

STANDARD TERMS AND CONDITIONS FOR RAILS

April 2008

A. STANDARD TERMS AND CONDITIONS

1. Closure of Contract

1.1 All our deliveries and services, including future deliveries and services, and including proposals, consultations and other supplementary services, shall be performed solely on the basis of the following terms and conditions; this shall also apply to all business transactions for purposes of adjustment.

1.2 Our quotations shall be subject to alteration without notice. Sales contracts and other agreements - especially insofar as these deviate from our Terms and Conditions - shall become binding only after confirmation in writing by us. Budget offers shall always be non-binding.

We reserve the right to amend binding offers during the period of validity, provided that no written acceptance has been received from the Buyer.

1.3 Cancellations and suspensions of orders shall not be accepted.

1.4 Any withdrawal from the Contract shall in any case only be possible as long as we have not yet taken action in its performance; action in its performance shall be regarded in particular as the start of production for a delivery. All disadvantages resulting thereof shall have to be reimbursed.

1.5 The Buyer's terms and conditions of sale shall not obligate us unless we have explicitly recognized same. Absence of contradiction shall in no case signify our agreement.

1.6. The Buyer is obliged to disclose his VAT ID to us prior to signing the contract.

2. Prices, Conditions of Payment

2.1 Prices shall be ex works from which they are delivered, exclusive of packaging and charges for railway cars.

2.2. Payment shall be due no later than the 15th of the month following the month of delivery ex works and shall be made with neither setting off nor retention.

- 2.3 For 25% of the invoiced amount we shall accept in payment discountable and properly tax paid bills of exchange, with reservation of previous agreements. Payments through bills of exchange and cheques shall be credited conditional on receipt with deduction of expenses and with value date of invoice of the day on which we have the equivalent value at our disposal. Payments using bills of exchange shall not count as cash payments.
Discounting expenses, bank fees and bill stamp duty, if any, shall be covered by the Buyer.
- 2.4 If the payment date stipulated in Section 2 is not met, interest and other charges shall be invoiced, these being calculated on the basis of the conditions for operating resources credit prevailing during the period of late payment. However, the minimum interest shall be based on a rate 3.5 % above the relevant interest rate of the European Central Bank.
- 2.5 Regardless of the term of any bills of exchange received and credited, all monies owing to us shall be due for immediate payment if terms of payment are not complied with or if we become aware of circumstances likely in our view to diminish the creditworthiness of the Buyer. We shall then have the right to make any remaining deliveries only against payment in advance or to withdraw from the Contract after a reasonable period of grace and to claim damages for non-performance.
We may also forbid the resale or processing of the goods delivered and demand their return at the cost of the Buyer, and revoke the right of the Buyer to collect payment in accordance with Reservation of Ownership Section 3.6. The Buyer shall already agree now to the removal of the delivered goods in the above cases.
- 2.6 We shall have the right to securities usual for the kind and extent for monies owing to us, also insofar as these are conditional or of limited term.
- 2.7 In the event of a business transaction being closed in a foreign currency, conversion shall be based on the rate of exchange published by the European Central Bank at the moment of agreeing the price, whereby the Buyer shall carry the exchange rate risk, i.e. if the exchange rate changes, the Buyer shall at the due date pay in the foreign currency that amount corresponding to the Austrian schilling amount agreed at the time the price was fixed. Should it prove impossible to make payment by the method or route agreed, the Buyer shall be obligated to make payment in the way we choose.
In the event of difficulties arising with the transfer of the invoice amount into the Republic of Austria, all ensuing disadvantages shall be carried by the Buyer, regardless of the cause of said difficulties.
- 2.8 On grounds of the authorization granted to us by firms belonging to our group, we shall have the right to set off with all amounts owed to us by the Buyer, regardless

of the respective legal basis, and against all payments owed to the Buyer by us or our group companies, regardless of the respective legal basis. This shall also apply if cash payment has been agreed for one side and payment through bill of exchange or other performance has been agreed for the other.

If applicable, these agreements shall apply only to the balance. If monies owing are due on different dates, monies owing to us shall become insofar due no later than the due date of the amount owed by us and shall be set off with equivalent value.

3. Reservation of Ownership

- 3.1 All delivered goods shall remain our property (goods under reservation of ownership) until all monies owing to us have been paid, in particular also the respective balances owing, regardless of their legal basis. This shall also apply if payments are made in respect of specially designated monies owing.
- 3.2 The Buyer may sell the goods under reservation of ownership only in normal business transactions under its standard terms and conditions and if it is not in arrears with payment, however, under the condition that it agrees a reservation of ownership with its customer and that the monies owing from the resale in accordance with Sections 3 to 5 are assigned for payment to us. In the case of resale our reservation of ownership shall not be cancelled until the selling price has been paid by the Buyer's customer. The Buyer shall have no other right of disposal over the goods under reservation of ownership.
- 3.3 The monies owing to the Buyer from the resale of the goods under reservation of ownership shall already now be assigned for payment to us. They shall serve as security to the same extent as the goods under reservation of ownership.
- 3.4 In the event the goods under reservation of ownership are sold together with goods not bought from us, the assignment of the monies owing from the resale shall apply only in the amount of the value of our invoice for the respective resold goods under reservation of ownership.
- 3.5 In the event the goods under reservation of ownership are used by the Buyer for performing a work or job order contract, the monies owing from this contract shall be subject accordingly to Sections 3 and 4.
- 3.6 The Buyer shall have the right to collect monies owing from the sale in accordance with Sections 2 and 5 until revocation by us, to which revocation we shall be entitled at any time. We shall exercise our right of revocation only in the cases stated in Prices, Conditions of Payment, Section 5. The Buyer shall in no case have the right to assign the monies owing. At our demand it shall be obligated to inform its customer immediately about the assignment to us - insofar as we do not

do this ourselves - and to give us the information and documents necessary for collection.

- 3.7 In the event the value of the existing securities exceeds the secured monies owing by more than 10 %, we shall be obligated on demand from the Buyer to release securities of our choice to that extent. The Buyer must inform us immediately of an attachment or other impairment by a third party.
- 3.8 In the event the reservation of ownership or assignment is invalid according to the law within whose area the goods are located, security corresponding to the reservation of ownership or the assignment shall count as agreed in this area. If the cooperation of the Buyer is necessary for this, it shall take all necessary actions for justifying and upholding such rights.

4. Deficiencies, Delivery of Goods not Complying with the Contract

Deficiencies of the goods, including the lack of promised characteristics, shall be dealt with in accordance with the following rules:

- 4.1 Decisive for compliance of the goods with the Contract shall be the moment of leaving the works.
- 4.2 After the Buyer has completed an agreed acceptance of the goods, lodging of complaints about deficiencies that could have been detected during the acceptance procedure shall be excluded.
- 4.3 The lodgement of a warranty claim shall not entitle the Buyer to withhold due payments.
- 4.3 Complaints by the Buyer about deficiencies must be received by us in writing, by telex or by telegram within 14 days of arrival of the goods at the place of delivery. Deficiencies which could not have been detected within this time limit even in the course of the most careful inspection must be reported immediately after discovery with immediate cessation of any treatment or processing, but in any case no later than 3 months after receipt of the goods. After expiry of the three-month time limit any liability for deficiencies for whatever reason shall be excluded.
- 4.4 In the case of justifiable complaints about deficiencies recognized by us and registered within the time limit we shall take back the deficient goods and deliver fault-free goods in their place. Instead of this, we may at our discretion compensate the reduced value. In the event of return deliveries, our order number must be stated in the consignment note, the dispatch documents and the transport invoice.

- 4.5 In the event we are in arrears in respect of our obligation to deliver replacements, the terms of Closure of Contract Section 4 shall apply.
- 4.6 Should the buyer not give us the opportunity to confirm the deficiency for ourselves, in particular by not making immediately available to us the goods or samples that are the subject of the complaint, all claims regarding deficiencies shall become invalid.
- 4.7 Claims in respect of deficiencies shall become invalid no later than one month after written rejection by us of the complaints about deficiencies.
- 4.8 In the case of goods sold as lower grade material - e.g. so-called IIa material - the Buyer shall have no right to claim in respect of any deficiencies.
- 4.9 These terms shall also apply for the delivery of goods not covered by contract.

5. Manufacture Liability

- 5.1 For goods produced by us on the basis of design data, drawings or models provided by the Buyer our warranty shall not be based on proper design, drawings and models, but shall be limited to manufacture of the goods in compliance with the information provided by the Buyer. If there are doubts, the information shall be interpreted in accordance with the relevant European standards.

6. Place of Performance and Jurisdiction

- 6.1 The place of payment for the Buyer and the place of jurisdiction for both parts of the contract is Leoben, Austria. The place of performance of all contractual obligations is the location of the works making the actual delivery.
- 6.2 We reserve the right to take legal action against the Buyer at any competent court.
- 6.3 Disputes in connection with export deliveries to companies based in a foreign country shall be settled in accordance with the arbitration regulation of the ICC International Court of Arbitration in Vienna (Vienna Conventions) before one or more arbitrators appointed according to the above conventions. The arbitration proceeding shall be held in German.

7. Applicable Law

- 7.1 Contracts shall be governed by Austrian law, excluding the principles of conflict of laws (Convention on the Law Applicable to Contractual Obligations EVÜ,

Austrian Code on Private International Law IPRG). Contracts shall not be subject to the UN Convention on Contracts for the International Sale of Goods.

The contractual language is German, provided that both parties agree to this. Otherwise, English shall be used. For Contracts translated into English, the English version shall be valid.

8. Severability

- 8.1. The declaration or decision that one or more of the clauses of these Standard Terms and Conditions are null and void shall have no effect on the validity of the remaining clauses.

B. PERFORMANCE OF DELIVERY

1. Works Making Delivery

Delivery shall be made from the production of a work chosen by us.

2. Delivery Times, Dates of Delivery

2.1 The stated delivery times and dates of delivery shall be subject to alteration without notice, i.e. not legally binding. Claims for damages of any kind and insistence on delivery times are therefore excluded. However, we shall strive to fulfil the delivery times and the dates of delivery.

The Buyer shall have no right to refuse partial deliveries.

2.2 Notwithstanding the stipulation in Section 1, the delivery times shall begin with the date of our confirmation of order, however, not before complete clarification of all details of the order and the provision of any necessary certificates from domestic and foreign authorities.

Delivery times and dates of delivery shall refer to the moment of dispatch ex works. In the event that goods cannot be dispatched in time due to causes for which we are not responsible, the above terms shall be complied with timely notification that the goods are ready for dispatch.

They shall be valid with the notification of readiness for dispatch if the goods cannot be dispatched punctually for reasons beyond our control.

Notwithstanding our rights deriving from delayed performance on the part of the Buyer, the delivery times shall be extended by the length of time by which the Buyer is in arrears with its obligations towards us from this or other sales contracts.

The same shall apply analogously for dates of delivery.

2.3 The preceding Section 2 shall also apply if fixed delivery times or dates of delivery were explicitly agreed.

2.4 In the event we are in arrears, the conditions of Closure of Contract, Section 4 shall apply.

3. Acceptance

3.1 If an acceptance procedure is agreed, this may only take place at the works making delivery, immediately after notification of readiness for acceptance. The personnel

costs of acceptance shall be carried by the Buyer; the material costs of acceptance shall be charged by us according to our price list.

- 3.3 We shall notify the Buyer of the date and time of the acceptance inspection, so that the Buyer can arrange to be present at the inspection, or to be represented by an authorised representative.
- 3.4. If acceptance is delayed or incomplete, we shall have the right to send the goods without acceptance or to store them at the cost and risk of the Buyer. On dispatch or storage the goods shall count as delivered and accepted in accordance with the Contract in every respect.

4. Dimensions, Weights, Grades

- 4.1 Deviations of dimension, weight and grade shall be permissible in accordance with the relevant ÖNORMs or DIN standards or accepted practice, insofar as nothing specific has been agreed. Should calculated weights be decisive, the normal surcharge shall be applied for roll tolerances and similar.
- 4.2 Weights shall be determined by our weighmasters and shall be decisive for the calculation. Proof of weight shall comprise unchallengeable presentation of the weight slip, also insofar as this consists of mechanically recorded data. For the calculation the total weight dispatched shall apply, regardless of the means of transport used for making delivery. No warranty shall be given for a piece number or composite number or similar stated in the invoice. Differences to the calculated individual weights shall be distributed proportionally over these.

5. Force Majeure and other Impediments to Delivery

Incidents of *force majeure* shall entitle us to postpone the delivery for the duration of the impediment plus a reasonable run-up time, or to withdraw partly or wholly from that part of the Contract not yet performed. Strike, lockout and other circumstances that seriously hinder or prevent delivery shall count as equivalent to *force majeure*, regardless of whether said circumstances arise at us or at our subcontractors.

The Buyer may demand from us a declaration as to whether we wish to withdraw or to deliver within a reasonable time limit. In the even we do not make a declaration, the Buyer shall be able to withdraw in accordance with the terms of Closure of Contract, Section 4.

6. Impermissible Delivery to Third Party

- 6.1 Goods that are not sold explicitly for export may not be transferred unprocessed into regions outside the Republic of Austria.
- 6.2 Goods that are sold for export and have not been processed may be neither left within the area of the Republic of Austria nor delivered back there or transferred back, and may also not be transferred to any country other than the country stated in the order.
These goods may also not be processed within the area of the Republic of Austria.
- 6.3 The buyer shall be obligated at our demand to provide proof of where the goods are located.
- 6.4 The Buyer shall obligate his customer to comply with the conditions for corresponding further transfer in the same way as stipulated in Sections 1 to 3, shall substantiate any claims arising therefrom and at our demand shall assign to us these claims for proof, damages and contractual penalty. It shall be obligated to notify us immediately of infringements by its customer against the obligations incumbent on said customer as defined by Clause 1.
- 6.5 In the event the Buyer or its subsequent customer fails to comply with its above obligations, the Buyer shall compensate us for the lost profits and shall pay a contractual penalty of 30 % of the agreed selling price.
- 6.6 The Buyer shall be responsible for the acquisition of licenses and other authorisations required for the export of the goods and shall bear the associated costs.

7. Dispatch and Transfer of Risk

- 7.1 Provided there are not separate agreements, the goods are dispatched according to the ex works clause of the INCOTERMS terms as amended. Loading of the goods shall not constitute acceptance of passing of risk.
- 7.2 If the goods are transported by the lorry of the recipient, our price list shall continue to apply even if a different price list should appear in the meantime. In the event of misdirection, the Buyer shall pay both an amount equivalent to 10 % of the value of the goods and the value of a too high price adjustment.
- 7.3 Goods notified as ready for dispatch must be called immediately. In the event delivery of the goods cannot be requested within 7 days of notification of readiness for dispatch and if we are not responsible for the dispatch not complying

with the contract, we shall have the right at our discretion either to send them or to store them at the cost and risk of the Buyer and to invoice them as delivered ex works.

- 7.4. If nothing different has been agreed, the goods shall be delivered unwrapped and not protected against rust.
- 7.5 We shall have the right to choose with exclusion of any liability both the means of transport and protection, which - as shall also apply for covered and special wagons - shall be invoiced separately, and also the dispatch route.
- 7.6 With the transfer to the carrier or freight forwarder, however no later than the departure from the works or store, the risk - including the risk of confiscation - shall be transferred to the Buyer - e.g. also in the case of fob and cif transactions. Aside from this, insofar as no other rulings have been specified in these Terms and Conditions the Incoterms 1990 or the latest edition thereof shall apply for the wording of the different conditions of sale.
- 7.7 Should the buyer not give us the opportunity to confirm the deficiency for ourselves, in particular by not making immediately available to us the goods or samples that are the subject of the complaint, all claims regarding deficiencies shall become invalid.
- 7.8 Claims in respect of deficiencies shall become invalid no later than one month after written rejection by us of the complaints about deficiencies.
- 7.9 In the case of goods sold as lower grade material - e.g. so-called IIa material - the Buyer shall have no right to claim in respect of any deficiencies.
- 7.10 These terms shall also apply for the delivery of goods not covered by contract.

C. LIABILITY

Our liability shall be defined exclusively by the agreements concluded in the sections above. All claims not acknowledged there explicitly, i.e. claims for damages including consequential damage - regardless of the legal basis - shall be excluded.

This exclusion shall not include, however, claims under product liability law in respect of personal injury and material damage that a consumer suffers in the sense of product liability law.

Overall liability shall be limited to the cover of our manufacturer's liability insurance. In the event of breach of contractual obligations, our liability shall be limited to the material costs of the delivery that caused the damage.

D. MISCELLANEOUS

1. Consecutive Delivery

In the case of consecutive delivery the corresponding documents shall be submitted in time with the required order of part deliveries. If this requirement is not met, we shall have the right after setting a reasonable period of grace to divide the order ourselves and deliver the goods, or to withdraw from the outstanding part of the agreement and claim for damages.

2. Part Delivery

We shall have the right to make part deliveries. The Buyer shall not carry the additional costs if we are responsible for this. The price shall remain unchanged. Every part delivery shall count as an independent transaction.

3. Deviating Quantity

In the case of deviating quantities, i.e. underdelivery or overdelivery, we shall be entitled but not obliged to sell the excess quantity to the Buyer at the price valid on the respective date.

4. Place of Jurisdiction

Place of jurisdiction shall be the legally responsible ordinary court at the seat of voestalpine Schienen GmbH or, at its discretion, the responsible ordinary court at the seat of the Buyer. The buyer shall be obligated to confirm in writing to voestalpine Schienen GmbH at its demand the existence of this agreement as to the place of jurisdiction.

5. Applicable Law

Austrian substantive law shall apply. The United Nations Convention on Contracts for the International Sale of Goods shall be excluded. The contractual language shall be German.

6. Partial Ineffectiveness

In the event individual terms of these Terms and Conditions are wholly or partly invalid, all remaining terms of these Terms and Conditions shall retain their validity.