

## General Terms and Conditions of Sale of voestalpine Rail Center Königsborn GmbH

### 1. Conclusion of the Contract

1.1 All our supplies and services, also those in the future, including proposals, consultations and other ancillary services are rendered exclusively on the basis of the conditions mentioned hereinafter.

We shall only be bound to the buyer's/principal's purchasing conditions when these have explicitly been accepted by us. Failure to object shall under no circumstances constitute an acceptance on our part.

1.2 All our offers are provided subject to confirmation. Transactions and any other agreements, especially when they deviate from our terms and conditions, shall only be binding once they have been confirmed by us in written. Budget proposal are non-binding indicative offers.

Any binding offer may be changed by us during the period of validity, provided such an offer has not yet been accepted in written by the customer.

1.3 Orders may only be cancelled or suspended in mutual agreement. Any costs resulting thereof shall be borne by the buyer/principal.

1.4 Withdrawal from the contract shall only be possible when we have not yet started with processing activities, and any adverse effects resulting thereof must be compensated. Processing activities are specifically defined as services to be performed. Any costs resulting thereof shall be subject to compensation.

1.5 The buyer/principal shall provide us with his VAT ID prior to conclusion of the contract.

### 2. Prices

2.1 Unless otherwise agreed, our prices are EXW Königsborn Incoterms 2010, excluding packaging, excluding wagon positioning charges and excluding the applicable VAT.

2.2 In the event that between the time of conclusion of the contract and the supply of the goods and services additional or increased official charges become applicable, especially customs duties, levies and/or currency adjustments, we shall be entitled to increase the agreed price accordingly.

In addition and unless otherwise agreed, we reserve the right to invoice the services to be performed in accordance with the actual work performed and the expenses resulting thereof.

### 3. Terms of Payment

3.1 Payment shall be effected net 30 days after the date of our invoice without any set-off or retention, by transfer to the account indicated in our invoice. Any agreement deviating therefrom must be in written.

3.2 We are entitled to require collateral for any outstanding debt to the extent common for this type of receivables, even if these are conditional or limited in time.

In the event that the value of existing collateral exceeds the secured receivables by a total of 10%, we shall be obliged, on the request of the buyer/principal, to release certain securities of our choice. The buyer/principal shall inform us immediately of any attachments or other restrictions enforced by third parties.

3.3 In the event that the contract is concluded in a foreign currency, the conversion shall be made using the buying rate of the foreign currency published by the European Central Bank at the time the price is determined and the buyer/principal shall bear the exchange risk. This means that if the exchange rate changes, the buyer shall pay on the due date the amount in the agreed foreign currency that corresponds to the equivalent value in EUR at the time the prices were determined. When it is not possible to adhere to the agreed method or way of payment, the buyer/principal shall effect payment by a means of our choice.

If, for any reason whatsoever, difficulties arise with the transfer of the invoiced amount, any resulting adverse effects to us shall be fully borne by the buyer/principal.

3.4 On the basis of the authorization given us by the companies forming part of our Group, we are entitled to offset any receivables, whatever their legal basis, that we or our Group companies claim from the buyer/principal, against any receivables, whatever their legal basis, the buyer/principal claims from us or our Group companies. This shall also apply when one party has agreed to cash payment and the other party has agreed to payment by means of bills of exchange or by other means of payment.

If applicable, these agreements only apply to the balance amount. If the amounts receivable have differing due dates, our receivables become due, at the latest, on the date of our amounts payable and will be posted with the value dates.

- 3.5 In the event of default on payment, we shall be entitled to claim interest of 5 % above the National Bank's base rate of the corresponding receiving country. Not less, however, than 9% p.a.

## 4. Delivery/Acceptance

- 4.1 Delivery shall take place EXW Königsborn Incoterms 2010. Any terms of delivery deviating thereof shall be agreed on in written on the basis of INCOTERMS, latest version.

- 4.2 All delivery periods and dates are subject to change, i.e. they are not legally binding. This means that claims for damage of any kind and reference to delivery periods shall be excluded. The buyer/principal shall not be entitled to reject part deliveries.

All part deliveries are deemed independent transactions, i.e. any claim resulting thereof may be asserted with all rights inherent to a fully completed transaction.

The period of delivery starts from the day of acceptance of the order by us. However, not before all details of the performance have been clarified. In the event that the buyer/principal has to fulfil certain preconditions (e.g. provision of documents, permits, releases or advance payments), the time of delivery shall start from the time these conditions have been fulfilled.

The above also applies when explicit periods or times of delivery have been firmly agreed.

- 4.3 As a matter of principle, a delivery shall be considered as having been effected, when a timely notice of readiness to ship has been given. In the event that the buyer/principal does not immediately take over the goods or services, all risks shall transfer to the buyer/principal from the moment of notification, and the value of the goods/compensation for work may be invoiced. Thereafter, we shall have no further obligation than to store the unpacked goods without any corrosion protection, at the cost of the buyer/principal and we shall only be liable for cases of gross negligence.

- 4.4 When the buyer/principal wishes to perform an acceptance inspection of the goods, such inspections must be explicitly agreed in written with us when concluding the contract. If no deviating arrangements have been made, the acceptance inspection shall take place at the place of production during the normal working hours.

- 4.5, When an acceptance inspection has been agreed, it may only take place at the supplying plant immediately after the notice of readiness for the acceptance inspection has been given. All expenses related to the personal or technical inspection shall be borne by the buyer/principal.

- 4.6 The buyer/principal will be informed in good time prior to the acceptance inspection so that he may be present at the inspection or that he may nominate an authorised representative in his stead.
- 4.7 When goods are not accepted or not accepted in time or accepted incompletely, we shall be entitled to dispatch the goods without acceptance or to store them at the expense and risk of the buyer/principal. The goods shall be deemed supplied and accepted in full accordance with the contract when they have been dispatched or stored.

## 5. Retention of Title

- 5.1 All goods supplied shall remain our property until all payments have been received. This especially refers to demands for unpaid balances in our favour, irrespective of their legal basis. This shall also apply when payments are made towards specifically indicated outstanding amounts. In cases of machining or processing, we shall have co-ownership of the newly created product in proportion of the value of the goods delivered, to the value of the goods processed. Materials that have already been paid for shall be held as payment for outstanding amounts.

## 6. Warranty

Defects of goods/services, including the lack of warranted properties and services performed shall be treated in accordance with the following regulations:

- 6.1 The time of transfer of risks shall be deciding as regards the condition of the goods pursuant to the contract. (See also Clause 4.3)
- 6.2 Once the goods have been accepted by the buyer/principal, any claims on defects that could have been detected during the acceptance inspection shall be deemed void.
- 6.3 Claims based on warranties do not confer the right to hold back due payments.
- 6.4 The buyer/principal may raise claims for damages with us in written, by telex or telegraph within 14 days after the goods have arrived, or when the services to be provided have been concluded at their destination. Defects that cannot be identified within this period, even with careful inspection, shall be notified immediately on discovery, but not later than 1 year after reception of the goods or completion of the services performed at destination, and any further machining or processing must be stopped immediately. After the expiry of the

1-year period, no claims on defects for whatever reason shall be accepted. The buyer/principal shall at all times be liable for proving that the defects were already present at the time of the handover.

- 6.5 In the event that the claim on defects has been notified in time, is justified and has been recognised by us, the buyer/principal shall only be entitled to improvement within a reasonable period. Unless otherwise explicitly agreed with us, there shall be no entitlement to raise other or different claims, whatever the legal grounds may be. All further claims shall be limited to direct damage and the buyer/principal shall only be entitled to raise them in the event that we or our vicarious agents have acted with gross negligence or intent. Consequential damage due to defects shall not be refunded.
- 6.6 If the buyer/principal does not offer us an opportunity to inspect the defect and, in particular, if he does not place the defective goods or samples thereof at our disposal without delay, any and all claims for defects shall be deemed void.
- 6.7 All claims on defects become statute-barred one month after our written rejection of such claims at the latest.
- 6.8 Claims on warranties for services performed shall only be accepted if the rails are transported and offloaded in accordance with regulations and with transport and loading equipment authorised by DB.

## 7. Product Liability

Our liability shall exclusively be governed by agreements in accordance with the items mentioned above and shall not include, under any circumstances and for whatever legal grounds, claims related to consequential damage, lost profit, unrealised savings, loss of interest, pure financial losses. The total liability shall be limited to the value of the material of the goods of the affected delivery.

The aforementioned limitations of liability shall not apply to personal injury resulting in physical injury or damage to health, the physical integrity or the health of people.

## 8. Reservation of Performance

Our obligation to deliver is subject to the correct and timely receipt of supplies from our suppliers. Any and all circumstance that make the performance of our services substantially more difficult or impossible, shall entitle us to suspend our performance for the duration of the impediment and a for

reasonable start-up period, or to withdraw from the part of the contract that has not yet been completed.

## 9. Force Majeure and other Impediments to Delivery

Events of force majeure entitle us to defer delivery for the duration of the delay and for an adequate start-up period or, for the part of the contract that has not yet been completed, to withdraw from the contract partially or entirely. Force majeure shall be deemed strike, lockout or other circumstances that render the performance of our services substantially more difficult or impossible, irrespective of whether such circumstances affect us or our sub-suppliers. The right to claim for damages related to an instance of force majeure shall be explicitly waived.

The buyer can request us to provide a statement in which we declare our intent to withdraw from the contract or to supply the goods within a reasonable period. If we do not provide such a statement, the buyer/principal shall be entitled to withdraw from the contract.

## 10. Place of Performance and Jurisdiction

10.1 The place of performance as regards the buyer's/principal's duty of payment and any and all contractual obligations of the contracting parties shall be Königsborn. The place of jurisdiction for all disagreements shall be the competent court in Magdeburg. However, we reserve the right at our discretion, to initiate proceedings at a competent court within whose jurisdiction the buyer/principal falls.

10.2 Any disagreement concerning export deliveries to foreign companies shall be decided in accordance with the Rules of Arbitration and Conciliation of the International Court of Arbitration of the Austrian Chamber of Commerce in Vienna (Vienna Rules) by one or more arbiters appointed in accordance with the said rules. The language of the arbitration proceedings shall be German.

## 11. Applicable Law

The substantive law of Germany shall apply, to the exclusion of its reference and conflict of laws rules. The application of the United Nations Convention on Contracts for the International Sale of Goods to this agreement is explicitly excluded.

The contract language shall be German, provided the parties agree to this, otherwise English shall be used. Contracts that are translated into English shall only be valid in this version.

## 12. Reimbursement of Costs

In the event of default on payment, the buyer/principal commits to paying to voestalpine Rail Center Königsborn GmbH any and all out-of-court, pre-litigation collection costs.

## 13. Severability Clause

If a clause of this contract is or becomes invalid or if the contract is incomplete, the remainder of its content shall not be affected thereby. The invalid clause shall be substituted by a non-mandatory provision of the law and if no such provision is available, by a clause corresponding to commercial customs or professional ethics at our place of business. Contractual omissions shall be treated in the same way.

## 14. Applicable Version

In cases of doubt, the German version of these General Terms and Conditions of Sale shall apply.

Valid as of February 28<sup>th</sup>, 2019.