

## voestalpine Texas LLC – Purchase Order: Part II

Terms and Conditions for Goods and Services

Version: October 22, 2015

### SECTION 1 - TERMS OF ACCEPTANCE.

This Order is for the purchase of the goods (“**Goods**”) and the services (“**Services**”) specified in Part I of this Order (the Goods and Services, collectively, the “**Work**”), and is subject to these terms and conditions (these “**Terms**”). “**Perform the Work**” means deliver the Goods and render the Services.

This Order will be deemed accepted by the seller specified in Part I of this Order (“**Seller**”) upon the first of the following to occur: (a) Seller sending or delivering to voestalpine Texas LLC (“**Buyer**”) any writing or instrument acknowledging acceptance; (b) any performance by Seller under this Order. Buyer may revoke this Order at any time prior to Seller’s acceptance of this Order.

This Order is governed by only these Terms and the terms in Part I of this Order. Any additional terms or conditions proposed by Seller, except as set forth in Part I of this Order, (a) shall be deemed to have been an attempt to materially alter these Terms and (b) shall not be deemed to be a part of this Order. The terms in Part I of this Order shall control over any contrary terms in these Terms.

**SECTION 2 – PERFORMANCE.** Seller shall Perform the Work at Buyer’s facilities located at the address specified in Part I of this Order (the “**Place of Performance**”) on the date specified in this Order (the “**Performance Date**”). Time is of the essence. If, on or prior to the Performance Date, Seller shall have failed to Perform the Work in full, (a) Seller has materially breached this Order and (b) Buyer may terminate this Order immediately.

Buyer may inspect the Work on or after the Performance Date. Buyer may reject all or any portion of the Work if Buyer reasonably determines the Work is damaged, defective, or otherwise not in conformance with this Order. During the Warranty Period (as defined in Section 9), Buyer may direct Seller to, at Seller’s own cost, promptly replace, repair, or re-render the nonconforming Work. Seller shall comply with such direction. Seller shall not substitute any material specified in this Order without Buyer’s prior written consent.

The order number must appear on all documents pertaining to this Order, including invoices, packing lists, correspondence, and shipping documents.

Buyer will furnish materials, equipment, transportation, and machinery only if and to the extent set forth in this Order.

**SECTION 3 - INVOICING AND PAYMENT.** The price of the Work is set forth in Part I of this Order. Seller shall invoice Buyer for the Order within 30 days of delivery. All invoices must be

itemized. Unless otherwise stated in this Order, Buyer shall pay all properly invoiced amounts due to Seller within 30 days after receipt of such invoice, except for any amounts disputed by Buyer. Seller shall be solely responsible for and pay all costs of delivering or performing the Work to the Place of Performance, in accordance with the INCOTERM 2010 provided in Part I of this Order.

**SECTION 4 – DISPUTES.** The parties shall act in good faith at all times in performing under this Order. Seller shall continue performing its obligations under this Order notwithstanding any dispute between the parties.

**SECTION 5 –RISK OF LOSS.** The risk of loss of any Goods shall pass in accordance with the INCOTERM 2010 provided in Part I of this Order.

**SECTION 6 - SUSPENSION OR TERMINATION FOR CONVENIENCE.** Buyer may suspend or terminate this Order, in whole or in part, at any time for Buyer’s convenience. If Buyer suspends or terminates the Order for Buyer’s convenience, Buyer shall (a) pay Seller for the Work already received and accepted by Buyer prior to the termination and (b) pay (i) the direct costs (but not any indirect or overhead costs) incurred by Seller with respect to any uncompleted Work plus a reasonable profit and (ii) any termination fees or other similar costs incurred by Seller from third parties. In the event of any suspension or termination for convenience by Buyer, Seller’s sole rights and remedies shall be as set forth in this Section 6. Seller waives all other claims against Buyer and its affiliates on account of any such suspension or termination for convenience.

**SECTION 7 - SUSPENSION OR TERMINATION FOR CAUSE.** If Seller fails to perform its obligations hereunder in any manner, Buyer shall be entitled to suspend or terminate for cause any or all portions of the Work, in which case Buyer shall be entitled to exercise any and all remedies available at law and in equity.

**SECTION 8 – COMPLIANCE WITH LAWS.** Seller and its subcontractors and suppliers of every tier shall comply with all applicable codes, laws, regulations, standards, and ordinances regarding the performance of the Work as well as Buyer’s environmental, health, and safety rules with respect to Work performed at Buyer’s facility and all applicable industry standards (collectively, “**Laws**”), as well as all Laws applicable to the Work as delivered to Buyer.

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**SECTION 9 – WARRANTIES ABOUT THE WORK.** Seller represents and warrants that Seller is qualified and able to Perform the Work. Seller warrants to Buyer that the Work shall (a) be new and free from any defects in workmanship, material, and design; (b) conform to applicable specifications; (c) meet all specified performance requirements and all safety requirements; (d) be free and clear of all liens, security interests, or other encumbrances; (e) not infringe or misappropriate any third party's intellectual property rights; and (f) be performed or provided in accordance with all Laws. The warranties provided in this Order (a) survive any delivery, inspection, acceptance, or payment, (b) are cumulative and in addition to any other warranty provided by law or equity, (c) are deemed made on the date that Seller accepts this Order and terminate on the second anniversary of the Performance Date (the period in clause (c), the “**Warranty Period**”).

**SECTION 10 – CONFIDENTIALITY.** Seller shall hold any information concerning Buyer's business or any other information about Buyer (including this Order and these Terms) in absolute and strict confidence. Seller shall not refer to Buyer in any advertising, press release, client list, or other promotional or marketing material.

**SECTION 11 – LIMITATION OF LIABILITY.** Seller waives any claim against Buyer for consequential, special, or punitive damages, including lost profits and business interruption.

**SECTION 12 - CONFLICT OF INTEREST.** Seller warrants that it has not given nor received any commissions, payments, gifts, kickbacks, lavish or extensive entertainment, or other things of value to or from any employee or agent of Buyer or any third party in connection with this Order and acknowledges that the giving or receiving of any such payments, gifts, entertainment, or other things of value is strictly in violation of Buyer's corporate policy and may result in the cancellation of this Order and all future orders. Seller shall notify Buyer of any such solicitation by any of Buyer's employees, agents, or any third party. Furthermore, Seller acknowledges and agrees to Buyer's Business Code of Conduct available at <https://www.voestalpine.com/group/en/group/compliance/downloads/code-of-conduct-for-voestalpine-business-partners.html>. If the Code of Conduct is not found at that link, Seller shall perform a diligent search of [www.voestalpine.com](http://www.voestalpine.com) to find the Code of Conduct or ask for Buyer to provide Seller with a copy of the Code of Conduct.

**SECTION 13 - INDEPENDENT CONTRACTOR RELATIONSHIP.** At all times, Seller shall be an independent contractor as to the Work. The detailed manner and method of performing the Work shall be under the control of Seller, Buyer having an interest only in the results obtained.

**SECTION 14 – INDEMNIFICATION. TO THE FULLEST EXTENT ALLOWED BY LAW, SELLER SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS BUYER AGAINST ALL LOSSES, CLAIMS, EXPENSES, AND DAMAGES WHICH MAY RESULT IN ANY WAY FROM, AND TO THE EXTENT OF, ANY BREACH OF WARRANTY, NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF SELLER OR ANY OF ITS AGENTS, EMPLOYEES, SUPPLIERS, OR SUBCONTRACTORS.**

**SECTION 15 - INSURANCE REQUIREMENTS.** Seller shall, at its own expense, maintain and carry the following insurance in full force and effect with insurance carriers acceptable to Buyer: (a) commercial general liability (including product liability) in a sum no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; (b) to the extent any work related to this Order is performed in the U.S., workers' compensation insurance in compliance with the applicable laws of each jurisdiction affected by this Order; and (c) to the extent any work related to this Order is performed in the U.S., automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of no less than \$1,000,000. Seller shall provide Buyer with a certificate of insurance evidencing the coverage specified in this Order within 10 working days after Seller's acceptance of this Order and shall also confirm that Buyer, to the fullest extent permitted by law, has been named as an additional insured with waivers of subrogation in favor of Buyer.

**SECTION 16 - FORCE MAJEURE.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order, except for the obligation to make payments which are already accrued, to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence (“**Force Majeure Event**”). The following is a non-exhaustive list of events that are not Force Majeure Events: (a) Seller's economic hardship, (b) changes in market conditions, or (c) work stoppages, labor disputes, or worker strikes of Seller's employees,

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suppliers, or subcontractors. Seller shall diligently work to (a) minimize the effects of any Force Majeure Event, and (b) resume performance under this Order.

from the non-prevailing party.

*[End of Terms and Conditions for Goods and Services]*

**SECTION 17 - NOTICES.** All notices, consents, claims, demands, waivers and communications hereunder, other than routine correspondence in the ordinary course of business, (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth in Part I of this Order or to such other address that may be designated by the receiving party in writing. Any Notice must be delivered by personal delivery, nationally recognized overnight courier (all fees pre-paid), or certified mail (return receipt requested, postage prepaid). A Notice is effective only upon receipt of the receiving party, and if the party giving the Notice has complied with the requirements of this Section 17.

**SECTION 18 - MISCELLANEOUS.** The words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation.” Seller shall not assign this Order or any rights, obligations, or monies due or to become due under this Order without the prior written consent of Buyer, and any purported assignment in violation of this Section 18 is null and void. All matters arising out of or relating to this Order shall be governed by and construed and interpreted according to the laws of the State of Texas, without regard to principles of Texas law which would require the application of the laws of any other jurisdiction. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and/or state courts located in Nueces County, Texas. This Order is comprised of only Parts I and II (and any attachments), and contains the complete and entire agreement between the parties hereto, and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. **NO CHANGE, ADDITION, OR MODIFICATION OF ANY OF THE TERMS OR CONDITIONS OF THIS ORDER SHALL BE VALID OR BINDING ON EITHER PARTY UNLESS IN A WRITING SIGNED BY BUYER.** If any term or provision of this Order is found invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term of this Order. If any provision of this Order is found during dispute resolution proceeds to be invalid, illegal, or unenforceable, the adjudicator shall be entitled to reform or modify such offending provision so that it is enforceable to the maximum extent allowed by law. The prevailing party in any legal proceeding brought under this Order shall be entitled to recover its reasonable attorney’s fees, related legal expenses, and court costs