

# **GENERAL BUSINESS TERMS AND CONDITIONS**

for the purchase of plants, plant components and services

**voestalpine Bahnsysteme division**

**voestalpine Bahnsysteme GmbH & Co KG**

**voestalpine Schienen GmbH**

**voestalpine Stahl Donawitz GmbH & Co KG**

**voestalpine Austria Draht GmbH**

**voestalpine Tubulars GmbH & Co KG**

**April 2008**

1) DEFINITIONS	3
2) GENERAL TERMS	3
3) QUALITY AND ENVIRONMENTAL MANAGEMENT	4
4) PRICING	4
5) INVOICING AND PAYMENT	5
6) SUBCONTRACTING, COUNTER TRADE	6
7) TERMS, COMPLIANCE WITH AGREED SCHEDULES	6
8) CONTRACTUAL PENALTIES, DEFAULT	7
9) COMPLETENESS, LIABILITY, REPLACEMENT	8
10) WARRANTY, ACCEPTANCE	8
11) DOCUMENTATION	11
12) INSPECTION, TESTING, SCHEDULE CONTROL	12
13) TERMINATION OF CONTRACT, SUBSTITUTE PERFORMANCE	12
14) SHIPPING, STORAGE, DOCUMENTATION OF ORIGIN	13
15) TRANSFERABILITY	15
16) TECHNOLOGY TRANSFER, EXPORT LICENSES, IMPORT LICENSES	15
17) THIRD PARTY RIGHTS, PATENTS, INVENTIONS, IMPROVEMENTS CONFIDENTIALITY, ADVERTISEMENT	15
18) FORCE MAJEURE	16
19) ARBITRATION PROCEEDINGS	16
20) DEPLOYMENT OF PERSONNEL, INSTRUCTION, TRAINING	17
21) CANCELLATION, SUSPENSION	17
22) CONSTRUCTION COORDINATION ACT (BauKG)	17
23) MISCELLANEOUS	18

1) **DEFINITIONS**

in General Business Terms and Conditions:

Customer

Contractor = party legally bound by an order (by letter or facsimile)

Order = agreement between the Customer and Contractor regarding the goods and/or services to be provided by the Contractor

Documentation = all agreed, general, logistic, technical and other information in the form of text or drawings, or in electronic format

Inspection team = personnel of the Customer or its authorised representative

2) **GENERAL TERMS**

The goods and services provided by the Contractor are destined to become part of the overall plant installed by the Customer.

Due to the importance of the goods and services in relation to a complex plant, the Contractor undertakes to complete the order with a degree of diligence that exceeds the normal level of care.

The Contractor is obliged to obtain all information that might determine, or affect the conditions with respect to the plant, the environment and the processing technologies under which its deliveries are made and its services are provided.

Taking into consideration the above, the GENERAL BUSINESS TERMS AND CONDITIONS regulate the key issues in the relationship between the Customer and the Contractor.

Agreement on these GENERAL BUSINESS TERMS AND CONDITIONS shall void the purchasing conditions printed on the reverse side of the order form.

The general business terms and conditions of the Contractor, if any, shall not be applicable, unless they are explicitly accepted by the Customer in writing.

Order of precedence

Offers by the Contractor shall only be valid, if they have been explicitly confirmed by the Customer as an integral part of the delivery.

In the event of contradictions and deviations, the following order of precedence applies:

- Written order specifications, including listed order documents that form an integral part of the orders, especially the minutes of the negotiations
- General Business Terms and Conditions for the Purchase of Plants, Plant Components and Services

- Enquiry documents

If, in the order documentation of the Customer, reference is made to offer documents, these documents are only applicable as regards technical specifications. Such reference shall however not imply acceptance of the business terms and conditions of the Contractor.

Amendments and additions to the order, including its enclosures, shall only be valid and binding, if they have been accepted in writing by the Customer.

The General Business Terms and Conditions of the Customer are deemed accepted by the Contractor latest at the beginning of execution of the order.

#### Validity of orders

Orders are only legally binding if they are issued in writing by the purchasing department of the Customer.

For orders, changes to orders and extensions otherwise made, by other means or by other parties, where it is not clear whether they have been made with the consent of the Purchasing department of the Customer, the Contractor must inform the Customer's purchasing department of the order, change or extension by means of a confirmation. Otherwise, the Customer shall be entitled to refuse acceptance of the delivery or service, on the basis that it is not valid.

After placement of the order, the Contractor shall provide the Customer with the contact details of the persons responsible for the order on the part of the Contractor (and its principal suppliers) in the areas of

- Technology
- Logistics (inspection, testing, checks, shipping, packaging)
- Sales

The details of the contacts on the part of the Customer are included in the order and/or the enclosed documents.

### 3) **QUALITY AND ENVIRONMENTAL MANAGEMENT**

The Contractor and its subcontractors/suppliers are obliged to execute the order in compliance with principles of the quality and environmental management systems laid down in the applicable standards of the ISO 9000 and ISO 14000 series.

The Customer shall be entitled to audit the quality and environmental management system of the Contractor and its subcontractors for compliance. Such audits must be carried out at a date and time agreed between the parties.

### 4) **PRICING**

#### Prices

The prices agreed upon in the order include all costs arising in connection with delivery, services, documentation and funding at the agreed conditions, etc. as required in the specifications, terms and conditions and the order documentation.

The Customer shall only bear those costs that have been explicitly identified in the order documentation as being payable by the Customer.

Extensions and additions to an order, in particular those for spare and wear parts, shall be subject to the same conditions and price reductions as the principal order.

Unless agreed otherwise, the transfer of ownership is governed by INCOTERMS 2000, analogous to the passing of the risk. If the scope of delivery and services includes assembly and installation of the goods, the risk shall pass upon the final acceptance at the building site.

Unless otherwise agreed by the parties, the Contractor is obliged to comply with all statutory regulations and rules that apply in the country of the Customer, in particular as regards technical standards, taxation, approvals, licenses, customs duty, registration, etc.

The Contractor shall also be responsible for insurance cover, if required, and must inform the Customer on the scope of the insurance, the insured sum and the excess to be covered by the Contractor.

### Pricing

Unless agreed otherwise in the order, the following pricing rules apply:

The prices are fixed net prices, exclusive of VAT, DDP, AG according to INCOTERMS 2000, and must include documentation, technical inspection and testing, coating, corrosion protection, labelling, signing, etc.

## 5) **INVOICING AND PAYMENT**

### 5.1 Payment

Unless agreed otherwise, payment of the agreed instalment is due within 45 days after receipt of the written request for payment or invoice, and after compliance with all requirements and specifications laid down in the order, especially also proper documentation.

Payment shall not be interpreted as acceptance of the delivery, documentation or performance of the Contractor, and thus does not constitute a waiver of claims the Customer might have in relation to liability, warranty, documentation, compensation for damages, etc. arising from failure of performance or defects.

Due amounts may be set off against counterclaims from other business transactions of the Customer, or companies that belong to the same group as the Customer, with the Contractor.

### 5.2 Retentions/guarantee retention

Unless otherwise agreed by the parties, the Customer shall be entitled to retain 10 percent of the order value as an interest-free guarantee for possible claims regarding compensation for damages or warranty claims until latest 45 days after the end of the warranty period.

Redemption of this retention by a bank guarantee is only possible after prior arrangement between the parties.

In this case, the Customer shall only consider an acceptable, irrevocable and abstract bank guarantee that is free of charge; term of validity: date of end of warranty period plus 45 days.

The last due payment will be released only after submission of the final invoice conforming to the conditions laid down in the order and after fulfilment of all agreed deliveries and performances.

### 5.3 Invoicing

Invoices must be submitted in duplicate to the Customer.

## 6) **SUBCONTRACTING, COUNTER TRADE**

### Subcontracting

The Contractor is obliged to inform the Customer in advance, if it intends to subcontract substantial parts of the delivery or services and to seek the Customer's written approval.

Not subject to this obligation are standard parts and equipment listed in a supplier list approved by the Customer prior to the placing of the order.

The Contractor shall be fully liable for the goods and services supplied by its subcontractors, in particular as regards

- quality and protection of the environment
- technical standards
- compliance with subcontract specifications
- customs notification, customs clearance, import, transport, etc.

### Counter trade

All subcontracts must be accepted by the Customer. For subcontracts with a value of EUR 70,000.00 or more, the Customer reserves the right to enter into a direct contract with the subcontractor.

Such a direct contract between the Customer and a subcontractor must be made at conditions that do not in any way affect the delivery terms and other conditions of the supply covered by these General Business Terms and Conditions.

## 7) **TERMS, COMPLIANCE WITH AGREED SCHEDULES**

7.1.1 The date of submission of the documentation is the date on the receipt stamp of the Customer, or the date of the Customer's confirmation of receipt.

The documentation is deemed supplied within the agreed terms, if it is complete and submitted in accordance with the respective order agreements/specifications and the applicable general business terms and conditions.

7.2.1 A delivery or service is deemed fulfilled, if it is completed in full, including submission of the complete and correct documentation, on the date specified in the Contractor's obligations in accordance with the order specifications, its integral parts and the general business terms and conditions.

If the Contractor becomes aware that it will not be in a position to meet the agreed delivery dates and terms, it is obliged to notify the Customer immediately in writing, stating the grounds for and estimated duration of the delay.

If there are obligations on the part of the Customer regarding compliance with certain dates and terms in relation to an order for goods, the Contractor is obliged to remind the Customer in due course and to provide proof of the reminder. If the Contractor fails to do this, the Customer shall

not be deemed in any way responsible for any subsequent delays in the delivery of goods and provision of services.

In the event of the Contractor being unable to comply with the target delivery date, due to the delayed provision of documents/information by the Customer, and despite having notified the Customer of the urgency, the agreed target dates shall be moved back by maximum the period of the delay caused by the Customer. Additional costs that can be documented and are caused by this delay shall be assigned by mutual agreement between the Customer and the Contractor.

The moved back target dates and schedules shall be the new reference date for penalties for default.

In the event of a potential or actual delay, irrespective of its cause, the Contractor shall ensure maximum possible flexibility as regards its performance, in order to minimise delays.

### Storage

In the event of changes to the agreed delivery dates that are not caused by the Contractor, it shall agree to properly store the goods on behalf of the Customer for a period of up to three months at the Contractors expense and risk.

The parties may enter into separate arrangements regarding the payment for such goods against a declaration of transfer of ownership and/or bank guarantee, etc. Such arrangements must be made in writing.

Deliveries of all goods, partial deliveries and/or early deliveries are only permitted with the prior written consent of the Customer (shipping release).  
Early deliveries shall not oblige the Customer to make early payments.

## 8) **CONTRACTUAL PENALTIES, DEFAULT**

In the event of the Contractor failing to meet the dates and deadlines laid down or if the goods do not conform to the specified properties laid down in the order, it shall be liable to pay contractual penalties, which are based on the total order value and are laid down in the minutes of the negotiations. The contractual penalties shall be set off against outstanding invoiced amounts or other amounts payable to the Contractor.

### 8.1 Delay

#### 8.1.1 in delivery/performance

1% of the overall order value per week of delay or part thereof, to a maximum of 10% of the overall order value.

This rule also applies for fixed separate target dates, provided there are no other agreements in this matter between the parties.

#### 8.1.2 in the supply of the documentation

0.5% of the overall order value per week of delay or part thereof, to a maximum of 5% of the overall order value.

### 8.2 Contractual penalty for non-compliance with specified properties/warranties/services/performance data, etc.

Separate detailed specifications are laid down in the respective order, technical specifications and/or enclosures of the order, in accordance with article 10 "Warranty, acceptance".

## General

The Contractor is obliged to pay a contractual penalty from the first day of the delay, without the Customer having to prove that the delay resulted in damage.

The obligation to pay contractual penalties does not require the Customer to state its reservations upon acceptance of the delivery, be it on time or late.

Payment of a contractual penalty shall not release the Contractor from its obligations as regards compliance with the terms of the contract and its general liability and warranty obligations.

See also

- Article 6 "Subcontracting, counter trade"
- Article 9 "Completeness, liability, replacement"
- Article 10 "Warranty, acceptance"
- Article 13 "Termination of contract, substitute performance"

### 9) **COMPLETENESS, LIABILITY, REPLACEMENT**

The Contractor and its suppliers are obliged to ensure completeness of the delivery of goods/service/documentation, allowing for perfect installation and fault-free continuous operation, irrespective of whether all required deliveries and performances are listed in detail in the order specifications.

Completeness also includes that the plant/plant components are suitable for the intended purpose and are fully functional when operated in compliance with the safety instructions, applicable standards and statutory regulations and under the conditions and influences that can be reasonably expected at the location of installation.

Defects for which the Contractor is responsible must be eliminated by the Contractor without delay and at no cost to the Customer, whereby the Customer is entitled to demand repair, replacement and/or additional delivery, taking into account the project-specific situation and requirements as regards the time schedule. Irrespective of the above clause, the Customer is also entitled to demand a price reduction or rescission.

The order is only deemed fulfilled after the defects have been rectified, the relevant envisaged measures have been taken and the agreed warranty period has lapsed.

The Contractor is also liable for damage caused by deficiencies in the shipping documents and the documentation of origin, the packaging of the goods, incorrect dispatch handling, loading, defective corrosion protection, incorrect or incomplete parts identification and signing off (whereby spare parts must be signed off and packed separately) as well as deficiencies in relation to the acquisition of approvals and licenses, official documents, etc. and shall bear all related costs.

Pursuant to the Austrian Product Liability Act, the Contractor's liability is unlimited.

### 10) **WARRANTY, ACCEPTANCE**

The Contractor guarantees that the delivery/service is complete/performed in accordance with the order specifications and that the goods are suitable for the intended use and free of defects; it also guarantees that the design, suitability, manufacturing methods and the guaranteed properties conform to the latest state of technology at the time of the order, comply with all applicable regulations, and contain only new material of suitable top class quality.

Changes to the design may only be made with the prior written consent of the Customer.

The Contractor guarantees that its deliveries and services conform to the standards, statutory regulations and rules applicable in Austria, and that all dimensions are based on the metric system, unless otherwise agreed by the parties. If there are no applicable explicit Austrian

standards, regulations and rules, the Contractor must apply comparable standards, regulations and rules, preferably from Germany.

The Contractor is obliged to inform the Customer without delay of relevant technical innovations of which has become aware.

The application of standards, regulations and specifications other than those applicable under Austrian law, is only permitted with the written consent of the Customer, irrespective of clause 2 in this article (article 10, paragraph 3).

Lack of information shall not be interpreted as approval of a special regulation.

Any total or partial interruption of proper industrial continuous operation occurring during the warranty period that exceeds the permissible fault time shall result in the extension of the warranty period for the duration of the interruption.

In the event of small defects/deficiencies (of a value of around EUR 10,000.00 per case) or in cases where the defect must be eliminated without delay, the Customer is entitled to take the necessary measures for elimination or repair of the defect at the expense of the Contractor, without prior notification of the Contractor. Such remedy shall not affect the Customer's rights under the Contractor's warranty.

This applies also in cases where the Contractor fails to eliminate a defect within due time, despite having been requested to do so (and having been granted short yet adequate time for this task, especially during phases where adherence to the time schedule is critical, such as test operation, etc.).

The Customer shall notify the Contractor without delay of the elimination of the defects/deficiencies.

#### 10.1 Liability for defects

Unless otherwise agreed by the parties, the Contractor shall be liable for defects for a period of 24 months from the date of the ACCEPTANCE of the complete plant (positive performance test results, e.g. of a steel mill), and not longer than 36 months from the date of the proper and complete final delivery of the goods, provided that the Contractor is not responsible for the delayed acceptance.

Normal wear and tear is not covered by warranty, unless specifically agreed otherwise.

The Contractor undertakes to eliminate, at the request of the Customer and within the time period set by the Customer, any defects occurring during the warranty period and for which the Contractor or its subcontractors are responsible, irrespective of whether these defects could have been detected at an earlier stage. The defects are to be eliminated by repair or replacement. All costs in connection with such repairs or replacements are to be borne by the Contractor.

In the event of rectification of the defect or replacement of defective parts, the respective subunit or machine is covered by warranty for a period of 24 months from the date of the successful resumption of the operation of the affected subunit or machine.

#### 10.2 Performance guarantee

The Contractor guarantees continued compliance with all agreed performance values as laid down in the minutes of the negotiations.

The Contractor guarantees to make all deliveries and provide all services required for this within a reasonable period of time and at its own cost, and to complete all repairs, adjustments, installation work and provisions of additional equipment and/or take all measures necessary to ensure that all specified performance values are complied with on a continuous basis.

The Contractor shall provide additional personnel, at its own cost, for the assessment of the acceptance test.

If the guaranteed values are not reached after completion of additional tests that must be approved by the Customer and completed within an agreed period, the Customer is entitled to resort to remedies to which it is entitled by law, in particular rescission, reduction in value and compensation for damage. Additional contractual penalties that apply in such events might be laid down in detail in the order.

### 10.3 Guarantee for engineering, documentation, consultancy services

The Contractor guarantees the correctness and completeness of its engineering, consultancy and documentation services, and the correctness of verbal and written instructions and actions in the event of deployment of personnel.

The Contractor shall be liable for any damage caused by deficiencies in its engineering, documentation and consultancy services.

### 10.4 Guarantee for replacement, wear and retooling parts

The warranty period for replacement and retooling parts begins at the date of installation or commissioning of the respective parts and ends latest thirty months after delivery.

### 10.5 Acceptance

ACCEPTANCE takes place when the following conditions are fulfilled:

- fulfilment of all deliveries and services by the Contractor, in compliance with the order specifications
- proper and complete delivery of all documents
- signing by both parties of an acceptance certificate, certifying that the test operation, including performance test, of the entire plant have been completed successfully.

If the Customer accepts the delivery/service, while certain agreed performance values were not reached in the performance test, an acceptance certificate must be signed by the parties, containing the values reached in the last completed performance and listing the rectifications yet to be made in detail.

Assessments of reductions in value or contractual penalties arising from a situation are only binding on the Customer, if made by its purchasing department.

### 10.6 Additional definitions

The following additional definitions apply (project-specific modifications or additions as defined in the respective order documents).

End of installation = date of completion of the installation, including no-load test.  
The no-load test is deemed completed successfully, if the entire plant has been tested without operating media in stand-alone as well as in in-line operation, all units, unit parts, control devices, safety devices, etc.

have been checked for proper functioning and/or have been set to nominal values. All control circuits must thereby be checked for proper functioning and pre-adjusted.

Start of test operation	= commissioning = start of load test = start-up of entire plant under operating conditions
Performance test	= test of the complete plant under continuous load conditions over an agreed period of time Successful proof of performance = compliance with all guaranteed performance data and operation according to the specifications laid down by the Customer

#### 10.7 Compensation for damages

The Contractor shall be fully liable for damages suffered by the Customer, with the exception of loss of earnings and loss of production.

### 11) **DOCUMENTATION**

With respect to the order, the documentation includes all written documents, drawings and electronically produced and stored files specified in the order and required for the proper and timely completion of all activities in connection with the installation and operation of a plant/plant component.

The documentation must be submitted in German and conform to the scope defined in the order documents, including enclosures, or as required for the proper completion of the above activities.

The documentation is to be provided free of charge DDP, AG according to INCOTERMS 2000 and must allow for quick identification of the various assemblies and individual parts of the supplied plants/plant components (e.g. by means of item numbers, order numbers, ID numbers, consistent item and product identification in accordance with the order specifications, etc.) and ensure that dispatch, customs clearance as well as installation, maintenance, repair work and the ordering of spare parts can be completed without assistance from the Contractor's specialist staff.

In the event of changes during the processing of the order, all affected technical documents and the documentation must be updated accordingly, so that an updated final documentation is guaranteed.

Unless otherwise agreed by the parties, the final updated installation documentation must be submitted in time for installation planning purposes, in order to ensure efficient and economical installation of the supplied goods.

The documentation includes the following items (to be compiled according to the relevant CE guidelines):

- Amended final documentation (as built documentation)
- Test documentation, including time schedules, progress reports, etc.
- Declaration of Conformity, Manufacturer's Declaration

The Contractor must compile product-specific detailed test documents/documentation and/or product-specific CE Declarations of Conformity that conform to the specified scope and must be drawn up for the entire plant, including adjacent plants in the line.

- Operating manual, drawings, installation, commissioning and maintenance instructions
- Spare and wear parts lists
- Documentation of origin

## 12) **INSPECTION, TESTING, SCHEDULE CONTROL**

The Customer reserves the right to have drawings, materials, equipment, packaging, etc. to be provided by the Contractor examined by its testing bodies/officers (= inspection team) at the offices/production premises/warehouses of the Contractor and its subcontractors. Such inspections may only be carried out during the order processing period and after due prior notification and may extend to the following:

- Inspection, sampling for quality inspection, assessment of compliance with schedule and progress, etc.

The Customer must be notified without delay of all foreseeable changes to the schedule.

The Contractor is obliged to carry out, where required, a technical inspection of the equipment to be delivered. This inspection must be completed prior to the delivery and its results (test reports, measuring logs, etc.) must be made available to the Customer on request.

The Customer is entitled to be present during the technical inspections of the Contractor, and to request additional special technical inspections by the Contractor where this is warranted. The Customer must inform the Contractor in due course of its wish to be present during the technical inspections, and the Contractor must subsequently invite the Customer in due time to attend the inspections.

The Contractor shall provide all auxiliary equipment, materials, staff, interpreters, energy, suitable test equipment, test instruments, etc. required for the completion of the inspection at its own costs.

The Contractor or the Customer respectively shall cover the costs for the deployment of their personnel and/or inspection teams.

If the inspection is not successful for reasons for which the Contractor is responsible, all costs resulting from a repeat inspection must be borne by the Contractor.

If the Customer waives its right of inspection or if the inspection team fails to attend the inspection, the inspection documentation is to be submitted to the Customer without delay or as agreed, latest prior to the delivery of the plant/plant components.

The completion of an inspection or waiver of such shall not release the Contractor from its contractual obligations.

## 13) **TERMINATION OF CONTRACT, SUBSTITUTE PERFORMANCE**

If the Contractor, after having been granted a reasonable period of grace, fails to fulfil its principal contractual obligations (such as for example delay with respect to intermediate target dates of the planning an production schedule), the Customer is entitled to terminate the contract or parts thereof, notwithstanding the regulations laid down in article 8 "Contractual penalties, default".

A reasonable period of grace is deemed granted, if repeated written reminders stating the reasons and requesting compliance with the contractual obligations have been sent to the Contractor.

In particular, failure on the part of the Contractor to supply goods that fulfil the guaranteed properties, shall entitle the Customer to withdraw from the agreement.

In such cases, the Customer is entitled to make the defective or failed deliveries/services itself or to contract a third party to do so, at the expense of the Contractor. The related, reasonable additional costs shall be invoiced directly to the Contractor and are payable within 45 days from the date of the invoice.

The Contractor must reimburse the Customer any already paid amounts for failed or defective deliveries and/or services, plus associated funding costs.

A special right of termination of the contract is included in article 18 "Force majeure".

In the event of composition or bankruptcy proceedings against the Contractor or one of its suppliers, or if significant changes occurred in relation to ownership, the Customer must be notified without delay and shall be entitled to withdraw from the contract in full or in part, or take suitable action without prejudice to any procedural rights.

With respect to the legal regulation in the case of composition or bankruptcy proceedings, the Customer is given the right of disposal with regard to its goods stored at the Contractor's premises or the premises of its subcontractors.

#### 14) **SHIPPING, STORAGE, DOCUMENTATION OF ORIGIN**

The relevant INCOTERMS 2000 clauses and project-specific packaging instructions of the Customer, if any, apply.

Extra costs for special transportation (e.g. air freight) due to the fault of the Contractor (such as delay in delivery, delivery required for the elimination of a defect, etc.), including the cost of all required packaging and safety measures as well as packaging materials required by law, must be borne by the Contractor.

All regulations of the Austrian Foreign Trade Act AHG 2005 as amended apply.

In cases where deliveries are not accepted for reasons for which the Contractor is not responsible, or if deliveries are to be temporarily stored at the request of the Customer, and provided that the Customer is entitled to demand storage, the delivery documents determining the start of the payment period is the warehouse receipt.

For payment options, see article 7 "Terms, compliance with agreed schedule".

##### Parts identification, delivery documentation

For procedural reasons, the conditions of delivery in the documentation must include the complete and correct order, identification, contractual item and item number and a description of every product, which must allow for unambiguous identification and allocation of relevant customs tariffs in accordance with the applicable regulations.

Parts must be assigned the same name with the same spelling in all documents, in particular in the drawings, parts lists, packing lists and delivery documents.

##### Documentation of origin

The Contractor must ensure that all goods to be imported into Austria are accompanied by the valid preferences certificate (certificate of movement, generalized system of preferences certificate of origin, certificate of origin, etc.) that is required for preferential import customs clearance.

The certificate of origin must contain the following information:

- Names of exporter and recipient
- Order number of Customer
- Detailed description of goods
- Number of pieces
- Shipment number
- Gross and net weights
- The value of the goods may not be included in the certificate!

The documentation of origin must be attached to the delivery/delivery documents.

The certificate of origin must be attested by the relevant chamber of commerce or, if requested by the Customer, by the consulate.

All charges, fees and extra costs arising from the failure to supply the necessary documents or from the submission of incorrect information must be borne by the Contractor.

Unless otherwise agreed by the parties, the Customer considers the country of the Contractor as the country of origin of the goods.

#### Documentation of origin for deliveries from EU countries, including Austria:

The Contractor is obliged to submit a valid supplier declaration and a commercial invoice (in duplicate) together with the delivery and standard shipping documents.

The origin of the goods can be certified by means of a valid long-term declaration for goods with preferential origin (EEC Directive 3351/83).

If such a declaration cannot be made, a note to this effect must be made on the invoice in the section where the country of origin is to be named for each item.

The Contractor shall be liable for all costs and fees that might arise from incomplete or incorrect declarations of origin.

#### Documentation of origin for deliveries from countries with EU preferential trading agreements

The Contractor is obliged to submit a valid movement certificate and a commercial invoice (in duplicate) together with the delivery and standard shipping documents. The origin of the goods can be certified by means of a valid invoice declaration, provided that this is acceptable under the respective preferential trading agreement.

If a movement certificate or invoice declaration cannot be made, a note to this effect must be made on the invoice, where also the country of origin must be named.

The Contractor shall be liable for all costs and import duties that might arise from incomplete or incorrect declarations of origin.

#### Documentation of origin for deliveries made from developing countries that are subject to the Generalized System of Preferences (GSP):

The Contractor is obliged to submit together with the delivered goods a generalized system of preferences certificate of origin required for preferential import customs clearance.

At the request of the Customer, the certificate of origin issued by the relevant authorities must be attested by the consulate.

The Contractor shall be liable for all duties, charges and extra costs that might arise from incorrect declarations of origin.

Unless otherwise agreed, the country of origin is the country of domicile of the Contractor.

15) **TRANSFERABILITY**

The transfer or assignment to a third party of any duties and/or rights of the Contractor arising from the order, with the exception of the subcontracting of the provision of goods and services in accordance with the list of supplier, which has been approved by the Customer prior to the placing of the order, is only permitted with the written consent of the Customer.

The moment composition or bankruptcy proceedings are foreseeable, and latest at the time of initiation of such proceedings, the Contractor must notify the Customer immediately and with all necessary details. The Contractor is obliged to protect the interests of the Customer by taking measures to limit the damage to the Customer.

16) **TECHNOLOGY TRANSFER, EXPORT LICENSES, IMPORT LICENSES**

The Contractor is obliged to acquire all export licenses required for export to Austria at its own costs.

The Contractor guarantees that, at the time of the order, there are no impediments by state authorities or otherwise, that could prevent it from making a complete delivery and providing all ordered services, and that full delivery of the ordered goods is assured. In the event of failure, the Contractor shall be liable for any damage suffered by the Customer.

17) **THIRD PARTY RIGHTS, PATENTS, INVENTIONS, IMPROVEMENTS, CONFIDENTIALITY  
ADVERTISEMENT**

Commercial property rights, security rights, other third party rights

The Contractor is obliged to ensure that the use of the plant/plant components to be delivered to the Customer and all related technical procedures/know-how is not in any way inhibited or restricted by the enforcement of a right of a third party (rights in trademarks, samples, patents, territorial protection, etc.). The Contractor shall also ensure that the use of the plant/plant components does not violate any boycott clauses, blacklists, etc.

If the Contractor becomes aware at any time that there are issues with third party rights, decisions on boycott, blacklists, etc., it shall inform the Customer without delay.

In the event of actions of a third party claiming infringement of its right or violation of the law, the Contractor shall fully indemnify the Customer against such claims. It also guarantees that the Customer can make unrestricted use of the ordered goods and services, or to provide to the Customer free of charge an acceptable alternative. The Customer shall refrain from making any

concessions to the third party, to authorise the Contractor to defend its position and to support it in this regard.

#### Confidentiality, advertisement

The Contractor is not entitled to publish or to use the content of this order/the goods delivered on the basis of this order or transaction, or any information received from the Customer for promotional purposes, unless the Customer has agreed to this in writing.

Persons who have access to information and documents that are deemed confidential must be subjected to an appropriate confidentiality agreement.

#### Inventions, improvements

Inventions and improvements made by the Contractor or any of its staff members in the course of the joint completion of the order must under certain circumstances be made available to the Customer for utilisation. The sale or transfer of rights of utilisation to a third party is only permitted with the written consent of the Customer, provided that the invention or improvement made by the Contractor would not have been possible without operational know-how and/or cooperation of the Customer.

### 18) **FORCE MAJEURE**

In the event of force majeure obstructing the parties, they shall be released in full or in part from their obligations to fulfil the contract within the prescribed timeframe.

Events of force majeure are:

- War
- Insurrection
- Natural disaster
- Fire
- Official strike
- Flue epidemic disease

No other events shall be deemed events of force majeure. The Contractor must notify the Customer without delay, latest 5 calendar days after the first occurrence, of an event of force majeure that prevents it from fulfilling its contractual duties. This notification must include a written statement outlining the cause, the expected effect and duration of the delay, must be certified by an appropriate state authority or chamber of commerce in the country of origin and indicate the beginning and expected end of the obstruction,

In the event of force majeure, the parties must take all reasonable measures to eliminate or limit the obstructions or foreseeable damage caused by it, and to keep the other parties informed of these efforts and developments.

Target dates and agreed periods that cannot be complied with due to force majeure shall be rescheduled, based on the duration of the effect of the force majeure event, or by a period agreed between the parties.

In the event of force majeure continuing for a period of more than four weeks, the Contractor and Customer shall negotiate arrangements to address the effects and further procedures.

If the event of force majeure continues for a period of more than six months, and if the parties are unable to agree on a joint solution, they are entitled to withdraw in full or in part from the contract.

19) **ARBITRATION PROCEEDINGS**

19.1. For orders made to Contractors whose registered offices are outside the Federal Republic of Austria:

All disputes arising from an order that cannot be settled by common consent shall be brought before one or more arbitrators appointed according to the commercial arbitration regulations of the Austrian Chamber of Commerce who will decide on the basis of same.

Orders are governed by Austrian law, with the exception of the UN Sales Convention of 1980 as amended.

The venue of the court of arbitration is Vienna.

19.2 For orders made to Contractors whose registered offices are in the Federal Republic of Austria:

All disputes arising from an order that cannot be settled by common consent shall be brought before a court of arbitration of the Styrian Chamber of Commerce in Graz, on behalf of the courts of arbitration of the Austrian Chamber of Commerce, and according to the above regulations.

Orders are governed by Austrian law, with the exception of the UN Sales Convention of 1980 as amended.

The Customer reserves the right to take action against the Contractor following the normal process under Austrian material law, whereby such cases shall be heard before a competent court in Leoben, Austria.

The UN Sales Convention of 1980 as amended shall not be applicable.

20) **DEPLOYMENT OF PERSONNEL, INSTRUCTION, TRAINING**

The Contractor is obliged to deploy a sufficient number of suitably qualified personnel to the construction site, in accordance with the personnel deployment conditions and price agreements.

If personnel of the Contractor are involved in supervisory work in connection with installation and commissioning on the construction site, and if the Customer requires personnel instruction/training on the site, such services must be provided at no additional cost to the Customer during the monitoring work.

The Customer shall inform the Contractor in due course on the details regarding deployment of personnel and training, with reference to the project-specific requirements. Alternatively, such details are regulated in the terms and conditions for the deployment of personnel.

21) **CANCELLATION, SUSPENSION**

Cancellation

The Customer reserves the right to withdraw in full or in part from the contract, even if the Contractor is not at fault.

In such a case, the Customer is obliged to reimburse the Contractor proportionally for already made deliveries and services, and to pay all established costs for work in progress and expenses arising from the cancellation of subcontracts, if any. Upon receipt of the notice of withdrawal, the Contractor is obliged to make every effort to keep the costs arising to the Customer in this matter as low as possible.

### Suspension

The Customer is entitled to request the Contractor at any time to suspend work in relation to the order. In this case, the Contractor shall make the Customer aware of the consequences of a suspension, and propose to the Customer the economically most favourable solution as regards amendment of the time schedule with regard to the relevant project.

All established additional costs to the Contractor arising from the suspension of the order shall be borne by the Customer.

## 22) **CONSTRUCTION COORDINATION ACT (BauKG)**

22.1 Provided the Contractor is subject to the regulations laid down in the Austrian Construction Coordination Act (BauKG) for building sites, which might also apply in connection with the purchase of plants, the following applies:

22.2 In the case of assignment of duties to the Contractor under the BauKG, and if the relevant conditions are met, the required documents (health & safety schedule, documentation for subsequent work) must be complied with or amended respectively, in addition to the calculation of unit prices and fees for construction work. Furthermore, there is an obligation on the part of the parties to nominate planning/and or construction site coordinators and to provide evidence of this nomination, in the form of a completed order confirmation. The prior announcement shall be made by the project manager of the Customer.

22.3 The Contractor shall be solely responsible for coordination according to BauKG between the construction site coordinator and the Contractor's subcontractors.

22.4 The Contractor shall make the scaffolding, lifts, and other installations erected by it available, free of charge, to other companies working on the same construction project, in accordance with the health & safety schedule and any relevant amendments.

If the Contractor intends to remove any scaffolding at the site, it must seek the consent of the site manager or construction site coordinator in charge. This consent must be obtained at least one week prior to the intended date of dismantling of the scaffolding.

22.5 The Contractor is solely responsible for compliance with the statutory safety regulations laid down in the Austrian Occupational Health and Safety Act. It must ensure that the workplaces and transport routes are at all times kept clean and unobstructed and that waste and packaging material is removed from the site and disposed of in accordance with the relevant statutory waste disposal regulations. This work must be carried out free of charge. All dirt and obstruction created by the Contractor's own work must be removed without delay. If this is not done, the Customer is entitled to contract a third party with the removal of the dirt at the expense of the Contractor.

In the event that the party that has caused dirt and/or damage cannot be identified, the costs arising from the removal of the dirt and repair of the damage shall be charged proportionally to all Contractors employed in the construction project.

23) **MISCELLANEOUS**

23.1 Insurance:

Unless otherwise agreed by the parties, the Contractor must arrange appropriate insurance cover. Insurance contracts entered into by the Contractor must include a waiver of recourse to the Customer.

In case the Contractor is included in the insurance cover purchased by the Customer, the Contractor shall accept the respective terms and conditions of insurance as binding. The Contractor is thus obliged to fulfil all its duties in relation to such insurance cover, including the provision of information on request, adherence to instructions, compliance with obligations, etc.

23.2 Power or representation:

Persons that make statements and declarations on behalf of the Contractor to the Customer shall be considered duly authorised to do so.

23.3 Reorganisation:

The Contractor shall inform the Customer without delay of the commencement, cancellation or termination of a reorganisation proceeding pursuant to the Austrian Corporate Reorganisation Act. During such a reorganisation, it shall report to the Customer on the process of the reorganisation on a monthly basis.

23.4 Severability clause:

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

In such a case, the Contractor and the Customer shall be obliged to replace the void, invalid, illegal or unenforceable clause with one that best reflects its commercial purpose in a legal valid legal format.