

1. DEFINITIONS

Conditions shall be the terms and conditions of sale set forth below.
Contract shall be the contract for the purchase and sale of the Goods incorporating these Conditions.
Goods shall be the subject matter of the Contract.
Purchaser shall be such person, firm or company as is so designated in any quotations (*Kostenvorschlag*), offer (*Angebot*), correspondence or Contracts relating to the Goods in question.
Seller shall be ATI FLAT ROLLED PRODUCTS GMBH, In der Fleute 17 D-42897 Remscheid-Bergisch Born, Germany.

2. APPLICATION OF TERMS, QUOTATION, OFFER AND ACCEPTANCE

2.1 Subject to any variation in accordance with these Conditions the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Purchaser purports to apply under any purchase order, (*Bestellung*), confirmation of order (*Auftragbestätigung*), specification (*Spezifikation*) or other document). No terms or conditions endorsed on, delivered with or contained in the Purchaser's purchase order, confirmation of order, specification or other document shall form part of the Contract.

2.2 Any quotations are given and all orders are accepted only upon these Conditions while any deviations from these Conditions require the express and written agreement of the Seller (see section 18.1) to be signed by an authorized representative of the Seller.

2.3 No quotation (*Preisangabe, Kostenvorschlag*) of Seller shall constitute an offer for sale capable of acceptance so as to create a binding Contract.

2.4 Each order (*Bestellung*) or acceptance of a quotation received from any Purchaser shall be deemed to be an offer by the Purchaser to buy Goods subject to these Conditions and shall require the Seller's acceptance before any Contract shall be deemed to have arisen. Seller shall have the right to accept any offer of any Purchaser within 2 weeks.

2.5 Each order placed by the Purchaser that is accepted by the Seller shall constitute an entire and separate Contract to which these Conditions shall apply.

3. PRICES, ADDITIONAL CHARGES AND COST, ALTERATION OF PRICES

3.1 Unless otherwise agreed by the Seller in writing, the price for the Goods, which is Ex works Seller's premises, shall be the price set out in the Contract.

3.2 The price for the Goods is exclusive of the following charges which shall be paid by Purchaser to Seller in addition to the price (to the extent that such charges are paid or payable by Seller): all taxes which are in the nature of excise, sales, use, retailers or occupation taxes (including but not limited to value added tax) and freight, carriage and insurance.
 3.3 Any additional cost incurred in packing or making any special test or inspection which is requested by Purchaser, and is in addition to those regularly supplied by Seller, will be added to the price as a special charge. Such tests and inspections will be made only at the place of manufacture before the date of shipment.
 3.4 Seller may (after timely notification of the Purchaser and, if requested, with reasonable explanation) at any time prior to delivery, reasonably change the price of the Goods to reflect any increase or reduction in the cost to the Seller which occurred after the conclusion of the Contract and which is due to any factor beyond the control of Seller, such as, without limitation, foreign exchange fluctuations, currency alteration or regulation or significant increase in the cost of raw materials and other labor.

4. PAYMENT, DEFAULT OF PAYMENT, DEFAULT INTEREST, SELLER'S SUSPENSION OF DELIVERY, PURCHASER'S RETENTION OF PAYMENT AND SET-OFF

4.1 Unless otherwise expressly stipulated in these Conditions or otherwise agreed in writing all of Seller's invoices are due and payable net thirty (30) days from date of invoice.
 4.2 All payments shall be made by Purchaser to Seller in full without any deduction or setoff whatsoever. The interest rate for any interest the Seller is entitled to from the due date (*Fälligkeitstermin*), shall be as set forth in the applicable statutes.
 4.3 The Seller and the Purchaser agree that the Purchaser shall be deemed to be in default of payment seven days after the end of the payment term in section 4.1 without any reminder. In any case, Purchaser is in default of payment thirty seven (37) days after the receipt of the Goods.
 4.4 Should Purchaser be in default of payment, Seller shall be entitled to claim default interest from the Purchaser at the statutory interest rate. Any of Seller's rights to claim further damages caused by the default in payment remain unaffected.
 4.5 If Purchaser shall fail to make payments on this Contract or any other agreement between Purchaser and Seller in accordance with the terms hereof or thereof, Seller may defer further shipments and defer rendering further services until such payments are made.
 4.6 The Seller reserves the right where the lack of Purchaser's ability to perform (*mangelnde Leistungsfähigkeit*) is reasonably feared, to suspend delivery or performance of the Contract or to installment without liability until full payment has been provided. Lack of the Purchaser's ability to perform is assumed in particular (i) if the Purchaser informs the Seller of a suspension of payment (*Zahlungsinstellung*), (other than temporary difficulties in making payment), (ii) if restructuring negotiations with creditors of the Purchaser are commenced or (iii) other facts arise that cause a significant deterioration of the Purchaser's financial standing (*wesentliche Verschlechterung der Vermögenslage*) occur or threaten to occur and therefore the performance of the Purchaser's obligations against the Seller become endangered. If such a situation occurs, the Seller is entitled to withdraw (*zurücktreten*) from the Contract, without affecting the Seller's statutory rights of withdrawal. For ongoing delivery relationships, termination (*Kündigung*) shall replace withdrawal.
 4.7 If Purchaser is in default of payment and Seller gives written notice of a final and reasonable time limit for payment, Seller shall be entitled, upon failure of that time limit, to suspend delivery or performance of the Contract and the Purchaser shall be liable for and reimburse Seller for all damages, including any and all direct damages and consequential damages (*Folgeschäden*) incurred by Seller by reason of such repudiation.
 4.8 All payments payable to the Seller under the Contract shall become due immediately on its termination.
 4.9 Purchaser is only entitled to a right of retention of payment as far as such right of retention arises under the same Contract.
 4.10 Any set-off (*Aufrechnung*) of Purchaser with Purchaser's own claims as against Seller's claims is not allowed except in so far as such claims of Purchaser are undisputed or subject-matter of a final and conclusive judgment of a competent court (*rechtskräftig festgestell*).

5. DELIVERY, DELAY OF DELIVERY

5.1 Delivery of the Goods shall be made Ex works at Seller's premises, unless otherwise agreed in writing. Where the Goods are sold Ex works or under other commercial terms the definitions and rules in INCOTERMS 2010 shall apply, except as expressly provided in the Contract.

5.2 Delivery of the Goods to a carrier for transportation to Purchaser shall constitute delivery to Purchaser and the carrier is Purchaser's agent for this purpose. Seller shall promptly obtain and deliver or tender to Purchaser, in due form, any documents necessary to enable Purchaser to obtain possession of the Goods from the carrier, but failure to do so is not a ground for rejection by Purchaser.

5.3 All stipulated shipment and delivery dates shall include a possible delay of up to thirty (30) days, unless the Seller is legally responsible for such a delay due to the Seller's willful or grossly negligent conduct. In case of any delay, Purchaser or its agent shall not have the right to reject the delivery or performance of the Contract unless the Seller is responsible for such a delay and the Purchaser has not been notified.
 5.4 Unless otherwise agreed to in writing, invoice quantities may vary in accordance with permissible variations of +/- 10%.
 5.5 If Seller's production or supply of the Goods is curtailed, suspended, or interrupted, deliveries may be cancelled (the agreement to sell being deemed to be rescinded with respect to such deliveries). This shall not apply if the Seller is legally responsible (*zu vertreten hat*) for the production changes. If no cancellation occurs, the Purchaser is obligated - without affecting the Purchaser's contractual or statutory rights of withdrawal - to continue to accept that portion of the delivery that during the period of curtailment, suspension or interruption has not been delivered, after such circumstances have ended and until delivery is made in full, unless such acceptance has become unreasonable.
 5.6 In taking of possession of the Goods by Purchaser shall constitute a waiver of all claims arising out of any delay in delivery by Seller.
 5.7 Purchaser's claims for damages caused by delay of delivery as well as claims for damages in lieu of performance shall be excluded in all cases of delayed delivery, even upon expiry of a time limit set by the Purchaser for delivery. The above shall not apply in case of compulsory liability owing to intent (*Vorsatz*), gross negligence (*grobe Fahrlässigkeit*), death or personal injury. Purchaser shall only be entitled to repudiate the Contract (*vom Vertrag zurücktreten*) according to the compulsory provisions as far as Seller is legally responsible (*zu vertreten hat*) for the delay of delivery. The aforementioned provisions shall not imply a change in the burden of proof to the detriment of Purchaser.
 5.8 Purchaser shall upon Seller's request declare within a reasonable period of time whether it repudiates the Contract (*vom Vertrag zurücktreten*) due to the delay of delivery or whether it requests delivery.

6. DEFECTS

6.1 Seller shall be liable for any deviation or non-conformity of the Goods from the specifications agreed between the Purchaser and the Seller as set out on the relevant order form (**Defect**) as follows, it being understood that insignificant deviations from the agreed quality, minor impairment of usefulness, wear and tear or damage arising after the transfer of risk due to faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship or from particular external influences not assumed under the Contract shall not qualify as a Defect for purposes of these Conditions:
 6.2 All parts or services where a Defect becomes apparent within the limitation period (*Verjährungsfrist*) shall, at Seller's discretion, be repaired, replaced or delivered free of charge irrespective of the hours of operation (*Betriebsdauer*) elapsed, provided that the reason for the Defect had already existed at the time when the risk passed (*Gefahrübergang*).
 6.3 All claims based on Defects are subject to a limitation period of twelve (12) months from the time of the transfer of risk. This provision shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), Sec. 478, 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code ("**BGB**"), as well as in cases of death or personal injury, or where Seller intentionally or grossly negligently fails to fulfill its obligation or fraudulently (*arglistig*) conceals a Defect. In cases of Sec. 478, 479 BGB, claims for damages of the person entitled to recourse claims shall nevertheless be excluded (see section 6.8). The statutory provisions regarding suspension of expiration (*Ablaufhemmung*), suspension (*Hemmung*) and recommencement of limitation periods remain affected.
 6.4 Written notice of Defects that can be identified upon a usual entry inspection must be given without undue delay at the latest fourteen (14) days from the receipt of the Goods. Written notice of Defects that cannot be identified in such an inspection must be also given without undue delay (*unverzüglich*), at the latest fourteen (14) days from the discovery of such Defects. Claims based on Defects that can be identified shall be excluded, should Purchaser fail to give written notice of such Defects within the aforementioned period of time.
 6.5 Seller shall first be given the opportunity to supplement the performance (*Nacherfüllung*) within a reasonable period of time.
 6.6 If Seller's supplementary performance (*Nacherfüllung*) is unsuccessful, Purchaser shall be entitled to repudiate the Contract (*vom Vertrag zurücktreten*) or reasonably reduce the remuneration, irrespective of any claims for damages Purchaser may have according to section 12 of these Conditions.
 6.7 There shall be no claims based on Defects if and to the extent such Defects are attributable to improper modifications or repair work carried out by Purchaser or third parties.
 6.8 Seller has no duty to incur or reimburse expenses for purposes of supplementary performance (*Nacherfüllung*), other than costs of travel and transport, labour, and material as would be reasonable (*angemessen*) for supplementary performance.
 6.9 Purchaser's right of recourse against Seller pursuant to Sec. 478 BGB is excluded with respect to damages. Purchaser's right of recourse against Seller for rights of Purchaser, or third party customer, or other person, or the statutory provisions governing claims based on Defects, shall also be excluded. These exclusions of damages shall not apply to cases under section 12.2.
 6.10 Furthermore, the provisions of section 12 of these Conditions (Other Claims for Damages) shall apply in respect of claims for damages. Any other claims of Purchaser against Seller or Seller's agents or any such claims exceeding the claims provided for in section 6 of these Conditions, based on a Defect, shall be excluded.

7. TECHNICAL DATA, ADVICE, SPECIFICATIONS

7.1 Any technical data, production data, production estimates and performance figures, advice, drawings and specifications furnished by Seller with respect to Goods and/or services supplied and the use of such Goods and/or services shall, without charge, do not create any warranty, guarantee or representation for which Seller would be liable and Seller assumes no obligation or liability for any damages, consequential, incidental, special, liquidated, penal or otherwise, for such data, estimates, advice, drawings and specifications given or result obtained irrespective of whether claims or actions with respect to such are based upon contract, tort, negligence, strict liability, warranty, or otherwise. However, the provisions of section 12 of these Conditions (Other Claims for Damages) shall apply in respect of claims for damages.
 7.2 The estimates, figures, advice, drawings and specifications described in section 7.1 shall be given and accepted at Purchaser's risk. In so far as the Seller has any title rights to such items, the Purchaser does not acquire ownership title, nor a licence or any other right of use in such items. Furthermore, section 15.3 shall apply.

7.3 Catalogues, circulars and similar pamphlets of the Seller are issued for general information purposes only and shall not be deemed to modify the provisions hereof or create any liability for Seller.

7.4 In the event that Seller is providing Goods hereunder that are experimental or are made by an experimental process (*Versuchsstadium*), then Purchaser shall treat as confidential any technical data, specifications, and information of Seller relating thereto and will not disclose to others nor use the same for any other purpose.

8. IMPOSSIBILITY OF PERFORMANCE, ADAPTATION OF THE CONTRACT

8.1 Seller shall be liable for its impossibility (*Unmöglichkeit*) to be carried out. Purchaser shall be entitled to claim damages, unless Seller is not legally responsible (*nicht zu vertreten*) for the impossibility. Purchaser's claim for damages shall, however, be limited to an amount of 10 % of the purchase price of the part of the deliveries which, due to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of compulsory liability based on intent, gross negligence or death or personal injury; this does not imply a change in the burden of proof to the detriment of Purchaser. Purchaser's right to repudiate the Contract shall remain unaffected.
 8.2 Where unforeseeable events that are beyond Seller's control, especially in case of force majeure, business disruption, industrial disputes, especially strike and lockout, war, mobilization, riots and problems with data- or network security or with the material and energy supply substantially change the economic importance or the contents of the deliveries or considerably affect Seller's business, adaptation of the Contract can be claimed. Where doing so is economically unreasonable, Seller shall have the right to repudiate the Contract (*vom Vertrag zurücktreten*). If Seller intends to exercise the right to repudiate the Contract, Seller shall notify Purchaser thereof, in writing, without undue delay (*unverzüglich*) after having realized the repercussions of the event.

9. TERMINATION, CANCELLATION, REPUDIATION

Unless otherwise provided for herein, Purchaser may not repudiate, terminate or cancel its order without the written consent of Seller and then, only upon payment of a cancellation charge, to be set by Seller, reasonably consisting of frustrated expenses of the Seller in preparing and performing the Purchaser's order.

10. TITLE AND TRANSFER OF RISK

10.1 Notwithstanding delivery of the Goods to Purchaser or Purchaser's agent, title to the Goods shall not pass to Purchaser until Purchaser has satisfied in full all payment obligations resulting from the business relationship - including balance demands due under open accounting (*Kontokorrent*) or refinancing or promissory notes (*Refinanzierungs- oder Umkehrwechsel*).
 10.2 All risk of accidental loss or damage to the Goods shall pass to Purchaser from and after delivery of the Goods (Ex works as per sections 5.1 and 5.2 of these Conditions).

11. CREDIT APPROVAL

11.1 Seller shall be performed by Seller as set forth on the purchase order and shipments shall at all times be subject to approval of Seller's Credit Department and in case Seller shall have any doubt as to Purchaser's responsibility or if Purchaser fails to fulfil the terms and conditions of payment herein, Seller may decline to perform any further shipment or delivery hereunder, except upon receipt of satisfactory security including, but not limited to, full or partial prepayment.
 11.2 In the event of announced or anticipated breach by Purchaser, or the financial condition of Purchaser at any time does not in the reasonable judgment of Seller justify continuance of the work to be performed by Seller hereunder on the terms of payment originally specified, Seller may require, at its discretion, full or partial payment in advance or may withdraw from the Contract with respect to deliveries of Goods or work then outstanding and Purchaser shall be liable for its cancellation of the Contract.

12. OTHER CLAIMS FOR DAMAGES, LIMITATION OF LIABILITY

12.1 Any claims for damages and reimbursement of expenses Purchaser may have (hereinafter referred to as "Claims for Damages"), based on whatever legal reason, including infringement of duties arising in connection with the Contract or tort, shall be excluded.
 12.2 The above shall not apply in case of mandatory liability, in particular for damages caused by Seller's willful misrepresentation or a willful or grossly negligent breach of the Seller's or Seller's agents' obligations, as well as for death or personal injury that have been caused by a willful or negligent breach of duty of the Seller or Seller's agent. Furthermore, this does not apply to damages resulting from the breach of an essential contractual obligation (obligation without whose fulfilment the proper performance of the contract is impossible and on whose satisfaction the contracting partner regularly relies and is entitled to rely) (*wesentliche Vertragspflichten*). In this case however, the Seller's liability shall be limited to the foreseeable and typically occurring damage, unless caused by intent or gross negligence or based on liability for death or personal injury. The above provision does not imply a change in the burden of proof to the detriment of Purchaser.
 12.3 To the extent that Purchaser has a valid Claim for Damages according to section 12 of these Conditions, Purchaser shall be time-barred upon expiration of the limitation period applicable to Defects pursuant to section 6.2 of these Conditions. In case of claims for damages under the German Product Liability Act (*Produkthaftungsgesetz*), the statutory provisions governing limitation periods shall apply.

13. NO WAIVER

13.1 Seller's failure to enforce any of the terms, conditions and limitations set forth herein shall not be construed as a waiver thereof or a waiver of any other terms, conditions and limitations herein, and the failure of Seller to exercise any rights arising from default of Purchaser, or otherwise shall not be deemed to be a waiver of such right or any other right. The terms, conditions and limitations herein may be enforced and the rights of Seller may be enforced at any time in whole or in part.

14. ENTIRE AGREEMENT

14.1 The Contract represents the whole agreement and understanding between Purchaser and Seller and supersedes all other agreements, proposals, negotiations, representations and understanding between the Purchaser and Seller relating to the subject matter of this Contract.
 14.2 Seller's acknowledgements that it has not relied on any statement, promise or representation made or given by or on behalf of Seller which is not set out in the Contract.

15. PATENTS; TRADEMARKS; UNPATENTED INFORMATION, DEFECTS IN TITLE

15.1 If any Goods sold hereunder are to be prepared or manufactured according to Purchaser's specifications, Purchaser shall defend the Seller against all claims, suits or proceedings and indemnify and hold harmless (*freistellen*) the Seller against all claims that third parties may bring against the Seller based on the assertion that the production, manufacturing and/or distribution of the Goods in accordance with the Purchaser's specifications violate registered, filed for registration or unregistered, already existing (or being in the process of development) rights of intellectual property or rights with a similar or identical character (patent, trademark, design, copyright) or other intellectual property rights or rights of invention, or other technical know-how (**Technical Know How**), and/or rights in commercial know how and business secrets (**Commercial Know How**), to the extent the purported violation results from the Purchaser's specifications.
 15.2 Any knowledge or information concerning Purchaser's products, methods, or manufacturing processes including the information concerning Intellectual Property Rights, Technical Know How or Commercial Know How (**Intellectual Property**) which Purchaser may disclose to Seller incidental to the manufacture or sale of the Goods and/or performance of the services covered by a purchase order shall, unless otherwise specifically agreed in writing, be deemed to have been disclosed as a part of the consideration hereunder, and Purchaser agrees not to assert any claim, (other than claim for patent infringement) against Seller by reason of Seller's use or alleged use thereof.
 15.3 Seller shall choose whether to: (i) at Seller's discretion and own expense, (ii) obtain the right for Purchaser to continue using any right or license of any kind in any Intellectual Property owned or controlled by Seller or its affiliates, but the foregoing shall not be understood to limit in any way the right of Purchaser to use and sell such Goods, in the event that such Goods, as sold hereunder, fall within the scope of such Intellectual Property.
 15.4 The Seller does not give any warranty to the effect that Goods or services supplied by the Seller are free from any Intellectual Property of third parties. However, if a third party asserts a justified claim against Purchaser based on an infringement of an Intellectual Property with respect to the deliveries made by Seller and then used in conformity with the Contract, Seller shall be liable to Purchaser within the time period stipulated in section 6.2 of these Conditions and according to the following sections 15.5 to 15.12 of these Conditions.
 15.5 Seller shall choose whether to: (i) at Seller's discretion and own expense, (ii) obtain the right for Purchaser to continue using the purportedly violating materials, or (iii) change or replace them in such a way that the Intellectual Property Right is no longer violated, or (iii) repay to the Purchaser the paid purchase price or give a credit note, minus reimbursement of reasonable costs and expenses for the time during which the Purchaser has used the relevant Goods. If this is not reasonably possible for Seller, Purchaser may repudiate the Contract or reduce the remuneration pursuant to the applicable statutory provisions.
 15.6 Seller's liability to pay damages shall be governed by section 12 of these Conditions.
 15.7 Seller's above obligations shall only apply if Purchaser immediately notifies Seller of any such claim asserted by the third party in writing, gives all reasonable support to defend Seller and sole control of the defense of the asserted claim as well as the settlement and related negotiations. If Purchaser stops using the delivered Goods shall only apply to reduce the damage or for other good reason, Purchaser shall be obliged to notify the third party that no acknowledgment of the alleged infringement of the Intellectual Property may be inferred from the fact that the use has been discontinued.
 15.8 Claims of Purchaser shall be excluded if Purchaser is itself responsible for the infringement of any Intellectual Property.
 15.9 Claims of Purchaser shall also be excluded if the infringement of the Intellectual Property is caused by specifications made by Purchaser or owing to a type of use not foreseeable by Seller or to the deliveries being modified by Purchaser or being used together with products not provided by Purchaser. Furthermore, claims of Purchaser are excluded in so far as Purchaser continues the purportedly infringing actions after having been notified of the potential infringement and the notified Seller has reacted in accordance with section 15.5, or if the Purchaser has been provided in other ways with changes, replacements or other remedies, with which the purported infringement could have been prevented.
 15.10 In addition, with respect to Purchaser's claims pursuant to section 15.3 of these Conditions, sections 6.4 and 6.8 shall apply *mutatis mutandis* in the event of an infringement of an Intellectual Property Right.
 15.11 Where other defects in title (*Rechtsmängel*) occur, section 6 of these Conditions shall apply *mutatis mutandis*.
 15.12 Any other claims of Purchaser against Seller or Seller's agents (*Erfüllungsgeschäfte*) or any such claims exceeding the claims provided for in section 15 of these Conditions, based on a defect in title, shall be excluded.

16. GOVERNING LAW

The Contract shall in all respects be governed by and construed in accordance with German substantive law applicable between domestic entities (*Inländer*). Neither (i) the United Nations Convention on Contracts for the International Sale of Goods; (ii) the 1974 Convention on the Limitation Period in Contracts for the International Sale of Goods ("*1974 Convention*"); nor (iii) the Protocol Amending the / 974 Convention done at Vienna, Austria, on 11 April 1980, shall apply in any manner to the interpretation or enforcement of the Conditions set forth herein to extent permitted by applicable law.

17. PLACE OF PERFORMANCE AND VENUE

17.1 Place of performance for any actual or future claims under the business relationship with Purchaser, especially claims for payment against Purchaser or claims for delivery against Seller, shall be the place of Seller's business seat, i.e. In der Fleute 17 D-42897 Remscheid-Bergisch Born, Germany.
 17.2 If Purchaser is a merchant, exclusive venue and jurisdiction for all disputes arising directly or indirectly out of the Contract shall be the place of Seller's business seat above. However, Seller may also bring an action at Purchaser's place of business or at any other statutory venue.

18. FORM, INTERPRETATION

18.1 Any declarations of the Seller and the Purchaser require written form in order to be valid. The same applies to a change or amendment of this provision.
 18.2 The Conditions are to be interpreted in such a way that mandatory law shall apply. This applies in particular to statutes of liability and protection, whose application is meant for the benefit of consumers or to prevent death or personal injury, such as the Product Liability Act and the law concerning the sale of consumer goods.
 18.3 Only the English language version of the Conditions shall be authoritative. The German language version of these Conditions is a courtesy translation of the English original. In the English original, where a German term has been inserted in quotation marks and/or italics, it alone (and not the English term to which it relates) shall be authoritative for the purpose of the interpretation of the relevant English term in these Conditions. If the English legal meaning or the English legal concept of any of the terms used differs from the German legal meaning or the German legal concept, the German legal meaning or German legal concept shall prevail.