

# GENERAL BUSINESS TERMS AND CONDITIONS

## August 2019 Version

### 1. General information

The scope of activities undertaken by voestalpine Rail Technology GmbH with respect to service provision comprises the following activities:

- » Investigation,
- » Measurement,
- » Consultation,
- » Expert appraisal and
- » Training

in regard to the fields of track engineering and track welding technology.

The following General Business Terms and Conditions are applicable to all agreements concluded between voestalpine Rail Technology GmbH and its customers and govern the provision and performance of all present and future services and deliveries between the contracting parties in the area of services.

voestalpine Rail Technology GmbH contracts and provides services exclusively in accordance with these General Business Terms and Conditions. A Customer's own General Business Terms and Conditions, which deviate from these General Business Terms and Conditions or conflict with them, are expressly not recognized and their validity excluded. The Customer, hereby, agrees by mutual consent to the exclusive application of these General Business Terms and Conditions, together with the foregoing exclusions to the present legal transaction and for the entire business relationship.

### 2. Order performance

2.1 Orders accepted by voestalpine Rail Technology GmbH shall be implemented in accordance with the recognized rules of technology. No responsibility shall be assumed for the correctness of the standards, guidelines, regulations, programs, etc. on which the tests are based, unless this is expressly agreed otherwise in writing. The Customer shall ensure that all documents and circumstances necessary for the inspection are conveyed to voestalpine Rail Technology GmbH and communicated in a timely manner. voestalpine Rail Technology GmbH shall not be liable for the correctness and completeness of the documentation and information provided.

2.2 The scope of voestalpine Rail Technology GmbH's work shall be stipulated in writing when the order is placed. Should changes to the agreed scope of the order arise during its orderly execution, these shall be agreed in advance and in writing and shall be remunerated separately. In such a case, the Customer shall be entitled to withdraw from the contract if an adherence to the contract by the Customer can no longer be reasonably expected with regard to the changes or extensions; this shall be the case if the changes or extensions cause the Customer additional costs exceeding 25 % of the original total order value. The Customer shall, in this instance, however, pay the agreed remuneration or, in the absence of an agreement, reasonable compensation for the services already rendered by voestalpine Rail Technology GmbH. If the Customer withdraws from the contract prior to the commencement of the test activities, voestalpine Rail Technology GmbH shall be entitled to charge the Customer for the preparatory costs incurred for the examination.

2.3 Subsidiary agreements, promises, and other declarations made by the employees of voestalpine Rail Technology GmbH or by the experts commissioned by voestalpine Rail Technology GmbH, shall only be binding if they are confirmed in writing by voestalpine Rail Technology GmbH. This formal requirement is mandatory; deviations from it can only be made by written agreement.

2.4 Unless agreed otherwise, voestalpine Rail Technology GmbH shall issue an order confirmation with respect to the accepted order.

2.5 voestalpine Rail Technology GmbH shall be entitled to have the order carried out, wholly or in part, by expert, dependent employees of the voestalpine group of companies or by subcontractors such as, for example commercial/freelance experts.

### **3. Deadlines, delay, impossibility, liability**

3.1 The order periods stated by voestalpine Rail Technology GmbH are to be deemed non-binding, unless their binding nature has been expressly agreed in writing.

3.2 Insofar as voestalpine Rail Technology GmbH fails to comply with an order deadline, the binding nature of which was agreed in writing, for reasons for which it bears sole responsibility and is, thereby, in default, the Customer shall be entitled, in the event that it has suffered demonstrable damage, to claim lump-sum damages for each completed week of default in the amount of 0.5 % of that part of the order value which is affected by the default, this up to a maximum of 5 % of that part of the order value which is encompassed by the default. Further claims for damages due to the delay shall be excluded unless voestalpine Rail Technology GmbH is liable under mandatory law by reason of intent or gross negligence. The respective burden of proof shall lie with the Customer.

3.3 Should the Customer grant voestalpine Rail Technology GmbH a reasonable grace period during its default and voestalpine Rail Technology GmbH allow this grace period to expire for reasons for which voestalpine Rail Technology GmbH is responsible, the Customer shall be entitled to withdraw from the contract. The same shall be applicable if the performance becomes impossible for a reason for which voestalpine Rail Technology GmbH is responsible. With the exception of reverse settlement claims, all further claims arising from the contract shall be excluded. Claims for compensation for damages by the Customer arising from culpa in contrahendo, from violations of contractual accessory obligations including pre-contractual accessory obligations, and from unlawful acts are excluded, unless these are based on intent or gross negligence on the part of voestalpine Rail Technology GmbH, its legal representatives, or vicarious agents. The provisions governing damages contained in these General Business Terms and Conditions or otherwise agreed, shall also apply if the claim for damages is asserted in addition to, or instead of a warranty claim.

Liability for slight negligence as well as consequential damages, pure financial losses, unrealised profits and savings, loss of interest and for damages arising from claims by third parties against the customer shall be excluded to the extent permitted by law. For its part, the Customer shall be liable for ensuring that all information and documentation necessary for the rendering of the service are made available to voestalpine Rail Technology GmbH in a timely and complete manner. voestalpine Rail Technology GmbH shall only be obligated to perform the service once all information has been properly provided by the Customer.

#### **4. Warranty coverage**

4.1 The warranty provided by voestalpine Rail Technology GmbH shall only cover the services expressly ordered from it pursuant to Section 2.2. of these GBTC. Any warranty shall, in particular, not include the condition status and functionality of tools, systems and equipment to which the parts to be examined belong. Nor shall voestalpine Rail Technology GmbH bear any responsibility for the design, execution, material selection, and construction of the systems and equipment to be inspected, unless these questions were expressly the subject of the order.

The warranty obligation and the legal responsibility of the manufacturer or supplier of the equipment shall remain unaffected and fully valid and chargeable.

4.2 The warranty obligation of voestalpine Rail Technology GmbH is limited to the rectification of a defect or deficiency within a reasonable period of time, which also includes the absence of an expressly warranted characteristic.

There shall be no other or further claim, in particular for a reduction of the remuneration, on whatever legal grounds. Compensation for any consequential harm caused by a defect due to mandatory statutory liability by reason of intent or gross negligence shall be limited to half of the invoice value of the corresponding order.

#### **5. Payment terms and conditions and prices**

5.1 For the calculation of the cost of its services, the fees according to the prices valid at the time of the issuance of the order confirmation by voestalpine Rail Technology GmbH pursuant to Item 2.4. of these GBTC shall be applicable, unless a fixed price or another assessment basis has been expressly agreed in writing.

5.2 Advance payment of costs can be requested and partial invoices can be submitted for the services already rendered. In the event of termination, voestalpine Rail Technology GmbH shall be entitled to demand that part of the agreed remuneration which corresponds to the part of the service rendered.

5.3 The consideration shall be due for payment within 21 days of invoicing, though at the latest by the date stated on the invoice, unless agreed otherwise in writing.

5.4 In addition to the disclosed prices, value added tax (VAT) shall be invoiced at the respective statutory rate applicable up to the final execution of the order.

5.5. Should the Customer be obliged by law to withhold and remit withholding tax or other levies, the Customer shall provide voestalpine Rail Technology GmbH advance notification thereof in writing, stating the amount withheld and the relevant legal basis. The Customer shall be responsible for the consequences of a delayed notification. The Customer shall be obligated to make use of the possibilities of reduction and/or avoidance of withholding or paying taxes. In the absence of a prior written agreement, the Customer shall pay the price invoiced by voestalpine Rail Technology GmbH in a timely manner and without any deductions.

The Customer shall, furthermore, and without being requested to do so, provide voestalpine Rail Technology GmbH with a copy of the proof of payment, including the name of the competent authority for the refund of the withholding tax.

5.5 Complaints regarding our invoices must be submitted in writing within 14 days of receipt, or shall otherwise be excluded.

5.6 The Customer shall not be entitled to withhold or offset payments by reason of warranty claims or other claims asserted against voestalpine Rail Technology GmbH.

5.7 In the event of default of payment by the Customer, voestalpine Rail Technology GmbH shall be entitled to charge default interest in accordance with § 1333 of the Austrian General Civil Code ("ABGB"). If the bank debit interest rate is higher, voestalpine Rail Technology GmbH shall be entitled to further charge the interest rate verifiably charged by the bank.

5.8 Claims from other business dealings may only be offset against voestalpine Rail Technology GmbH's claims following a legally binding court decision or in the event of voestalpine Rail Technology GmbH's written acknowledgement.

5.9 voestalpine Rail Technology GmbH shall be entitled to demand immediate settlement of all its claims, irrespective of the term of any accepted and credited bills of exchange, if payment terms are not met, due bills of exchange are not honoured, or other circumstances become known which call the creditworthiness of the Customer into question. voestalpine Rail Technology GmbH shall also be entitled in such cases to perform outstanding services only in return for advance payment and to withdraw from the contract and/or claim damages for non-performance, this subject to the setting and expiry of a reasonable deadline,.

## **6. Secrecy, copyright**

6.1 voestalpine Rail Technology GmbH may make duplicates or take copies of written documents and files which are made available to voestalpine Rail Technology GmbH for inspection during the performance of the order and which are important for the execution of the order.

6.2 voestalpine Rail Technology GmbH shall reserve the copyright to the expert opinions, test results, calculations, etc. prepared by it. The legal copyright of voestalpine Rail Technology GmbH to its work is inalienable. The Customer shall ensure that the services are only used for the respectively agreed purpose of the order. The rights to use the work granted to the Customer may only be transferred to third parties in return for a consideration or free of charge with the express written consent of the originator. Consultation with the originator shall always be required for further use extending beyond the scope of the agreement. Services protected by copyright may not be altered without the originator's permission, either in their original form or during reproduction. In the event of a violation of copyrights of voestalpine Rail Technology GmbH, damages shall be payable until full satisfaction.

6.3 voestalpine Rail Technology GmbH, its employees and the experts engaged by it shall not disclose and/or exploit without authorization business and operating conditions which come to their knowledge during the performance of the activity.

## **7. Data protection**

voestalpine Rail Technology GmbH shall process the Customer's personal data in order to properly fulfil the order and for its own purposes. voestalpine Rail Technology GmbH also uses automatic data processing systems for this purpose. Data processing by voestalpine Rail Technology GmbH is carried out in full compliance with all applicable data protection requirements.

## **8. Place of jurisdiction, place of performance, choice of law**

8.1 Unless statutory provisions preclude an agreement on the place of jurisdiction, the competent court for all legal disputes between voestalpine Rail Technology GmbH and its Customers shall be the competent court in Leoben.

8.2 The place of performance for all obligations arising from contracts is Leoben - Donawitz.

8.3 The contractual relationship and all legal relationships arising therefrom shall be governed exclusively by Austrian law; the application of international conventions, in particular the UN Convention on Contracts for the International Sale of Goods, is expressly excluded.

8.4 For contracts and orders with consumers, the mandatory provisions of the Consumer Protection Act shall remain unaffected.

8.5 Should individual parts of a contract or of these General Business Terms and Conditions be, or become legally ineffective, whether in whole or in part, this shall not affect the binding nature of the remaining provisions and the validity of the legal transactions concluded on the basis of these provisions. Ineffective provisions or parts of a provision shall be interpreted or supplemented in such a way that the intended purpose is achieved as accurately as possible in a legally permissible manner.