



**General sales terms and conditions of Oryx Stainless España S.L.U.**

Muelle Comercial, s/n, Oficinas 2ª Planta, 08800 Vilanova i la Geltrú (Barcelona)

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**1. Scope**

These general sales terms and conditions ("General Sales Terms") of Oryx Stainless España S.L.U. ("ORYX") laid down in the following text shall govern all engagements given to ORYX and all sales agreements of scrap materials, raw materials and similar materials entered into between ORYX and the buyer (the "Buyer").

ORYX and the Buyer are referred to jointly as the "Parties" and "individually as a "Party".

All references by Buyer to its own general terms and conditions, howsoever named, and done in whichever stage of the realization of an agreement entered into with ORYX, are expressly left without effect. In the event that these General Sales Terms deviate from the written terms and conditions, howsoever named, of Buyer, the conditions herein will prevail, unless and insofar as the applicability of the written conditions of Buyer has been expressly accepted by ORYX in writing.

The General Sales Terms shall govern all future business relationships and sales contracts between ORYX and the Buyer and shall replace any general sales terms and conditions issued at any earlier point of time by ORYX. Individual agreements with Buyer (including side agreements, additions, annexes and amendments) will have priority over these General Sales Terms. The content of any individual agreement is defined by ORYX's written contract or written confirmation.

**2. Contract and Price**

All offers made by ORYX are subject to written confirmation and remain indicative unless confirmed in writing.

A sale agreement is deemed to be concluded by the written confirmation thereof by ORYX. This written confirmation by ORYX, irrespective of its form, shall count as conclusive evidence of what has been agreed (e.g. price, quality, delivery terms, payment terms), unless the Buyer immediately, but ultimately within two (2) business days, raises objections to the written confirmation.

If, after conclusion of a sales agreement, facts become available to ORYX which evoke reasonable doubts in the Buyer's ability to meet its financial obligations, ORYX is entitled to demand full payment before delivery or the provision of an appropriate security by the Buyer. Objective evidence of a fact evoking above mentioned doubts shall be a reduction of the Buyer's credit limit with ORYX's credit insurance or factoring counterparties.

All prices quoted by ORYX are net prices excluding value added tax (or any equivalent tax). Prices are based upon taxes, levies, duties and freight rates applicable at the time of quotation. Changes and increases to taxes, levies and duties applicable to the sales agreement will increase the sales price accordingly. If both parties agreed to freight paid delivery condition, freight rates increases after the time of conclusion of the sales agreement will increase the sales price. Freight price increases due to delivery obstructions will be added to the sales price.

### 3. Delivery conditions and transfer of risk

If no other delivery condition has been defined in the sales agreement, the delivery condition shall be "Ex Works" (EXW) Vilanova i la Geltrú (Spain) in accordance with the Incoterms 2020.

ORYX is entitled to fulfill its delivery obligations in several partial deliveries.

In case of other than "Ex Works" delivery condition has been agreed upon, ORYX is free to choose the means of transport and transport service provider. Unless otherwise agreed in the sales agreement or otherwise following from the agreed delivery condition "Ex Works" (EXW) (Incoterms 2020), the risk is transferred to Buyer at the moment of handover of goods to the carrier but latest at the time of goods leaving ORYX's yard.

Weight differences from the contract volume of plus or minus ten per cent (10%) for deliveries and partial deliveries are to be accepted by the Buyer in any case.

Delivery date shall always be the date of dispatch at the yard of ORYX. If a delivery period is agreed upon, the delivery period starts with the date of issuance of ORYX's written sales agreement. If the Buyer does not comply with or is in delay with complying with its contractual obligations which form a prerequisite for commencing a delivery (e.g. opening a letter of credit, issuing documents, make a prepayment), ORYX is entitled to adjust delivery periods or delivery dates reasonably by ORYX's production and shipping schedule.

In case ORYX, due to force majeure or a strike, is unable to fulfill its contractual obligations or the fulfillment of the contractual obligations is considerably hindered, ORYX is entitled to fully or partially cancel the sales agreement or to prolong the period for fulfillment without giving Seller the right to claim any demands or compensation.

### 4. Claims

The delivered goods are deemed to be free from defects if they do not or only deviate insignificantly from the specifications defined in the sales agreement. ORYX is not liable for deterioration of the quality of the goods after the time the risk has been transferred to the Buyer. Deviations in weight, dimensions, and class are permitted according to the applicable customs as recorded in the "usances of the metal trade" published by "*Verband Deutscher Metallhaendler*" (VDM) (i.e. Association of German Metal Traders ) in its most recent version.

ORYX shall have the right to be present during unloading, inspection, and test melting of ORYX's delivery at the destination. The buyer shall inspect the goods immediately after arrival.

ORYX will not accept any claims if the Buyer:

- did not allow an employee of ORYX or a representative assigned by ORYX to be present at the unloading of the delivery and during test melting of the product;
- did not inform ORYX about the time of unloading or the time of test melting within a reasonable time before unloading or test melting is scheduled, so that no employee of ORYX or representative assigned by ORYX could be present at the destination during unloading or test melting.

Claims regarding obvious defects have to be notified immediately by the Buyer, but not later than one week after the unloading of the goods at the destination. Defects that cannot be detected within this period and can only be detected during the test melting of ORYX's products, have to be notified immediately in writing not later than two days after they have been discovered.

Claims, if accepted by ORYX, will result in a price reduction or penalty to be negotiated between ORYX and Buyer, if the applicable penalty or price reduction has not been agreed upon in the sales agreement. ORYX may choose to replace the defective delivery at its own discretion.

The assertion of claims for payment shall be following Article 6.

The period of limitation for claims for defects shall be 12 months from the moment of passage of risk.

## **5. Reservation of title**

Until all accounts receivable against Buyer which are due to ORYX now or in the future, for whatever legal reason, have been settled, ORYX shall be granted the following securities:

Title to the goods delivered by ORYX shall remain with ORYX. Processing or transformation shall always be performed for ORYX as the manufacturer but without obligation for it. If the purchased goods are processed with other objects not belonging to ORYX, ORYX shall acquire co-ownership of the new object pro-rata to the value of the purchased goods (total invoiced amount, including value added tax) relative to the other processed objects at the time the processing took place. The value of the co-ownership of ORYX cannot be reduced below the value of the goods delivered by ORYX at contract prices.

Buyer shall keep the goods in sole ownership or co-ownership so created in safe custody for ORYX. Buyer is obliged to treat the goods subject to retention of title with care; specifically, it is obliged to insure them adequately at its own expense against loss or damage caused by fire, water, and theft.

Goods to which ORYX has a title (full or as co-owner) are hereinafter referred to as goods subject to retention of title.

If goods subject to retention of title are being seized by any third party, Buyer will inform the third party about the existing ownership or co-ownership by ORYX and inform ORYX about any third-party claim being brought forward.

Buyer is entitled to process the goods subject to retention of title in the regular course of business and sell them on subject to retention of title provided he is not in default. Pledges or assignments as security shall not be permitted. The customer shall already fully assign the receivables arising from the onward sale or from some other legal reason (insurance, unlawful act) in respect of the goods subject to retention of title to ORYX as collateral. In the event of an onward sale, the Buyer is obliged to divulge his customer's name and address to ORYX at any time upon demand. ORYX shall irrevocably authorize the Buyer to collect the receivables assigned to ORYX in their own name on their behalf. This collection authorization can only be revoked if the customer fails to honor his payment obligations in the proper fashion.

Should the customer commit a breach of contract - in particular late payment - ORYX shall be entitled to take possession of the goods subject to retention of title and if necessary demand assignment of the customer's claims for surrender against third parties. ORYX's recovery of the goods subject to retention of title shall not constitute grounds for withdrawing from the contract. Any costs incurred due to the recovery of the goods are for the account of the Buyer.

The retention of title under the aforementioned provisions shall remain effective, even if ORYX's individual receivables are included in current account with the Buyer.

## **6. Payment**

Payments are due to ORYX without deductions, prompt at the time of transfer of risk unless other payment terms have been agreed in writing.

Each delivery to a sales agreement shall be seen as an individual transaction with individual and separate payment specifications.

If a payment target has been agreed upon, the delivery date shall be the effective date, from which payment targets are calculated. Potential interest calculations shall be starting with this effective date.

Payments shall be made exclusively by bank transfer to the account specified by ORYX on the invoice. Other payment methods shall only be regarded as an effective payment if agreed upon in the sales agreement in writing.

Payment shall be deemed to have been made, if ORYX, or the beneficiary of the account specified in the invoice, has the funds transferred available for use.

Should the Buyer fail to pay the invoice according to the agreed payment term, ORYX shall be entitled to demand interest at a rate of prevailing base rate (Euribor) plus eight percent. The right to claim further damage remains.

Should the Buyer not meet his payment commitments or suspend payments or if ORYX becomes aware of facts, which puts into doubt Buyer creditworthiness, ORYX is entitled to declare all outstanding debt due and, at ORYX's discretion, to demand the provision of appropriate securities (e.g. bank guarantee). In the event, that juridical insolvency proceedings have been started over the Buyer's assets or insolvency was declared, ORYX is entitled to cancel the sales agreement without any deadline.

## **7. Limitation of liability**

Liability shall be excluded except for:

- Deliberate or grossly negligent breach of duty, death or injury to body and health, where ORYX has expressly provided a guarantee or in the event of product liability as per the applicable law; or
- Grossly negligent violation of essential contractual obligations by ORYX. Liability shall be restricted to the standard, foreseeable damage.

Vicarious liability shall be restricted to the liability of diligent selection of factors, servants, and assignees.

## **8. Data Protection**

The personal data of the natural person(s) acting on behalf of the Buyer under the sales agreement will be processed by ORYX, whose identification details and contact address are given in the heading, as data controller. Personal data may be processed for the following purposes:

- For the performance of the sales agreement. The processing is strictly necessary for this purpose and its legal basis is the execution of the sales agreement itself.
- For the sending of commercial communications to the Buyer, referring to ORYX products or services similar to those which would have been the object of contracting by the Buyer. The Buyer may indicate to ORYX at any time its refusal to receive commercial communications. The legal basis for this processing is the legitimate interest of ORYX.

No automated decisions will be made that may affect the Buyer. The data will be kept for the entire duration of the sales agreement and for the time necessary to comply with the legal and contractual obligations related to the execution of the sales agreement and, where appropriate, to comply with the purpose of sending commercial communications.

The data will be processed only by ORYX and by those third-parties to whom it is legally or contractually obliged to communicate them (such as third party service providers to whom a service related to the management or execution of the sales agreement has been entrusted).

The interested parties may exercise their rights to request access to their personal data, its rectification or deletion, limitation of processing, portability of their data and their right to object to the processing, by sending a written communication to ORYX at the address specified in the heading. They may also lodge a complaint with the competent Data Protection Authority.

## **9. Notices**

All notification made to ORYX under or in relation to the sales agreement must be in written in Spanish or English language by hand-delivery with the other Party's written confirmation of receipt, mail or email, or any other means, provided that there is proof of receipt by the addressee(s).

Notifications to ORYX must be delivered to the following address:

- Address: Muelle Comercial, s/n, Oficinas 2ª Planta, 08800 Vilanova i la Geltrú (Barcelona)
- Telephone: +34 624 62 46
- Email: info@oryx.com

## **10. Assignment**

The Buyer's rights and obligations under the sales agreement cannot be transferred, either in whole or in part, by the Buyer without the prior written consent of ORYX.

ORYX is entitled to transfer the sales agreement in whole or in part to a third party. The Buyer already consents to such transfer.

## **11. Applicable law and jurisdiction**

All agreements concluded with ORYX shall explicitly be governed by Spanish general law ("*derecho español común*"). The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are excluded and shall not apply.

The exclusive place of jurisdiction for all potential disputes arising from these conditions and / or any contractual relations between ORYX and Buyer shall be the Spanish courts of the city of Barcelona.

ORYX shall always have the right to bring any disputes or claims arising from or related to these General Sales Terms and /or any contractual relations between ORYX and Buyer before the competent court at the registered office of Buyer.

The Buyer shall not assign his claims under the contract to third parties without ORYX's prior written consent.

## **12. Final Provisions**

If any provision of these General Sales Terms is, for any reason, invalid and/or unenforceable, the remaining provisions shall continue to be valid and enforceable to the fullest extent permitted by Spanish law. The parties agree to replace an invalid and/or unenforceable provision with a valid and/or enforceable provision that most closely approximates the intent and economic effect of the invalid and/or unenforceable provision.