

## General Conditions of Sale

of ArcelorMittal Schienen Vertriebsgesellschaft mbH  
(valid as from 05 December 2024)

Bornstraße 291-293, 44145 Dortmund, Amtsgericht Dortmund, HRB 21880

### 1. SCOPE – ENTIRE AGREEMENT

- 1.1 These general conditions of sale (hereinafter referred to as “**GCS**”) shall apply to all offers and contracts regarding products, accessories or services (“**Goods**”) that are sold and/or rendered by the ArcelorMittal Schienen Vertriebsgesellschaft mbH (“**Seller**”) to the customer (“**Customer**”) as well as to the entire legal relationship in this context with Customer. These GCS, together with Seller’s specific conditions contained or referenced in its order confirmation or contract of sale and only such other documents as are specifically incorporated by way of reference in the order confirmation or contract or in these GCS, if such exist, constitute the entire agreement between Customer and Seller (such agreement hereafter referred to as the “**Contract**”), and supersede, in their entirety, any other conflicting terms and conditions proposed by Customer. No additions to or variations from the terms hereof, whether set forth in Customer’s purchase order or in any other documents, including shipping documents or general terms and conditions of Customer, shall be binding upon Seller unless otherwise agreed in writing by Seller.
- 1.2 If in a specific case Seller and Customer agree on deviating terms in an individual agreement, the terms of such individual agreement shall supersede the terms of these GCS. With regard to the contents of such individual agreement, however, unless proven otherwise, only a contract in writing or Seller’s written confirmation shall be decisive for the terms of such individual agreements. Any verbal agreements, undertakings and/or guarantees made by any of Seller’s agents or staff shall be binding only if they are confirmed in writing by Seller. In this context, the power of Seller’s agents or staff to duly represent Seller is expressly restricted.
- 1.3 The term Customer in the context of these GCS shall mean the purchasing company appearing in the Contract as well as any affiliated company, in particular any corporation, association or other entity that directly or indirectly controls, is controlled by, or is under common control with, the purchasing company appearing in the Contract, where "control" means the possession of the majority of common stock and/or voting rights of such corporation, association or other entity.
- 1.4 Seller’s offers to Customer are non-binding and shall be construed as an invitation to Customer to make an offer to enter into a Contract with Seller. A Contract shall not be formed until Seller confirms the order of Customer, in writing or in electronic form, or if Seller, without reservation, delivers the requested Goods or renders the requested work. In any event, Customer’s signature and return of order confirmation or, in the alternative, Customer’s failure to reject it within three days from receipt thereof shall constitute Customer’s acceptance of the contractual terms defined herein and result in the formation of a Contract. Unless otherwise agreed in writing, also all information, documentation, specifications, catalogues and estimates provided by Seller are sent for information purposes only and are non-binding.
- 1.5 Seller’s failure to exercise any right shall not be deemed to be a waiver of such right.

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- 1.6 If any of the terms or conditions of these GCS or parts thereof shall be determined to be void, unenforceable or illegal in whole or in part, such determination shall not affect the validity of the other terms and conditions herein.
  - 1.7 In case of conflict between the provisions of the Contract and the present GCS the provisions of the Contract shall prevail.
  - 1.8 These GCS only apply vis-à-vis undertakings, legal entities, companies, merchants, legal persons under public law or a special funds under public, and not vis-à-vis consumers.

## **2. WEIGHING - PRICES – PAYMENT**

- 2.1 Unless agreed otherwise in writing, all prices are exclusively calculated on the basis of Goods as measured, weighed or counted by Seller or on Seller's behalf at the departure point or as determined according to this Clause. If the Goods are so measured or determined the measured or determined amounts are decisive and not the quantity stipulated in the order confirmation or Contract. If weighed, the measured weights are proven by the weight slips or weight certificates. The Goods will be invoiced taking into account their gross weight (i.e., including the weight of the packing, if any; "gross for net" without any discount for packaging). Seller is not obligated to take back any packaging materials and/or square timber. Unless it is agreed in writing or it is otherwise standard practice to weigh each individual item, the total weight of the load shall be taken in account as basis for the invoice. Differences between the individual weights forming the load shall be proportionally shared between the same. Seller, at its reasonable discretion, may also determine the weights, without measuring them, by calculating the weight according to accepted standards (e.g. DIN) or by establishing the weight theoretically (e.g. by multiplying the product dimensions with the weight per unit). Any recognized customs of the steel industry remain unaffected (e.g., usual weight increases and reductions).
- 2.2 Unless otherwise agreed in writing, the prices listed in Seller's price list valid at the time of the formation of the Contract shall apply. All Prices shall be deemed *ex works* and are net cash, and Customer shall pay, in addition to the price, all taxes on transfers and transactions (including, but not limited to, VAT, at the applicable statutory rate) and charges for items such as transportation, insurance, shipping, storage, handling and demurrage. Any increase in any such taxes or charges that becomes effective after the date of the Contract shall be borne by Customer. All customs duties, taxes, fees and other charges imposed on or required for the Goods and sale thereof in the country of delivery shall be the responsibility of Customer and for Customer's account.
- 2.3 Customer shall pay Seller's invoices in accordance with the following provisions:
  - a) In case a commercial credit insurance exists that sufficiently covers all not yet paid and imminent deliveries to Customer, Customer shall pay Seller's invoices net cash, without any deductions, within 30 days as of the receipt of the Goods and the invoice pertaining thereto.
  - b) In case such sufficient commercial credit insurance does not exist or if the credit limit of such commercial credit insurance is subsequently reduced, Customer shall make advance payments in the amount of the respective invoice. Against the provision of sufficient collateral (e. g. a bank guarantee), the sufficiency of which will be determined by the Seller at its free discretion, Seller is, however, prepared to grant Customer a payment period of 30 days as of the receipt of the Goods and the invoice pertaining thereto.

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- c) If Customer is subject to bankruptcy or insolvency proceedings or the financial condition of the Customer otherwise deteriorates in such way that the fulfilment of Seller's claims is jeopardized, then Seller shall not be bound by the period of payment stated in a) or b) above, and all amounts due shall be payable immediately. Further payment shall be made in cash either prior to the dispatch of Goods or prior to their manufacture, as agreed between the parties.

2.4 Invoices shall be sent electronically or by post at the seller's discretion.

2.5 If Customer is in default with the payment of a due amount, Customer is obligated to pay (i) interest on the unpaid amount until the unpaid amount is received by Seller at a rate of 9%-points above the basic rate of interest according to Section 247 of the German Civil Code, (ii) a fixed compensation amounting to EUR 40 as compensation for recovery costs without prejudice to any other rights of Seller caused by said payment failure, and (iii) reasonable compensation for any recovery costs exceeding that fixed sum and incurred due to Customer's late payment (including, but not limited to expenses incurred, inter alia, in instructing a lawyer or employing a debt collection agency). Any delay in the payment although it is due or in the execution of any obligation entered into by Customer or where Seller has reasonable grounds for doubting Customer's solvency or credit worthiness and Customer is not prepared to effect advance cash payment or provide Seller with security as requested, Seller shall have the right to cancel the Contract or retain that portion of the Contract which it has not yet performed without Customer's consent; it shall also result in all sums due which are to be paid by Customer, even those which have not yet matured, becoming immediately payable without notification on the part of Seller.

2.6 Seller reserves the right to offset Customer's debts (i) against Customer's credits; and/or (ii) against other payments made by Customer to Seller under any other agreement; and/or to use payments for the settlement of the invoices which have been outstanding longer than 30 days plus any interest on arrears and costs accrued thereon, in the following order: costs, interest, invoice amounts. Customer only is entitled to a right to set-off or to a right of retention if its claims have been finally established by a court decision and are non-appealable or otherwise are uncontested or acknowledged by Seller. In addition, Customer shall only be entitled to use its right of retention if its claim is based on the same Contract as Seller's claim. In case of faulty products Customer's rights, in particular under Clause 5 these GCS remain unaffected.

2.7 All bank fees, save for Seller's bank fees, shall be borne by Customer.

### **3. TRANSFER OF RISK – DELIVERY – SHIPMENT – VAT**

3.1 Unless otherwise agreed in writing, the transfer of risk shall take place at Seller's plant prior to loading and in case of the use of Incoterms, risk shall pass in accordance with the applicable term - latest version of the Incoterms issued by the ICC (delivery). Should Customer fail to take delivery of Goods, Seller may store them at Customer's risk and expense and following a notification of their availability, invoice them as having been delivered. At delivery, Customer shall comply with all applicable laws, rules and regulations in particular and without limitation those related to Health, Safety and Environment.

3.2 Unless otherwise agreed in writing, Seller shall determine the route and means of transportation when delivering Goods to their destination, as well as the selection of forwarding agents and carriers. Customer shall be responsible to supply to Seller, sufficiently in advance in order to permit Seller to make the necessary shipping arrangements, all appropriate information including (a) marking and shipping instructions, (b) import

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certificates, documents required to obtain necessary government licenses and any other documents prior to their shipment, and (c) Customer's confirmation that it has caused the opening or establishment of a letter of credit if required. If any such instructions, documents or confirmations are not so received or would (in Seller's sole judgment) require unreasonable expense or delay on its part, then Seller may, at its sole discretion and without prejudice as to any other remedies, delay the time of shipment and/or terminate the contract. In such case, Seller reserves the right to claim damages with regard to all consequences arising from a culpable breach of Customer's obligation to provide the documents and confirmation specified in Clause 3.2 sentence 2.

- 3.3 Unless otherwise agreed in writing, a stated time of delivery shall not be binding and only be considered as an approximate estimate and delays in delivery shall not entitle Customer to claim any damages resulting therefrom. Compliance with expressly agreed delivery dates and/or performance obligations requires the timely and duly fulfilment of Customer's obligations. If an advance payment is stipulated or Seller's performance requires the provision of documents, approvals or clearances by Customer, the term of delivery shall not start to run until the aforementioned requirements are fulfilled, and in no case prior to the date of Contract formation. Seller reserves the right to raise the defence of unperformed contract. The delivery date is met if the Goods leave Seller's plant or warehouse or Seller indicates the readiness to ship the Goods on or before the stipulated delivery date or within the agreed term.
- 3.4 An untimely or wrong delivery by Seller's suppliers shall not be attributable to Seller. In that case Seller will notify Customer of the unavailability of the Goods without undue delay and refund the respective payments/performances.
- 3.5 Delays in delivery shall only entitle Customer to cancel Goods not yet in the process of manufacture and only after having granted Seller a reasonable grace period in order to remedy said delay and only after having sent Seller a formal notice of default. Without prejudice to the provisions contained in Clause 5 below, binding times for delivery shall only entitle Customer to damages insofar as Seller has been fully informed in writing at the conclusion of the Contract of the possible loss and damage consequent to delayed delivery and of a specific valuation of the different elements thereof.
- 3.6 In case of production delays, Seller is entitled to deliver the Goods to Customer in several subsequent partial deliveries, if this does not unduly burden the Customer.
- 3.7 Unless otherwise agreed in writing,
- a) delivery shall be deemed fulfilled when the Goods are delivered with a tolerance of  $\pm 5\%$  on weight, and/or
  - b) Seller is entitled to deliver Goods which have been stored in open yard without any protection against rust.
- 3.8 In the event that the supply of Goods is entitled to a VAT exemption due to intra-community sales or the export destination of Goods delivered, and Customer takes delivery at its own risk and own expense for the whole or for a part of the carriage or transport (delivery terms EXW, FOB, FCA, etc.), Seller shall only be bound to apply for a VAT exemption if Customer provides it with sufficient proof (transport document: CMR, bill of lading, CIM, export declaration, etc.) of carriage or transport to the country of destination.

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- a) On Seller's request, Customer shall send to Seller within 10 working days as of the receipt of Seller's request the following:
- the copy of invoice for the delivered Goods with the date and legible signature (name and surname) confirming the receipt of the Goods delivered to the address specified in the invoice in the assortment and quantity defined in the delivery specification and as referred to in the invoice,
  - the copy of delivery note or transport document on which the confirmation of delivery of Goods is placed.
- b) If the time limit (which is defined in point a) above) is not respected due to the fault of Customer, Seller has the right to charge Customer liquidated damages in the amount of one hundred Euro for each day of default. The liquidated damages, however, shall not exceed the VAT amount due on the delivery value, calculated in Euro.
- c) Customer is obliged to inform Seller immediately (at the latest within 3 days) about:
- change of Customer's VAT identification number for intra-community transactions,
  - change of Customer's company's name and address.

#### **4. CONFORMITY – INSPECTION**

- 4.1 In addition to tolerance on weight as stated in Section 3.7 above, all deliveries are also subject to the tolerances generally accepted in the industry, including as to dimensions and quality.
- 4.2 Without undue delay after delivery of the goods, in any event, however, prior to the further processing (including, but not limited to, the installation) of the purchased goods Customer shall carry out an inspection of the Goods to check their conformity with the agreed specifications, the contractually agreed quality, amount, weight, length, straightness and width as stated in the contractual documents as well as the general fitness of the Goods for the purposes of Customer. Upon receipt Customer shall inform Seller without undue delay of any apparent defects, damages to Goods (surface faults, package faults, etc.) and/or any other faults which can be detected in a reasonable inspection of the goods, specifying in each case the nature of the lack of conformity. When determining the scope of the inspection, the Customer shall in particular take into account potential damages resulting from further processing of faulty products. The Goods are deemed to be approved by Customer and Customer loses its warranty rights if Seller does not receive such notice of defects in writing or by fax without undue delay, however, no later than three workdays after delivery and in any case before the Goods undergo any further processing, or, if the defect was not recognizable in spite of a proper inspection, within three workdays after its discovery. Beyond that period of time no claim shall be accepted by Seller in respect of any defect, deficiency and/or failure of Goods to meet the specific terms of the order which a reasonable inspection should have revealed but for which said inspection was not made. The notification of defects and faults has to be supported with documents proving the claim justification.

#### **5. WARRANTY CLAIMS – INFORMATION – LIABILITY**

- 5.1 Seller warrants that the Goods delivered to Customer are in conformity with the specifications contained in the Contract. Customer shall communicate to Seller all necessary

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information to ensure the adequate description of such specifications. Customer acknowledges that Seller's obligation to deliver conforming Goods is fully fulfilled when these specifications have been met at the time of delivery. Any other (statutory) warranties are excluded, in particular any warranties or representations as to merchantability and fitness for a particular purpose.

- 5.2 Any technical advice, including, but not limited to drawings and calculation notes, provided by Seller, before and/or during the use of Goods, whether provided verbally, in writing or otherwise, e.g., by way of trials, is given in good faith but without any warranty on the part of Seller. Such information and/or advice are generally provided on an average basis and do not render dispensable suitability tests of the Goods and the compliance with processing requirements. Seller's advice shall not release Customer from its obligation to test Goods supplied by Seller as to their conformity and suitability for the intended processes and uses. The use and processing of Goods are undertaken solely at Customer's risk. The Customer shall hold the Seller harmless of any direct or indirect damages resulting from its failure to perform the abovementioned checks.
- 5.3 Goods shall be deemed free of defects if they comply with the usual and current EN standards. In particular, if metallurgical goods are designated as suitable for hot-dip galvanizing according to the offer and other documents, the Seller alone guarantees the delivery of goods in structural steels, the surface of which is free from insoluble marks and which contain silicon and phosphorus according to the European standards (EN), in which, provided that they are hot-dip galvanized properly, the build-up of increased zinc layer thickness is avoided. The Seller does not guarantee the resistance of the mechanical properties as a result of transformation and/or processing and/or surface treatment, nor the suitability of these properties for any other interventions and purposes.
- 5.4 Goods shall not be considered as defective and Seller shall have no warranty rights if the defect (i.e., the lack of conformity) claimed by Customer does not constitute a fundamental breach of Contract (a non-material defect). In general, a minor flaw, the remedy of which would lead to costs of less than one hundred Euro per Seller's delivery reference shall not be considered a fundamental breach. Downgraded, declassified and non-prime Goods are delivered under the exclusion of any warranty with respect to the reason for which the Goods were downgraded, declassified or marked non-prime. In these cases, Seller shall not be liable towards Customer. The same shall apply in the case of the sale of used Goods. In any event, Customer (i) must fulfil its obligation of mitigation of damages and (ii) is not entitled to delay the payment of any outstanding invoices.
- 5.5 If Goods are defective, the Customer shall initially only be entitled to supplementary performance, which shall be made at Seller's discretion by delivery of replacement products (against the return of the objected Goods) or by rectification of the defect. If the supplementary performance is unsuccessful or unreasonable to the Customer or dispensable because (i) Seller finally refuses the supplementary performance or (ii) Seller does not effect the supplementary performance on a contractually determined date or within a reasonable period of time and Customer has tied its interest in the continuation of the contract to the timeliness of Seller's service, Customer may reduce the purchase price or rescind the contract at discretion of Seller and claim compensation for damages or for futile expenses.

Customer's recourse claims against the Seller according to Sections 445a and 478 (entrepreneur's recourse) of the German Civil Code (§§ 445a, 478 BGB) exist only to the extent that the Customer has not made any agreements with his purchaser granting the

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purchaser rights to make claims for defects exceeding those available to him under German statutory law.

If only entrepreneurs are involved in the supply chain including the last purchase contract, the application of Section 439 paragraph 3 of the German Commercial Code (§ 439 Abs. 3 BGB) as well as of Section 445a paragraphs 1 and 2 of the German Civil Code (§ 445a Abs. 1, 2 BGB) are expressly excluded.

- 5.6 Seller shall only be liable for damages or unnecessary expenses – for whatever legal reason – if the damages or the unnecessary expenses
- a) were caused by Seller or one of its vicarious agents through a culpable breach of an obligation, the fulfilment of which is essential for the carrying out of the contract and which Customer would ordinarily be entitled to depend upon (material contractual obligation), or
  - b) can be attributed to gross negligence or wilful infringement of a contractual obligation on Seller's part or the part of its vicarious agents.
- 5.7 If Seller is liable according to Clause 5.6a) for the infringement of a material contractual obligation without acting with gross negligence or wilfully, Seller's liability shall be limited to the damage foreseeable at the time the formation of the Contract and typical in such situation. The above limitation of liability according to sentence 1 shall apply *mutatis mutandis* to claims arising from gross negligent or wilful conduct of Seller's employees or authorized representatives, insofar as such persons are not members of Seller's board of directors or management staff.
- 5.8 If Seller is liable according to Clause 5.5a) for the infringement of a material contractual obligation without acting with gross negligence or wilfully, Seller in no case shall be liable for any loss of processing expenses, loss of production, loss of revenue and/or any other consequential or special losses or damages directly or indirectly sustained by Customer or by any other person whatsoever. In these cases Seller shall in particular not be liable for costs attributed to the removal of the defective products and the new installation of defect free products. If Seller negligently breaches a material contractual obligation Seller furthermore can in total only be held liable up to an amount of 100 % of the invoiced value of the defective or damaged Goods.
- 5.9 The above limitations of liability shall not apply if the liability in question is arising under the provisions of applicable mandatory product liability statutes or if claims are brought against Seller for the injury of life, limb or health.
- 5.10 As far as Seller's liability is excluded or limited according to these GCS, this limitation of liability shall also apply with regard to the personal liability of Seller's employees, labourers, co-workers, representatives and vicarious agents.
- 5.11 If this is not provided otherwise herein, claims of Customer relating to defects of Goods or to a breach of obligations including claims for damages and unnecessary expenses, are subject to a limitation period of one year as of the start of the statutory limitation period. The provision in sentence 1 does not apply to limitation periods of claims arising from injury to life, limb or health, nor does it apply to claims brought under the mandatory statutory product liability statutes, nor to claims arising from a defective title of the Goods delivered by Seller, which invoke a third parties right in rem and would result in that third party's claim to have the delivered Goods handed over to it. It furthermore does not apply to the limitation period

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of Customer's claim for defects in relation to a building, nor to claims for defects of Goods that have been used for a building in accordance with the normal way they are used and have resulted in the defectiveness of the building, nor to claims relating to a fraudulent concealment of defects in the delivered Goods or the wilful breach of an obligation. In all these cases, the statutory limitation periods shall apply.

- 5.12 If the Customer or another buyer in the supply chain, due to defects in newly produced Goods which were produced by the Seller, had to fulfil claims of his buyer and if in this case the last sale in the supply chain is a sale of consumer goods (within the meaning of Sec. 474 of the German Civil Code (§ 474 BGB)), the claims of the Customer against the Seller according to Sections 437 and 445a paragraph 1 of the German Civil Code (§§ 437, 445a Abs. 1 BGB) shall become time barred at the earliest two months after the date on which the Customer has or the other buyers in the supply chain as business people have fulfilled the demands of their customers, unless the Customer against its own customers/contractors could have successfully invoked the statute of limitations. This postponement of the running of the statute of limitations according to sentence 1 shall end at the latest, however, after five years as of the date on which the Seller has delivered the goods to the Customer.

## **6. RETENTION OF TITLE**

- 6.1 All delivered Goods remain the property (Reserved Goods) of Seller until any and all of Seller's claims against Customer have been fulfilled, in particular the respective balance of claims that are due to Seller within the framework of the business relationship. The same holds also true for future and conditional claims.
- 6.2 If the Customer wilfully or negligently materially breaches the Contract, in particular if Customer is in default of payment with more than 10 % of the invoiced amount for a not insignificant period of time, Seller is entitled – without waiving other claims for damages – to withdraw from the contract and demand from Customer to return the Reserved Goods. After such return of the Reserved Goods, Seller is entitled to resell the Reserved Goods. The proceeds of the sale shall be credited towards the existing liabilities of Customer with deduction of reasonable sales costs.
- 6.3 Customer shall treat the Reserved Goods carefully and acquire insurance coverage concerning fire, water and theft at its own expense in the amount of the reinstatement value of the Reserved Goods. In case of a seizure of the Reserved Goods by a third party, Customer shall indicate Seller's right of property and inform Seller immediately in written form.
- 6.4 In case of a treatment or processing of the Reserved Goods by Customer, such treatment or processing is conducted for Seller as manufacturer in the sense of Sec. 950 BGB without Seller incurring any obligation. The processed and treated Goods are deemed Reserved Goods in the sense of Clause 6.1.
- 6.5 If Customer processes, combines or mixes the Reserved Goods with goods owned by third parties, Seller shall be entitled to co-ownership of the new goods in the proportion of the invoice value of the Reserved Goods to the invoice value of the other goods used. If, due to such combining, mixing or processing, the property of Seller lapses, Customer shall already now transfer to Seller the title or inchoate title to the new inventory or goods to the extent of the invoice value of the Reserved Goods, and in the case of processing, in the proportion of the invoice value of the Reserved Goods to the invoice value of the other goods used and shall keep them in safe custody free of cost for Seller. The co-ownership rights of Seller are deemed Reserved Goods in the sense of Clause 6.1.



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- 6.6 If Seller acquires ownership or co-ownership of the new goods, it shall transfer its ownership or co-ownership of the new goods to Customer under the condition precedent of the full payment of the purchase price.
- 6.7 Customer shall only be entitled to resell the Reserved Goods within the due and proper course of business under its normal terms of business and only as long as Customer is not in default with payments towards Seller, provided that Customer retains title to such goods and transfers the claims arising from such resale to Seller in accordance with Clauses 6.8 and 6.9. Customer is forbidden from making any other disposals of the Reserved Goods. The use of the Reserved Goods for the purpose of executing contracts for work and services or for work and materials, especially the firm connection of the Reserved Goods with the ground, is also deemed a resale.
- 6.8 Customer's claims arising from the resale of the Reserved Goods shall already now be assigned to Seller. Seller herewith accepts such assignment. They serve security purposes to the same extent as the Reserved Goods in the sense of Clause 6.1.
- 6.9 If Customer resells the Reserved Goods together with other goods, the claims arising from such resale shall be assigned to Seller in the proportion of the invoice value of the Reserved Goods to the invoice value of the other goods. Seller herewith accepts such assignment. Should goods be resold in which Seller holds a co-ownership share under Clause 6.5, a proportion of the claims from the resale corresponding to such co-ownership share shall be assigned to Seller. Seller herewith accepts such assignment.
- 6.10 Seller authorizes Customer to assert the claims assigned to Seller in its own name and to the account of Seller. Seller is entitled to revoke this debit authorization and to assert the claims itself, if Customer does not fulfil its payment obligations towards Seller. In case of Seller revoking the debit authorization, Customer shall be obliged to inform all debtors of the assignment of the claims.

## **7. DESTINATION AND PACKAGING**

- 7.1 Goods expressly intended for export to non-E.U. countries shall not be delivered by Customer to E.U. countries. In case of resale, Customer has to impose this provision upon its own customer. If these provisions are infringed either by Customer or by a possible next purchaser, Seller will have the right to claim from Customer damages equal to the loss of profit and a contractual penalty of thirty percent of the sales price.
- 7.2 Unless otherwise agreed in writing, Customer shall be responsible for providing the packaging materials and the means of protection, fastening and securing used during transport of Goods. If Customer fails to comply with this obligation and as a result of said failure Seller becomes liable for any danger there, Customer shall hold Seller harmless from liability for any such danger. Customer will not be able to pass on to Seller the costs of the destruction, recycling or storage of packaging materials and of the means of protection, fastening and securing used during transport of Goods.
- 7.3 Insofar as the parties have agreed in writing that the Seller shall provide the packaging, the Seller will accept the return of used and empty packaging if and to the extent that packaging of the same type, shape and size is distributed by the Seller in Germany. If the Customer is an end user who no longer commercially distributes the Goods sold by the Seller in the form in which they were delivered to him, but uses them himself, for example, the return shall be limited to packaging of goods from the Seller's product portfolio. Irrespective of whether the Customer is an end user, other than a private household, or a distributor following in the

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supply chain, the parties agree that packaging may only be returned at the Seller's registered office in Dortmund. If the Customer chooses to return the packaging at this return location, the Customer shall notify the Seller thereof in due time, at least five (5) business days in advance. The Customer shall be solely responsible for the delivery of the packaging to the return location and shall bear all costs and charges incurred in connection with the transport and return. If and to the extent that packaging cannot be reused, the Customer shall bear the costs incurred by its recycling.

7.4 The marking, if required, shall be made in accordance with the norms adopted by Seller, unless other requirements from Customer are agreed by Seller.

7.5 The Customer shall ensure that in the event of a deviation in the ex works delivery, the transport vehicles have unhindered access to the place of receipt (unloading point); this includes in particular the journey with a loaded heavy truck. In the event of slippery conditions, ice, snow and similar, any additional costs incurred shall be borne by the customer. The customer must provide a crane aid or forklift and personnel for unloading. It is agreed that both the lifting gear intended for unloading and the customer's fitters must wait on the construction site for up to 3 hours beyond the agreed delivery time without any reimbursement of costs by the seller.

## **8. FORCE MAJEURE**

8.1 Seller's manufacture, shipment and delivery of Goods hereunder shall be subject to, and Seller shall not be liable for, any delay in or impairment or performance resulting in whole or in part from any war (whether or not declared), strike, labour conflict, accident, fire, flood, Acts of God, delay in transportation, shortage of materials, failure to deliver on the part of Seller's suppliers, equipment breakdowns, mill conditions, laws, regulations, orders or acts of any governmental agency or body, or any cause beyond the reasonable control of Seller, or rendering performance by Seller impracticable due to the occurrence of a contingency the non-occurrence of which was a basic assumption on which Seller's order confirmation was issued or the Contract was based.

8.2 In any such event, Seller shall be entitled to such additional time to perform as may be reasonably necessary, and shall have the right to apportion its production among its customers in such manner as it may deem equitable.

8.3 This provision shall apply, mutatis mutandis, to Customer. The occurrence of any such event of force majeure shall be notified in writing to the other party within 3 business days of the occurrence of any such event.

## **9. ASSIGNMENT**

9.1 Seller shall be entitled to assign the Contract as a whole with all rights and obligations attached thereto to any affiliated company, corporation, association or other entity which directly or indirectly controls, is controlled by, or is under common control with, ArcelorMittal S.A.

9.2 Seller shall be entitled to assign or grant any right or security, to any third party, over the active part of its contractual position of the Contract, that is to say, the right of collecting the price of the Goods supplied under the Contract.

9.3 Customer shall not assign or delegate any or all of its duties or rights hereunder without the prior written consent of Seller.

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## **10. COMPLIANCE**

- 10.1 Customer must comply, and must ensure that its directors, officers, employees, contractors, sub-contractors, suppliers and personnel comply, with all applicable laws, including those concerning corruption, money-laundering, the payment of bribes, tax evasion, economic sanctions, health and safety and must not undertake or cause to be undertaken any activity that is illegal or unlawful. Customer must maintain such records as are necessary pursuant to such applicable laws and must promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by Seller (or its authorized representative).
- 10.2 Goods expressly intended for export to a non-European Union country shall in no case be delivered by Customer or through third party to a different destination as agreed in the Contract. Customer shall also ensure that as a result of, or in connection with, the Contract: (i) no Goods, services or technology will be provided in breach of any applicable economic sanction laws; and (ii) no persons or entities on an official sanction list under applicable trade sanctions laws are involved in or could benefit from the Contract.
- 10.3 Customer warrants that it (i) has not paid, (ii) has not agreed to pay, and (iii) will not pay directly or through its personnel or any entities acting on its behalf, any commission, facilitation payments or inducement in connection with this Contract. Seller may terminate this Contract without any liability to Customer if Customer has acted in breach of, or Seller has reasonable grounds to suspect that Customer has acted in breach of this section, without prejudice to any claims by Seller for loss or expense suffered as a result of such breach for which Customer shall indemnify and hold Seller harmless.

## **11. CONFIDENTIALITY**

- 11.1 All proprietary confidential information of Seller, including Seller's business, know how, specifications, procedures (such as quality procedures), technical or commercial information, trade secrets, pricing/costs information disclosed to Customer within the framework or in connection with this Contract is proprietary to Seller and shall be held in confidence by Customer, its directors, officers, employees, contractors, sub-contractors, suppliers and personnel in connection with this Contract, shall only be used by Customer exclusively in connection with the Contract, and shall not be used for any other purposes or disclosed to third parties without Seller's prior written consent. Customer shall be liable for any loss to Seller or commercial gain by others from unauthorized use of confidential information occasioned by Customer's failure to comply with this provision.
- 11.2 Any rights of ownership and any intellectual property rights (e.g. patent rights, trademarks, trade secrets, copyrights etc.) in any designs, drawings, samples and documents disclosed by Seller to Customer in connection with the Contract remain with Seller.

## **12. SUSPENSION, TERMINATION**

- 12.1 Seller is entitled to suspend performance of its obligations under the Contract if and as long as Customer does not fully, properly or not in good time fulfil any of its obligations vis-à-vis Seller that arise from the Contract. If Customer is in payment default or does not fulfil any of its obligations under the Contract, Seller will be entitled to terminate the Contract with immediate effect in writing without being obliged to compensate Customer for any loss on its part, without prejudice to any of Seller's rights.

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12.2 Unless Customer is entitled to do so according to applicable mandatory statutory provisions, Customer may not terminate the Contract, except with Seller's prior written consent. If Seller agrees to the termination, Customer will pay to Seller a compensation of at least 25% of the total sum that Customer should have paid to Seller under this Contract, without prejudice to Seller's right to have a full compensation in the event Seller suffer losses or damages arising out of such termination.

12.3 The parties may terminate the Contract with immediate effect if (i) the respective other party submits an application for the opening of insolvency proceedings over its assets, (ii) insolvency proceedings over the respective other party's assets are opened, (iii) the opening of such proceedings has been rejected due a lack of assets, or (iv) any similar event occurs under the laws of the jurisdiction applicable to that party.

12.4 Termination or expiry of the Contract does not affect the parties' rights to pursue claims for breaches arising before termination or expiry.

### **13. LANGUAGE, JURISDICTION AND APPLICABLE LAW**

13.1 These GCS exist in the English and German language. A copy of the text in one of these languages can be obtained upon simple request or can be consulted on the ArcelorMittal website [www.am-schienervertrieb.de](http://www.am-schienervertrieb.de). In case of conflict, the German version shall prevail.

13.2 The courts of Dortmund (Germany) shall have exclusive jurisdiction as to any and all disputes arising out of or in connection with the agreement between Seller and Customer. However, Seller reserves the right to bring any dispute involving Customer before the courts of Customer's jurisdiction of incorporation.

13.3 German law shall be the applicable law in all disputes arising out of or in connection with these GCS; the provisions of the United Nation's Convention on Contracts for the International Sale of Goods shall be excluded. Any retention of title disputes shall be governed by German law or by the law of Customer's jurisdiction of incorporation insofar as the choice of law in favour of German law is inadmissible or invalid.