on behalf of the government of the country of origin or the territory where the port or ports of shipment named herein is/ are situated restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this contract. CREMER STEEL shall be entitled either to extend the delivery until the prohibition or restriction has ended or to cancel the whole or parts of the contract if the prohibition or restriction is not only temporary. CREMER STEEL shall not be responsible for delays in shipment of the goods or any part thereof occasioned by any Act of God, strike, lock-out, riot or civil commotion, combination of workmen, breakdown of machinery, or any cause comprehended in the terms "force majeure".
- If delay in shipment is likely to occur for any of the above reasons, CREMER STEEL shall give written notice to Buyer. The notice shall state the reasons for the anticipated delay.
- If shipment will be delayed for more than one calendar month, CREMER STEEL shall have the option to extend the time of fulfillment until the delivery will be possible or to cancel the delayed portion of the contract in case that the delay is not only temporary.
- Buyer shall refund CREMER STEEL for any extra charges arising in connection with such delays. Buyer shall, if necessary, arrange that the period of validity of the respective banker's credit instructions, letters of credit, import licences, foreign exchange permits and other relevant documents will be extended accordingly.
- Buyer shall not be entitled to claim compensation from CREMER STEEL in any of the above mentioned events. Claims based on § 285 para. 1 BGB (German Civil Code) remain unaffected form this limitation.

### VI. Retention of Title

- All goods delivered shall remain CREMER STEEL's property and shall not pass on to Buyer until the contractual payments have been settled in full. Until the complete payment Buyer shall keep the goods as CREMER STEEL's trustee and shall neither pledge them nor sell them to third parties or secure these goods in favour of third parties.
- In case of outstanding payments CREMER STEEL is entitled to forbid any combination, mixing, processing or transformation of the goods.
- Processing or transformation of the goods in which title is retained is always carried out for CREMER STEEL as manufacturer without any liability arising from it for CREMER STEEL.

- Should the delivered goods in which title is retained be combined, mixed, processed or transformed with other goods by Buyer, CREMER STEEL shall have title or joint title to the resultant product in proportion to the value of the goods supplied. If CREMER STEEL's ownership expires due to combining, mixing, processing or transformation Buyer shall assign to CREMER STEEL title or joint title to the new product in proportion to the value of the goods supplied. The new products shall be deemed to be goods in which title is retained as defined in clause VI.1. in proportion to the value of the goods supplied.
- Any outstanding claims by Buyer resulting from resale of the goods, to which CREMER STEEL holds any title, are assigned to CREMER STEEL until all outstanding payments between Buyer and CREMER STEEL have been settled.
- In case Buyer's property is seized or otherwise becomes subject to third party rights Buyer shall inform CREMER STEEL immediately.
- If the value of such securities exceeds CREMER STEEL's claims by more than 20 %, CREMER STEEL will, upon Buyer's request, surrender securities at their option equivalent to the exceeding value.
- In case these provisions should not be effective in Buyer's domicile or in the country where the goods are located, the appropriate securities according to the laws of the Federal Republic of Germany will be considered agreed upon between the parties. If the cooperation of Buyer is necessary for the establishment of such rights, Buyer is obliged, at his own expense, to take all measures for the establishment and preservation of such rights upon CREMER STEEL's request.

### VII. Claims based on defects

- The receipt of defective goods must be reported to CREMER STEEL immediately in writing. The Buyer has to examine goods upon receipt without delay; concealed defects must be reported immediately after their discovery.
- After an agreed acceptance has taken place, any complaint about defects which should have been discovered in the course of the acceptance procedures is excluded.
- The Buyer has to allow CREMER STEEL to promptly examine any objected goods, in particular these shall be made available to CREMER STEEL on request and at CREMER STEEL's cost. In case of unjustified objection CREMER STEEL shall be entitled to impose the costs arising from this objection to the Buyer.
- CREMER STEEL's liability is limited either to remedy the defective goods or to replace them basis FOB port of shipment. In addition to this Buyer has neither the right to claim compensation of whatever nature, except the rights stated in clause VIII., nor the right to cancel the contract.
- CREMER STEEL alternatively, considering Buyer's interests, has the right to reduce the sales price or to take back the goods and refund the sales price. Buyer has no right to return the goods without CREMER STEEL's specific written consent.
- This limitation of liability shall also apply to goods replaced in accordance with this provision.
- In case the subsequent performance should fail the Buyer may ask for a reduction of the purchase price or withdraw from the contract.
- CREMER STEEL's liability for any defect automatically expires six months after the date of delivery, if not announced otherwise by CREMER STEEL in writing.
- Buyer's rights to recourse against CREMER STEEL under § 478 BGB (German Civil Code) are restricted to the legal limitations of the claims based on defects brought by third parties against the Buyer and always provided that the Buyer has complied with his obligation to notify CREMER STEEL defects immediately pursuant to § 377 HGB (German Commercial Code).
- There shall be no liability by CREMER STEEL in case of contracts for declassified goods.

### VIII. General liability

- If Buyer claims compensation for reasons other than defects of goods as mentioned under section VII, CREMER STEEL's liability is limited to damages caused by willful misconduct or gross negligence on behalf of CREMER STEEL, its executives or vicarious agents or for being at fault for violating essential contract obligations.
- In the event of being at fault for violating essential contract obligations CREMER STEEL, its executives or vicarious agents shall be, except in the case of intent or gross negligence, only liable for foreseeable, contract specific typical damages.
- CREMER STEEL shall not be liable under any circumstances for any indirect or consequential loss or damage of whatever kind.
- Such claim or claims do not entitle Buyer to cancel the contract.
- The above mentioned liability restrictions shall not apply in case of harm to life, physical injury or harm to health.

### IX. Use and Export of Goods

- In accordance with prevailing legislation in the Federal Republic of Germany all contracts are entered into under the condition that the goods will under no circumstances be used for any military purposes, directly or indirectly unless otherwise authorized by German governmental authorities.
- Buyer warrant that he will ship the goods to the country of destination as agreed in the contract. If Buyer desires to change the destination, he will have to get CREMER STEEL's written consent in advance.
- Upon CREMER STEEL's request Buyer is obliged to submit clear evidence as to the whereabouts of the goods.
- In case Buyer violates this understanding he automatically has to indemnify CREMER STEEL for any and all consequences of whatever nature which may result from such breach of contract.

### X. Assignment

- CREMER STEEL reserves the right to assign this Contract or any part thereof to any of its affiliated companies. The Buyer may receive on request a full list of CREMER STEEL's affiliated companies.
- Buyer shall not be entitled to assign this contract or any part of it without prior written consent by CREMER STEEL.

### XI. Applicable Law

The laws of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the Sale of Goods (CISG) of 11 April 1980 shall not apply.

### XII. Dispute Resolution and legal venue

- If a dispute arising out of or in connection with this contract and its execution cannot be settled between the parties in an amicable way, the same shall be submitted to an Arbitration Tribunal according to the rules and regulations of the International Chamber of Commerce in Paris for a final and binding judgment. The location of the arbitration shall be Hamburg, Germany. Language of proceedings shall be English.
- The Buyer, including states, companies owned by states and public entities herewith expressly confirms that he will submit to this arbitration clause. The Buyer must send his consent to this arbitration clause as integral part of any contract with the CREMER STEEL to CREMER STEEL in written form.

### XIII. Supplementary Clause

Should any provision of these provisions be or become illegal, invalid or unenforceable, the validity of the remainder shall not be affected. The invalid or unenforceable provision shall be replaced by such a provision which corresponds to the spirit and the purpose of the replaced provision to the greatest extent possible.