1. Scope of Application, Conclusion of Contract

1.1. These General Terms and Condition of Sale of DUISBURG TUBES PRODUCTION AG (hereinafter referred to as “Seller”) shall apply for all deliveries and services provided for companies, legal entities under public law and special-purpose entities organized under public law (public sector). Purchaser’s purchase conditions are not acknowledged, even if we do not again object to them after receipt thereof. Deviations from the Terms and Conditions of Sale are only effective if the Seller has expressly approved their validity in writing.

1.2. Our offers are subject to change without notice. Brochures, catalogs, manuals or advertising leaflets are not binding for the Seller. Orders from the Purchaser are not binding for the Seller even if they are placed on the basis of a quotation from the Seller. The contract does not become effective until the Seller has acknowledged the order in writing or by electronic data transmission.

1.3. The Seller shall retain all intellectual property rights and title to drawings, samples, studies and other documents if the order is not placed. The Purchaser is not entitled to divulge said documents to third parties or to use them for its own production. The documents shall be returned without delay if no order is placed.

1.4. These Terms and Conditions shall also apply for future contracts within the scope of a running business relationship with the Purchaser, even without explicit reference hereto; this applies also and in particular to any of the Purchaser’s legal successors.

1.5. We are entitled to partial delivery to the extent reasonable under the circumstances.

2. Prices, Terms and Conditions of Payment

2.1. All prices are understood to be ex works plus the applicable statutory VAT.

2.2. In the event of a change our costs for labor and material that occurs between the receipt of the order and the manufacturing of the goods ordered for reasons beyond our control and causes an increase of the manufacturing costs for the product by more than 33% in comparison with the time of order placement, as demonstrated by us and established in accordance with accepted business principles, we shall be entitled to adjust the originally agreed price with equitable discretion.

2.3. The Purchaser may only withhold payments or set off amounts with accounts receivable which are non-disputed or determined with final, res judicata effect.

2.4. Provided that no other terms have been explicitly agreed, payments are to be made within 10 days after delivery and receipt of invoice without deduction. Cash deduction is only acceptable if it is agreed in writing and all other due invoices have been paid.

2.5. Drafts and cheques will only be accepted as conditional payment. Drafts will only be accepted if expressly agreed by the Parties. The costs of bills of exchange and the discount interest shall be borne by the Purchase.

2.6. During the period of default, the Purchaser shall pay interest in the amount due at 8 % over the basic interest rate. We reserve the right to prove and claim greater damage caused by the default. In the event of default of payment the Seller shall also be entitled to withhold the delivery and/or other performances under all contracts, until the claims due to the Seller against the Purchaser have completely been satisfied. The Purchaser can avoid this right of withholding through the provision of a joint and several liability guarantee with an indefinite validity from a bank authorized as a domestic customs and tax guarantor in the amount of all outstanding claims.

2.7. In the event that, upon conclusion of the contract, a substantial risk of the Seller’s claim to consideration arises, e.g. due to a deterioration in the Purchaser’s assets, or if the Seller becomes aware of circumstances which raise questions about the Customer’s creditworthiness, the Seller may demand from the Purchaser advance payment or security in the amount of the agreed consideration with a reasonable deadline, and refuse performance until its request or the payment entitlement have been fulfilled. In case of a refusal of the advance payment or security by the Purchaser, or unsuccessful expiry of the deadline, the Seller is entitled to cancel the contract and to demand compensation.

3. Delivery Periods and Delivery Deadlines

3.1. Deliveries are made in conformity with the terms and conditions of delivery agreed upon in the order acknowledgement. Unless otherwise agreed therein, deliveries shall be effected ex works named site of the Seller in conformity with the Incoterms 2010 in the currently valid version. The Seller shall inform the Purchaser when the goods are ready for acceptance at the agreed site. The Purchaser is obliged to pick up the goods promptly after being informed that they are ready for acceptance. If the Purchaser fails to pick up the goods within 3 days after the Seller’s information, the Seller shall be entitled, at its discretion, either to ship the goods at the Purchaser’s risk and expense or to warehouse the goods and invoice them as delivered. If not contrary to commercial custom or otherwise agreed, goods are delivered without packaging and without protection. Where packaging is agreed, it will be charged at the lowest price.

3.2. The Seller will make every effort to meet its contractual obligations with regard to specific delivery deadlines requested by the Purchaser. Delivery periods begin with the date of the order acknowledgement, but not before clarification of all order details. Delivery periods shall be extended for the period during which the Purchaser fails to meet its obligations. The same shall apply for delivery deadlines. The Seller shall not be in default of delivery unless the Purchaser has sent a written reminder. Where delivery periods and deadlines are explicitly and in writing accepted as binding, the Seller’s liability for compensation shall be limited to the foreseeable direct damage. The agreed delivery periods apply only if and insofar as the Purchaser has fulfilled its obligations in good time. In particular, any warranties with regard to delivery periods and deadlines become invalid if the Purchaser does not make agreed down payments in a timely manner, or fails to provide the information necessary for
executing the delivery in good time. The time of dispatch ex works shall be decisive for meeting the delivery periods. If goods cannot be shipped in good time due to reasons not in the Seller's responsibility, delivery periods shall be deemed as met if the notification of readiness for dispatch is issued in good time. Events of force majeure, interruptions of service, shortages or raw material or fuel, fires, strikes, lockouts, machine breakdowns or similar events release the Seller from its obligation to meet the delivery period, regardless of whether such circumstances affect the Seller or the Seller's suppliers. If the circumstances stated above make the delivery or performance of service impossible, the Seller shall be released of its obligation of delivery. In the cases outlined above, an extension of the delivery period or the Seller's release from its obligation of delivery renders any claim for damages and any right of withdrawal that the Purchaser might have been derived therefrom shall lapse. If the circumstances stated above affect the Purchaser, the same legal consequences shall apply for the Purchaser's obligation of acceptance. If the disruption is expected to continue for so long that the Purchaser is forced to purchase the goods from a third party in order to prevent serious damage to its own business, and furnishes proof thereof to the Seller, the Purchaser is entitled to withdraw from the contract.

3.3 All parts to be delivered by the Seller are insured against breakage. In the event of damage, the Seller shall provide replacement of the damaged goods ex works, upon submission of the bill of lading plus a certificate of damage issued by an average adjuster to confirm the damage. Any goods that have given rise to complaints remain the Seller's property and shall be sent to us in advance free of freight.

3.4 Failing a specific agreement, the way and means of transport, and the choice of the transport company or freight forwarder, are at the discretion of the Seller. In the event of transport damage, the Purchaser shall contact without delay the competent bodies for an assessment of the damage.

4. Acceptance and Transfer of Risk

4.1 If acceptance was agreed, it shall be carried out at our plant promptly upon notification of the readiness for acceptance.

4.2 If the acceptance is not carried out in due time, not completely or not at all, we shall be entitled to ship the goods without acceptance, or to store them at the Purchaser's cost and risk and invoice the Purchaser.

4.3 Even if the transport is carried out by our own means of transport, the risk shall be transferred to the Purchaser when the goods leave the factory or are made available to the Purchaser, in particular if the goods are shipped in a packaging requested by the Purchaser. In the event of a return of the goods, the Purchaser shall bear all risk up to the moment of arrival of the goods in our factory.

4.4 In the case of call-off orders for which no duration, manufacturing lots and acceptance dates were agreed, we shall be entitled to demand a binding agreement at the latest three months after acknowledgement of the order. If the Purchaser does not comply with this request within three weeks, we shall be entitled to set a grace period of 2 weeks and after its expiry to withdraw from the contract or decline delivery and demand damages.

5. Retention of Title

5.1 All delivered goods shall remain our property (reserved goods) until the satisfaction of all claims, in particular also the respective balance claims to which we are entitled within the framework of the business relationship. This also applies to any debts arising or incurred in the future, e.g. as a result of changes in acceptance, and also where payments are effected for special designated debts.

5.2 Processing of reserved goods takes place in our name as producer in the legal sense of Article 950 BGB (German Civil Code), without committing us. The modified and processed items are deemed reserved goods in the sense of clause 1 hereof. With the processing, combination, commingling of the reserved goods with other goods by the customer, we shall be entitled to co-ownership in the new goods in the proportion of the invoiced value of the reserved goods to the invoice value of the other goods used. Should our ownership be dissolved by combination and commingling, the Purchaser hereby transfers to us the ownership rights to which it is entitled in the new product or the goods to the extent of the invoice value of the reserved goods, and shall store the reserved goods at no cost to us. Our co-ownership entitlements shall be regarded as reserved goods in the sense of clause 1 hereof.

5.3 The Purchaser is only permitted to resell the reserved goods within the normal course of business on its normal terms and conditions of business and if it is not in default, provided that the receivables from such resale are assigned to us in accordance with clauses 4 to 6. The Purchaser is not entitled to make any further disposals of the reserved goods.

5.4 The Purchaser's receivables arising from the resale of the reserved goods are hereby assigned to us. They shall serve as security to the same extent as the reserved goods. If the reserved goods are resold by the Purchaser together with other goods, the claim arising from the resale is assigned to us in proportion to the invoiced value of the reserved goods to the invoiced value of the other goods. In the case of the resale of goods in which we hold co-ownership shares in accordance with clause 2, part of the claim corresponding to our share of ownership shall be assigned to us.

5.5 The Purchaser is obliged, at our request, to immediately advise its customer of the assignment to us, unless we opt to do this ourselves. The Purchaser shall provide us with the information and documents necessary for collection. The Purchaser is under no circumstances authorized to assign the debts or to perform factoring transactions.

5.6 The Purchaser is obliged to notify us immediately of any attachment or other seizure by third parties.

5.7 If the value of the existing securities exceeds the secured debts by more than 20% in total, we agree to release a corresponding share of the securities at our discretion, if so requested by the Purchaser.

5.8 The Seller shall retain all intellectual property rights and title to drawings, samples, studies and other documents if the order is not placed. The Purchaser is not entitled to divulge said documents to third parties or to use them for its own production. The documents shall be returned without delay if no order is placed.
6. Liability for Defects

6.1. Any complaints must be submitted to us in writing immediately after the discovery of the defect, but no later than 8 days after delivery. Liability for hidden defects expires three months after delivery. If the Purchaser does not provide us immediately upon request with samples of the rejected goods, or if the rejected goods are modified without our explicit consent, all the claims based on the defects shall become extinct.

6.2. Failure on the Purchaser’s part, in the context of a mutual business transaction, to submit a complaint for defects in good time as stipulated by Article 377 or Articles 377, 381 of the German Commercial Code (HGB) shall also render all of the Purchaser’s existing or future tortious claims null and void. This principle does not apply if the claims are based on any willful act, neglect or omission, any act of bad faith or any gross negligence on our part. Furthermore, this exclusion shall not apply for claims which are based on the Product Liability Act or concern claims for damages for personal injury.

6.3. In the event of provable defects of material or workmanship, the Purchaser can initially only require the removal of the defect or the delivery of goods free of defects (re-performance). We are entitled to refuse the type of re-performance chosen by the Purchaser if such performance is possible only with unreasonable expense.

6.4. Where re-performance fails, the Purchaser can in principle demand decrease of the remuneration (abatement) or cancellation of the contract (rescission) at its discretion. In the case of minor defects, the Purchaser does not have the right to cancel the contract.

6.5. Where the Purchaser chooses to cancel the contract following the failure of re-performance, it will not additionally be entitled to compensation for damages on account of the fault.

7. General Limitations of Liability and Statute of Limitations

7.1. We shall be liable for damages caused by the violation of contractual or non-contractual obligations - in particular impossibility, delay, fault of contract initiation or tort - only in the case of malice or gross negligence, and to the extent of the typical loss or damage which could have reasonably been foreseen at the date at which the contract was entered into. This limitation also applies to our legal representatives or vicarious agents. Any further liability on our part, including for damage and consequential damage caused by defects, is excluded.

7.2. These limitations shall not apply in case of a culpable breach of essential contractual duties, insofar as the achievement of the object of the contract is endangered, in the event of culpably caused injury to life, body and health and also not if and insofar as we assumed the guarantee for the state of the sold material, as well as in cases of compulsory liability under the Product Liability Act. The legal provisions relating to burden of proof are not affected by this.

7.3. Insofar as not otherwise agreed, contractual claims of the Purchaser against us due to or in connection with the delivery of the goods shall become statute-barred one year after delivery of the goods. This time limit shall also apply to those goods which are used in the construction of a building in accordance with their usual application and which have caused the defectiveness of the building. This shall have no effect on our liability from willful and grossly negligent breaches of duties, culpably caused injury to life, body and health and the statute-of-limitations of statutory claims for recourse in conformity with Articles 478, 479 of the German Civil Code (BGB).

7.4. The limitations of liability as stated above shall also apply for claims for damages under the CISG, in particular Article 45 (1) b) and 74.

8. Place of Performance

The place of performance for delivery and payment and for all other duties is Duisburg.

9. Applicable Law

All legal relations between the Seller and a Buyer shall be subject to the material law of the Federal Republic of Germany, to the exclusion of the United Nations Convention of 11 April 1980 on Contracts for International Sale (CISG).

10. Legal Venue

The legal venue for all claims arising between the Parties is Duisburg. This provision shall not apply for business dealings with customers who are neither businessmen as defined in the German Commercial Code nor legal persons under public law nor public-law special funds.

11. Severability Clause

In the event that any one provision of these terms and conditions of trade or a provision within the framework of other agreements is or becomes invalid, the validity of all other provisions of these terms and conditions of trade or other agreements shall remain unaffected thereby.