

## General Business and Delivery Terms and Conditions

As of: August 2020

### A. GENERAL CONTRACTUAL PROVISIONS

#### 1. SCOPE OF APPLICABILITY AND GENERAL MATTERS

- 1.1 This section on General Provisions applies to all services of voestalpine Signaling Sainerholz GmbH (hereinafter, “voestalpine”) provided to the customer, if and insofar as these General Business and Delivery Terms and Conditions have been effectively included in the contractual relationship with the customer.
- 1.2 General business terms and conditions of the other contracting party (hereinafter, the “Customer”) are applicable only if voestalpine has expressly approved them in writing.
- 1.3 Legally relevant declarations and notices that the Customer is required to make or provide to voestalpine following conclusion of contract (e.g. setting of deadlines, notices of defects, declaration of rescission, or reduction of price) must be given in writing in order to be effective. Written form is satisfied by transmission using telecommunications means, including by fax or email, provided that a copy of the signed declaration is transmitted.
- 1.4 If reference is made to the applicability of statutory provisions, this has merely clarifying significance. For this reason, even absent such clarification, statutory provisions are applicable unless directly modified or expressly precluded by these General Business and Delivery Terms and Conditions.

#### 2. CONCLUSION OF CONTRACT

- 2.1 The Customer’s orders become binding only after voestalpine provides a written order confirmation or, if a written order confirmation is not provided, when the ordered goods are delivered by voestalpine. The foregoing also applies where voestalpine has previously provided catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards, sample items), other product descriptions, or documents, including in electronic form.
- 2.2 Amendments and supplementations to concluded agreements, including to these General Business and Delivery Terms and Conditions, must be made in writing in order to be

effective. Written form is satisfied by transmission using telecommunications means, including by fax or email, provided that a copy of the signed declaration is transmitted.

### 3. INTELLECTUAL PROPERTY, CONFIDENTIALITY

voestalpine reserves all intellectual property rights to which it is entitled, including copy-rights, rights to use copyrighted material, and other rights of use, in and to all drawings, illustrations, calculations, brochures, catalogues, models, tools, and other documents and resources (hereinafter, the "Documents") provided to the Customer by voestalpine. Absent voestalpine's prior express written consent, the Customer must refrain from making such Documents accessible to third parties, disclosing them, using or reproducing them directly or through third parties, or undertaking other acts of exploitation, unless this is necessary from the purpose of performing the contract concluded with voestalpine. If the Customer no longer requires such Documents in the normal course of its business, or if negotiations do not lead to the conclusion of a contract, the Customer must, when so requested by voestalpine, return them to voestalpine and, if applicable, destroy any copies it has made thereof. voestalpine will correspondingly treat the Customer's Documents with confidence.

### 4. PRICES AND PAYMENT TERMS

- 4.1 Unless indicated otherwise, prices are ex-works and do not include transport, packaging, or VAT. Pricing is in euros. VAT is listed separately.
- 4.2 Unless agreed otherwise, the agreed prices are due upon delivery (cf. B.1) or inspection and acceptance (cf. C.2).
- 4.3 The Customer may set off only those claims that are uncontested, have been reduced to an enforceable judgment, or have been expressly acknowledged.

### 5. LIMITATION OF LIABILITY

voestalpine's duty to compensate damages is generally precluded. The foregoing does not apply to

- » damages based on the breach of a material contractual duty. A material contractual duty exists, in particular, where its fulfilment is essential for the proper performance of the contract and upon whose compliance the contracting party normally relies and is entitled to rely. In such case, voestalpine's liability is limited to foreseeable damage that is typically incurred;
- » damages incurred through infringement of a guarantee given by voestalpine;
- » damages based on a wilful or grossly negligent breach of duty by voestalpine or one of its legal representatives or persons used to perform an obligation (Erfüllungsgehilfen).

- » damages from injury to life, body, or health that are based on a wilful or negligent breach of duty by voestalpine or one of its legal representatives or persons used to perform an obligation;
- » claims under the German Product Liability Act (Produkthaftungsgesetz).

### 6. FORCE MAJEURE

If a party is unable or temporarily unable to fulfil a contractual duty on account of an event that arises externally, has no operational connection, is not foreseeable, and cannot be averted even with extreme care reasonably to be expected ("Force Majeure"), such as war, internal unrest, natural disasters, strikes, export or import restrictions, epidemics and pandemics caused by infectious diseases, foreign travel warnings issued by authorities or ministries, piracy, etc.), the relevant duty to perform is suspended for the duration of Force Majeure and for a reasonable period thereafter for the purpose of restoring the ability to perform. If Force Majeure lasts longer than six months, or if it is apparent that Force Majeure will last for at least a continuous period of this length, either party may rescind the relevant part of the contract. If one of the parties is no longer interested in the remaining part of the contract, it may also rescind the relevant contract as a whole.

### 7. PLACE OF JURISDICTION, APPLICABLE LAW

- 7.1 The law of the Federal Republic of Germany is exclusively applicable to all contracts concluded between voestalpine and the Customer, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 1980, as well as conflict-of-law provisions.
- 7.2 If the Customer is a merchant, a legal person under public law, or a special fund under public law, or if it does not have a general place of jurisdiction in the Federal Republic of Germany, the exclusive place of jurisdiction for all disputes in connection with this contract is voestalpine's registered office. Mandatory statutory provisions concerning exclusive places of jurisdiction remain unaffected by this arrangement.

### 8. EXPORT LICENCES

- 8.1 Unless expressly agreed otherwise, the Customer bears the risk and expense of (non-) issuance of any required export and/or import approvals. The foregoing also applies where voestalpine assists the Customer at the latter's request in obtaining such approvals.
- 8.2 Where the parties agree in a given case that voestalpine bears the risk and expense of (non-) issuance of any required export and/or import approvals, the following applies:

- » In the case of property and pecuniary damages caused by simple negligence, the liability of voestalpine and the persons it uses to perform an obligation is limited in terms of amount to damages that were foreseeable at the time of contract conclusion and that are typical of this kind of contract.
- » The Customer undertakes to promptly provide voestalpine with the complete and substantively accurate information that is needed for the application for and issuance of required import and/or export approvals.
- » The Customer undertakes to provide the cooperation that is needed for the application for and issuance of required import and/or export approvals, including submission of the required declarations to authorities.
- » The Customer undertakes to satisfy the official requirements placed on the issuance of any required import and/or export approvals, including using products only in connection with the purpose permitted in the import and/or export approvals.
- » The Customer must indemnify voestalpine against all claims of third parties that result from the culpable breach by the Customer of the aforementioned duties.

## B. SPECIAL PROVISIONS FOR PURCHASE CONTRACTS AND FOR CONTRACTS FOR THE SUPPLY OF MOVEABLE THINGS TO BE PRODUCED OR MANUFACTURED

The provisions in this Section B are applicable solely to purchase contracts (section 433 of the German Civil Code (Bürgerliches Gesetzbuch, BGB)) and contracts for the supply of moveable things to be produced or manufactured (section 651 BGB) between voestalpine and the Customer whose subject is the supply of moveable things ("Goods").

### 1. TERMS AND CONDITIONS OF DELIVERY

- 1.1 Unless expressly agreed otherwise, delivery is FCA Sainerholz (Incoterms 2010). The foregoing also applies where at the Customer's request voestalpine engages a transport company to transport the Goods at the Customer's risk and expense. In such case, voestalpine will assign to the Customer any compensation claims to which it is entitled against the transport company.
- 1.2 The delivery deadline begins to run when the contract comes into effect, provided that the Customer has provided voestalpine in full with all required technical information (e.g. position of the drive in the point, isolated joints, relevant vehicle data, type of point drive or positioning system, relevant interface information about the positioning equipment or

point control, type of superstructure, track profiles, rail steel grades etc.) and has issued the required approvals and design releases. If the technical information is not available at the time the contract comes into effect, the delivery deadline begins to run for voestalpine once it has received in full all required technical information and the Customer's approvals and design releases are in place. Delivery dates or delivery times promised by voestalpine become ineffective if more than eight (8) weeks elapse between the contract coming into effect and the receipt in full of all technical information.

- 1.3 If the parties agree in a given case that voestalpine bears the risk and expense of (non-) issuance of any required export and/or import approvals, the delivery deadline is extended by the period arising through a delay in the issuance of the required export and/or import approvals, plus a reasonable period for execution of the delivery, provided that issuance is delayed for reasons for which voestalpine is not responsible.
- 1.4 voestalpine is entitled to make partial deliveries, if and insofar as this does not unreasonably interfere with the Customer's interests. That is the case, in particular, where
  - » the partial delivery is utilisable by the Customer in connection with the intended contractual purpose,
  - » the delivery of the balance of the ordered Goods is assured, and
  - » the Customer does not incur any substantial added effort or expense in this regard (unless the Customer declares its willingness to assume these costs).
- 1.5 The Customer is obligated to promptly notify voestalpine about any impending delay in the inspection and acceptance of the Goods.
- 1.6 If the Customer is in default in inspection and acceptance, the risk of accidental loss or deterioration of the Goods passes to the Customer at such point, and voestalpine can set a reasonable deadline for the Customer to perform inspection and acceptance. Following fruitless expiry, voestalpine is entitled to rescind the contract and demand compensation of damages pursuant to statutory provisions. voestalpine is not required to set a deadline if the Customer is responsible for unloading the Goods at the place of delivery and unloading is delayed by circumstances attributable to the Customer.

## 2. MATERIAL DEFECTS, RIGHTS IN THE EVENT OF DEFECTS

- 2.1 The Customer must promptly inspect the Goods following delivery to it or to a third party specified by it, provided that this is feasible in the ordinary course of business, and, if a defect is apparent, give the seller prompt notice. If the Customer fails to give notice, the Goods are deemed approved, unless the defect is one that was not discernible at the time of inspection. If such a defect subsequently becomes apparent, the notice must be given promptly following discovery. Otherwise, the Goods are deemed approved even in view of this defect. It suffices to preserve the Customer's rights if the notice is sent in a timely manner. If voestalpine has fraudulently concealed the defect, it may not rely on this provision.

- 2.2 In all cases, the special statutory provisions concerning final delivery of the Goods to a consumer remain unaffected (sections 478-479 BGB).
- 2.3 In the event of material defects in the delivered Goods, voestalpine is obligated and entitled at its choice, which is to be made by a reasonable deadline, first to perform repair or make substitute delivery. If the cure fails, the Customer may rescind the contract or reasonably reduce the purchase price.
- 2.4 The Customer loses its rights in the event of defects if it modifies the Goods, or has them modified by third parties, without the prior consent of voestalpine and such modification causes the defect or makes elimination of the defect impossible or unreasonably difficult. In any case, the Customer bears the added costs for elimination of the defect that result from the modification.
- 2.5 The warranty period amounts to one year, starting at the time of transfer of risk, unless the mandatory provisions of sections 478-479 BGB apply. The foregoing does not apply to liability for damages that are based on a wilful or grossly negligent breach of duty by voestalpine or one of its legal representatives or persons it uses to perform an obligation (Erfüllungsgehilfen), nor does it apply to liability for damages from injury to life, body, or health that are based on a wilful or negligent breach of duty by voestalpine or one of its legal representatives or persons it uses to perform an obligation. Accordingly, the statutory prescription period applies. If the Goods are used for a building in accordance with the normal way they are used, the warranty period amounts to five years.

### 3. RETENTION OF TITLE

- 3.1 With respect to a specific contract, voestalpine retains title to the Goods until payment in full of all claims based on the relevant contract ("Goods Subject to Retention of Title"). In this regard, the legal basis for voestalpine's claims against the Customer is irrelevant. Also covered are, in particular, open balances under current accounts. The Customer holds the Goods Subject to Retention of Title in safe custody for voestalpine at no charge.
- 3.2 The Customer must give voestalpine prompt written notice of interventions by third parties that interfere with voestalpine's rights (including voestalpine's retention of title), such as liens or compulsory enforcement. If the third party is not capable of reimbursing voestalpine for the in-court and out-of-court costs of a lawsuit in accordance section 771 of the German Code of Civil Procedure (Zivilprozeßordnung, ZPO) or a corresponding type of lawsuit provided for in the legal system at the place where the Goods Subject to Retention of Title are located, the Customer is liable for the financial loss occasioned by this.
- 3.3 In all cases, the Customer processes or remodels the delivered Goods Subject to Retention of Title for voestalpine as the manufacturer. voestalpine directly acquires title without this resulting in obligations for voestalpine. If the Goods Subject to Retention of Title are processed using other items not belonging to voestalpine, voestalpine acquires co-title to

the new thing in the ratio that the value of the product subject to retention of title bears to the other processed items at the time of processing. In addition, applying to the thing resulting from processing is that same as that applying to the products subject to retention of title that are delivered under retention of title. If voestalpine's title expires on account of processing, amalgamation, or commingling, the Customer assigns to voestalpine a share of its title or co-title the corresponds to the invoice value of the product subject to retention of title.

- 3.4 The Customer may resell the Goods Subject to Retention of Title only in the ordinary course of business. The Customer is authorised and entitled to resell the Goods Subject to Retention of Title with the proviso that all of the Customer's claims against its buyers from the resale vest in voestalpine. The Customer's claims from the resale of the Goods Subject to Retention of Title are hereby assigned to voestalpine in the amount of the invoice value of the Goods Subject to Retention of Title or, where voestalpine has co-title to a new thing resulting from processing, pro-rata in accordance with the share of co-title. voestalpine hereby accepts such assignment. The Customer is not entitled to make other dispositions of the Goods Subject to Retention of Title. In particular, the Customer may not pledge the Goods Subject to Retention of Title as collateral or otherwise. The Customer's entitlement to sell the Goods Subject to Retention of Title may be revoked by voestalpine (i) in the case of a substantial deterioration in the Customer's financial circumstances (in particular, where there exist grounds for insolvency under sections 17-19 of the German Insolvency Code (Insolvenzordnung, InsO)), (ii) if the Customer ceases to meet its payment obligations from collected proceeds, or (iii) if the Customer is in default in payment. In such cases, voestalpine also has the right to rescind the contract and demand that the Customer surrender the Goods Subject to Retention of Title.
- 3.5 The Customer is authorised to collect the claims assigned to voestalpine. The Customer's entitlement to collect assigned claims may be revoked or modified by voestalpine (in particular, voestalpine may require that the proceeds from the assigned claims be segregated in an escrow account). voestalpine will make use of the right to revoke or modify only (i) in the case of a substantial deterioration in the Customer's financial circumstances (in particular, where there exist grounds for insolvency under sections 17-19 InsO), (ii) if the Customer ceases to meet its payment obligations from collected proceeds, or (iii) if the Customer is in default in payment. The Customer is not authorised to assign the claim to third parties. When so requested by voestalpine, the Customer must notify its buyers of the assignment to voestalpine and provide voestalpine with the information and documentation necessary to collect the claim.
- 3.6 voestalpine undertakes at the Customer's request to release the collateral to which it is entitled under the foregoing provisions when the realisable value of the collateral exceeds the secured claims by more than 10%. voestalpine may choose which collateral to release.

- 3.7 If, at the Customer's request, the Goods Subject to Retention of Title are delivered to a country in which the above retention of title is not recognised or does not have the same security effect as in the Federal Republic of Germany, the Customer is obligated to take all actions and make all declarations as may be necessary to create a comparable security right. The same applies where the Customer takes the Goods Subject to Retention of Title to such a country.

## C. SPECIAL PROVISIONS FOR CONTRACTS TO PRODUCE A WORK

The provisions in this Section B are applicable solely to contracts to produce a work (section 631 BGB) between voestalpine and the Customer. Such contracts may have as their subject, e.g. planning services, maintenance, repair, and service work, point or rail milling, or installation support.

### 1. DUTIES OF THE CUSTOMER TO COOPERATE

- 1.1 In the case of installation, maintenance, repair, or service work, the Customer must, in a timely manner before the start of work, provide the safety provisions applicable to the work to be performed at the place of assembly and – if special equipment or training is necessary for this – that resources necessary to comply with the safety provisions.
- 1.2 The Customer must, in a timely manner before the start of work, ensure unimpeded performance of the work. This covers, in particular, guaranteeing free accessibility for the voestalpine personnel and vehicles necessary for performing the commissioned work.
- 1.3 The Customer must make all arrangements for complying with and monitoring all relevant occupational- and workplace-safety rules prior to, during, and after performance of the work by voestalpine.
- 1.4 The Customer must ensure the timely obtaining of approvals and/or access approvals for voestalpine personnel for performance of the work.

### 2. INSPECTION AND ACCEPTANCE

- 2.1 The Customer must inspect and accept the work. During inspection, both parties are to prepare a protocol documenting any defects ascertained in connection with the inspection. Such inspection and acceptance protocol must be signed by both parties. At the request of one of the parties, partial inspection and acceptance may also be performed. Inspection and acceptance, as well as partial inspection and acceptance, may not be refused on account of minor defects.
- 2.2 The work is deemed accepted if



- » after completing its work, voestalpine requested that the Customer proceed to inspect and accept it or to partially inspect and accept it, and
  - » despite the setting of a grace period by voestalpine, the Customer did not inspect and accept the work, and
  - » failure to inspect and accept was based on a reason other than a major defect notified to voestalpine.
- 2.3 The work is deemed accepted if in breach of contract the Customer makes use of the subject of the contract without first having inspected and accepted it.

### 3. RIGHTS IN THE EVENT OF DEFECTS

- 3.1 Unless provided otherwise below, statutory provisions apply to the Customer's rights in the event of material or legal defects.
- 3.2 If the Customer accepts the work despite its being defective, and if the Customer is aware of the defect at the time of acceptance, then the foregoing subsection notwithstanding, the Customer's rights in the event of defects are precluded, unless it has re-served the assertion of its rights.
- 3.3 The Customer loses its rights in the event of defects if it modifies the work, or has it modified by third parties, without the prior consent of voestalpine and such modification causes the defect or makes elimination of the defect impossible or unreasonably difficult. In any case, the Customer bears the added costs for elimination of the defect that result from the modification.
- 3.4 To the extent that voestalpine provides information or acts in an advisory capacity, and such information or advice does not form part of the contractually agreed scope of services owed by it, same is provided at no charge and under exclusion of all liability.

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