



## General purchasing terms and conditions of ORYX STAINLESS MALAYSIA SDN. BHD.

Registration No.: 201101030835 (958970-U)

### Registered Address:

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80888 Ibrahim International Business District, Johor, Malaysia

### Factory Address:

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## 1. SCOPE

The general purchasing terms and conditions ("general purchasing terms") of Oryx Stainless Malaysia Sdn. Bhd. ("ORYX") laid down in the following text shall govern all engagements given to ORYX and all purchases of scrap materials, raw materials and similar materials by ORYX from the seller ("Seller").

All agreements concluded with ORYX shall explicitly be governed by the law of Malaysia. The provisions of the UN Convention regarding contracts on the international sale of goods (CISG) are excluded and shall not apply. All references by Seller 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 turned down. In the event that these terms and conditions deviate from the written terms and conditions, howsoever named, of Seller, the conditions herein will prevail, unless and insofar as the applicability of the written conditions of Seller has been expressly accepted by ORYX in writing.

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

## 2. CONTRACT AND PAYMENT

An agreement of purchase and delivery 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 (price, quality, delivery terms, payment terms), unless Seller raises objections to the written confirmation within one (1) hour from the time the written confirmation is sent by ORYX. The mere making of an offer by ORYX shall not bind ORYX, unless ORYX has expressly stated otherwise in writing.

Prices and quality definitions as defined by ORYX's written purchase confirmation or purchase contract are binding. Seller shall issue an invoice not later than 7 days after reception of goods by ORYX. Seller attaches all documentation required for verification of the delivery being made as according to the agreement. Seller's invoice shall comply with all legal requirements in the Malaysia for such documents. Seller does not have the right to offset receivables against one company of the ORYX Stainless Group with payables to another company of the ORYX Stainless Group

Each purchase transaction under an individual agreement shall be deemed as an individual transaction with individual and separate payment specifications. Payment shall be specified by ORYX in each individual agreement.

The concluded purchase agreement shall consist of

- I. Individual agreement or any written purchase confirmation signed by ORYX and Seller; and
- II. These General Purchasing Terms which form an integral part of the individual agreement ("**Purchase Agreement**").

Concluded supply contracts may not be assigned to third parties without ORYX's written consent.

### **3. DELIVERY**

The delivery time(s) and delivery date(s) as defined in the written purchase agreement are binding. If no specific delivery time or delivery date has been agreed upon in writing, the delivery date shall be "prompt delivery" within a reasonable time. Seller shall inform ORYX immediately in writing about any circumstances or any information available to him, which make it evident that agreed upon delivery times or delivery dates cannot be fulfilled.

In case of late delivery, ORYX may set Seller an additional reasonable period for meeting its obligations and is entitled to claim for compensation of damages and dissolve the purchase agreement, in case the obligations have not been fulfilled during this grace period.

Seller bears the vicarious liability for any faults or non-performance by any auxiliary person or servant being appointed by him in relation to the fulfilment of his contractual obligations

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

### **4. DELIVERY PROCESS**

Seller shall deliver the goods under delivery condition DDP (Incoterms 2020) at ORYX's business address or CIF any Johor port (Incoterms 2020) for container deliveries from outside Malaysia, unless expressly otherwise stipulated in the agreement. All costs of delivery (e.g. packing, transport, insurance, duties) are for the account of Seller unless otherwise defined in the written purchase confirmation.

Upon acceptance of the goods, ORYX issues a written receipt note. This note is the only accepted proof of delivery. If a delivery requires weighing, the weight determined by ORYX's calibrated scale or any other appropriate weighting method chosen by ORYX is determining for the settlement of the delivery. ORYX will inform Seller about the result of the weight and quality inspection as soon as this process is finalized. Seller has to express his refusal within two working days after the result information has been submitted to him. Without receiving refusal information within this timeframe, ORYX is entitled to use the delivered goods in its scrap processing process.

Deliveries concerning more than one purchase confirmation or purchase agreement have to be clearly separated. Mixing of different product qualities is not allowed, unless the agreement defines the products bought as a mix of qualities.

Seller is responsible to make the delivery in accordance with the quantity, quality, description and packaging as specified in the agreement, and adhering to all legal provisions, especially to environmental and occupational health and safety regulations. Deliveries have to be made according to custom and usage in the industry.

Seller is responsible for correct and complete declaration of the delivered goods in all freight documents. Seller shall be liable for all costs and damages claimed by third parties against ORYX as a result of incorrect or incomplete declarations of goods.

Seller delivers the goods free from any right of third parties or Seller. Conditional delivery with extended reservation of title is not accepted.

### **5. CLAIMS**

ORYX shall analyse the delivered goods for potential deficiencies in appropriate time. Detected deficiencies shall be reported to Seller within 5 working days (excluding Saturdays, Sundays and public holidays) after delivery or, in case of hidden defects, within 5 working days (excluding Saturdays, Sundays and public holidays) after detection.

ORYX is entitled to warranty claims and claims based upon defects according to the law without any reduction. In any case, ORYX is entitled to choose for either removal of defects or compensation delivery of goods free of any deficiencies. Claims for indemnity remain unaffected by the aforementioned claims.

ORYX is entitled to remove deficiencies at the cost of Seller in case of imminent danger or any other reason which makes urgent removal of the deficiency necessary.

Limitation period for any claim of deficiency shall be 6 years as long as no other agreement has been made.

All costs related to claims due to quality deficiencies will be charged to Seller as claim costs. In addition, Seller has to bear any demurrage or storage cost related the claim.

With the delivery, Seller declares that he has tested the delivered material for, and warrants that the delivered materials are free from explosive devices, potentially explosive devices, closed blown containers, material with ionizing radiation or any other material posing a risk to the environment or health.

ORYX is checking delivered material for ionising radiation, higher than the natural self-radiation. A radiation higher than the natural self-radiation is defined by the detection of higher radiation than the natural background radiation at ORYX's radioactivity detection devices. Results of radioactivity control activities will be documented and sent to Seller if a higher than the natural self-radiation has been detected. ORYX will inform the relevant authorities if so required by law.

Costs for examination, segregation, storage, additional transport, removal, treatment, potential penalties or fines or any other cost in connection with detected explosive devices, potentially explosive devices, closed blown containers, material with ionizing radiation or any other material posing a risk to the environment or health, are for the account of Seller. Seller is liable for any damages to persons or property caused by such material. If legal provisions allow ORYX to return the goods to Seller, Seller is obliged to accept the goods to be returned. Seller shall hold ORYX harmless against any third party claims in relation to the aforementioned hazardous goods.

ORYX may terminate the purchase agreement with immediate effect:

- in the event of non-delivery, if Seller fails to deliver the goods within the defined delivery period or within the additional period (if ORYX decided to grant this additional period) or if Seller declares that it will not deliver within this fixed period;
- in case of any failure by Seller to carry out all or part of its obligations under the agreement, if such failure continues for 5 (five) days after ORYX's written notice to Seller to remedy such breach; or
- in case of bankruptcy, moratorium, receivership, liquidation or any kind of arrangement between debtor and creditors, attachment of goods or monies of Seller, change of control, ownership and/or management of Seller, and any other circumstances which are, in ORYX's opinion, likely to materially affect Seller's ability to carry out its obligations under the agreement.

Termination in accordance with this article will not render ORYX liable for any damages, costs, compensation or fees and shall be without prejudice to any rights or remedies which ORYX may have against Seller at the time of termination.

If Seller has failed to comply with its obligations towards ORYX and as a result of the exercise of its rights ORYX incurs costs or sustains loss or damage, ORYX shall be entitled to recover these costs and this loss or damage from Seller. The aforementioned costs also include the judicial and extrajudicial costs being at least 15% of the principal sum, as well as internal and external costs, expert costs, as well as an interest rate of 1.5% a month or part of a month calculated over the loss or damage.

Any dispute which may arise as a result of these terms and conditions and/or as a consequence of the agreements concluded by ORYX and Seller shall be exclusively settled by the competent court in Malaysia. ORYX shall at all time have the right to bring any disputes arising from these conditions and/or any contractual relation between ORYX and Seller before the competent court of the registered office of Seller or the court of jurisdiction where the Seller's assets or properties are located.

## **6. CONFIDENTIALITY**

Seller shall treat any information received from ORYX strictly confidential and shall not disclose such information to any third party without prior written consent of ORYX. These restrictions will not apply to any information which:

- a. Is or become generally available to the public other than as a result of Seller's breach of its obligations under this Article; or
- b. Was available to Seller on a non-confidential basis prior to the reception; or
- c. Is disclosed as required by law or regulations.

## **7. OTHERS**

If any provision of these 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 law. The parties agree to replace an invalid and/or unenforceable provision with a valid and/or enforceable provision which most closely approximates the intent and economic effect of the invalid and/or unenforceable provision.