

A. General provisions

I. Conclusion of contract

- Our deliveries and performances are provided exclusively on the basis of the following terms and conditions. We hereby reject the terms and conditions of purchase of the customer.
- Our offers are without engagement.
- Offers submitted by the customer in electronic form will only apply as accepted given an explicit declaration by us. Failure to comment on any such offer does not constitute acceptance. The same will also apply in the case of commercial letters of confirmation sent electronically.
- Our declarations are only valid if made in writing.

II. Terms and conditions of payment

- Unless otherwise agreed, the purchase price is payable without deductions within 20 days from invoicing and delivery or acceptance of the goods.
- If an agreement has been made that the goods are to be released for dispatch by our customer within a specific period following our notification of availability for dispatch (call-off), we shall be entitled to invoice the goods with effect from the time of availability for dispatch. In this case, the purchasing price shall be due for payment 21 days from the date of the invoice. The rights under Point A II 5 are reserved.
- Payment must be made without deduction of any settlement discount, such that we can dispose of the amount on the due date. The customer is only entitled to offset against claims that are undisputed or have been established by declaratory judgment; the customer is only entitled to rights of retention in so far as they concern the same contractual relationship.
- Non-compliance with the above terms of payment shall constitute default without reminder. In the case of default we may charge interest at a rate of 9% above the European Central Bank rate. We reserve the right to claim further damages for delay. In all other respects, this does not affect the statutory provisions on default.
- If our payment claim is endangered as a result of circumstances occurring subsequently and which result in a significant deterioration in the economic position, we shall be entitled to make it due immediately – irrespective of the term of bills of exchange accepted on account of payment.
- In the cases as per No. 5 as well as Point A V 8, we shall not arrange collection by means of the SEPA corporate debit mandate (Point A V 7), and shall demand advance payment for deliveries still outstanding.
- The customer can avoid the legal consequences stated in Point 5 as well as in Point A V 8 through the provision of collateral in the amount of our endangered payment claim. If, in the cases as per Point 5 or Point A V 8, the customer does not make either advance payment or provide appropriate collateral in the amount of our endangered payment claim within an appropriate period, we shall be entitled to exercise the right of withdrawal, subject to the exclusion of claims for damages on the part of the customer.
- The statutory regulations on default of payment will remain unaffected.
- In the event of default on payment indicating a deterioration in the economic position of the customer, we shall also be entitled to withdraw without the need for the setting of a corresponding deadline.

III. Collateral

We are entitled to normal collateral based on the nature and scope of our claims, even if these are conditional or limited in time.

IV. Group offsetting

We can offset all claims, to which we are entitled against the customer, against all claims to which the customer is entitled against us or a company of the voestalpine Edelmetalle GmbH Group, Vienna, irrespective of the legal grounds

V. Retention of title

- We shall retain title to all goods delivered (conditional commodity) until fulfilment of all claims, in particular also the respective balance claims, to which we are entitled within the scope of the business relationship. This also applies to future and conditional claims, e.g. from acceptor's bills of exchange.
- Processing or treatment of the conditional commodity will be carried out for us as manufacturer as defined in Section 950 BGB, without obliging us. The processed and treated goods will apply as conditional commodity as defined in Point 1.
- In the event of processing, joining and mixing of the conditional commodity by the customer with other goods, we shall be entitled to joint ownership of the new item in the ratio of the invoice value of the conditional commodity to the invoice value of the other goods used. If our ownership lapses through joining, mixing or processing, the customer hereby transfers henceforth to us the ownership or expectant rights, to which he is entitled to the new inventory or to the item, in the scope of the invoice value of the conditional commodity – in the event of processing, in the ratio of the invoice value of the conditional commodity to the invoice value of the other goods used – and will keep this for us free of charge. Our joint ownership rights shall apply as conditional commodity as defined in Point 1.
- The customer is entitled to make onward sale of the conditional commodity only in the ordinary course of business, subject to his normal terms and conditions of business and as long as he is not in default, provided he reserves title and the claims from the onward sale pass to us as per Points 5 and 6. He is not entitled to dispose of the conditional commodity in any other manner. The use of the conditional commodity for the fulfilment of contracts for work and services/contracts for work and materials shall also apply as onward sale within the meaning of Section A V.
- The claims of the customer from the onward sale of the conditional commodity are hereby assigned to us henceforth. They shall serve as collateral in the same scope as the conditional commodity as defined in Point 1.
- If the conditional commodity is sold on by the customer together with other goods, the claim from the onward sale shall be assigned to us in the ratio of the invoice value of the conditional commodity to the invoice value of the other goods. In the event of onward sale of goods to which we have joint ownership shares as per Point 3, a share of the claim corresponding to our joint ownership share shall be assigned to us.
- The customer is entitled to collect claims from the onward sale, unless, in the cases stated in Point A II 5 and Point A V 8, we have refrained from carrying out collection of payment using the SEPA corporate debit mandate. Upon request by us, he is obliged to inform his customers immediately of the assignment to us – in so far as we do not do this ourselves – and to provide us with the information and documents required for collection. Under no circumstances is the customer authorised to assign the claim; this also applies to all forms of factoring transactions – the customer is likewise not permitted to carry out such even on the basis of the issuing of the SEPA corporate debit mandate.
- If the customer falls into arrears on payment and this indicates a threat to the ability to recover a not immaterial share of our claim, we shall be entitled to forbid further processing of the goods delivered, to collect back the goods and, if necessary, to enter the customer's premises for this purpose. Collecting back shall not constitute withdrawal from the contract. As such, Section 449 Subsection 2 BGB is waived
- The customer must inform us immediately of attachment or other impairments by third parties.
- If the value of the available collateral exceeds the claims secured by more than 10% overall, we shall, upon request by the customer, be obliged to make corresponding release of collateral at our discretion.

B. Execution of the delivery

I. Delivery periods, delivery dates

- Delivery periods shall begin on the date of our order confirmation, not however before complete clarification of all details of the order; the same shall apply for delivery dates. All delivery periods and dates are subject to the reserve of unforeseeable production disruptions and on-time delivery to us.
- If the customer does not fulfil contractual obligations on time – including obligations to cooperate or accessory obligations such as opening of a letter of credit, provision of German or foreign certificates, effecting of an advance payment or similar -, we shall be entitled to extend our delivery periods and dates appropriately in accordance with the requirements of our production process – without prejudice to our rights from default of the customer.
- The date of dispatch ex-works shall be authoritative for adherence to delivery periods and dates.
- In cases of force majeure, delivery periods/dates will be extended/moved back appropriately. Industrial action in own and outside companies, transport delays, machinery breakdown, acts by sovereign powers and other circumstances for which we are not responsible, will also apply as cases of force majeure. We shall notify our customer immediately of any case of force majeure. The customer will be entitled to withdraw from the contract at the earliest six weeks following receipt of our notification.
- In the event of failure to adhere to delivery periods, the customer will not be entitled to the rights under Sections 281, 323 BGB until he has set us an appropriate deadline for delivery, which – as such in deviation from Sections 281, 323 BGB – is combined with a statement that he will refuse acceptance of the performance following expiry of the deadline; the claim to fulfilment will be excluded following unsuccessful expiry of the deadline.

- In the event of default, we shall only be liable for the evidenced delay damage if, after becoming aware of the duration of the delivery delay, the customer informs us of the level of the foreseeable delay damage. If the foreseeable delay damage exceeds 20% of the value of the delivered items affected by the delivery delay, the customer is obliged to make immediate efforts to secure a corresponding covering purchase, if applicable to exploit opportunities for covering purchases demonstrated by us, subject to withdrawal from the contract, for the delivered items affected by the delivery delay; the evidenced additional costs of the covering purchase and the evidenced delay damage for the interim period will be reimbursed by us. Otherwise, our liability for the evidenced delay damage is limited to 50% of the value of the delivered items concerned.

II. Dimensions, weight, quality

Deviations in terms of dimensions, weight and quality under DIN or applicable practice are admissible. The weights will be ascertained using calibrated scales and shall be authoritative for invoicing. Evidence of weight shall be provided through submission of the weighing report. If individual weighing is not normally carried out, the respective total weight of the consignment shall apply.

III. Dispatch, packing and passing of risk

- We shall decide on the freight forwarder or carrier.
- If loading or transport of the goods is delayed for reasons for which the customer is responsible, we shall be entitled, at our reasonable discretion, to store the goods at the expense and risk of the customer, to take any measures deemed appropriate to ensure preservation of the goods, and to invoice the goods as having been delivered. The same applies where goods notified as ready for dispatch are not called for within four days. This does not affect the statutory provisions on default of acceptance.
- We will deliver the goods using standard packing material with corrosion protection; the costs will be borne by the customer. Packaging, protection and transport equipment, as well as refundable, loading and transport gear may be returned. Any other packaging not strictly required for transport or any special protection measures for purposes such as long-term safe-keeping or storage require express agreement.
- In cases of transport damage, the customer must arrange an immediate ascertainment of facts by the responsible bodies.
- The risk will pass to the customer upon handover of the goods to the freight forwarder or carrier, at the latest however upon leaving the works or warehouse.

IV. Defect claims

- The goods will be contractually conform if they do not deviate or deviate only immaterially from the agreed specification at the time of the passing of risk. Contractual conformity and freedom from defects of our goods will be based exclusively on the express agreements concerning the quality and quantity of the goods ordered. A warranty for a specific use or specific suitability will only be assumed in so far as this has been expressly agreed; in other respects, the risk of suitability and use lies exclusively with the customer. We shall not be liable for deterioration, loss or incorrect treatment of the goods subsequent to the passing of risk.
- Contents of the agreed specification and any expressly agreed use will not constitute a guarantee; the assumption of a guarantee requires a written agreement. The customer must examine goods received immediately upon receipt. Defect claims will only apply if defects are reported immediately and in writing; concealed defects must be reported immediately following their detection. Following conducting of an agreed acceptance procedure, the reporting of defects is excluded if these could have been detected during this acceptance procedure.
- In the event of complaints, the customer must grant us an immediate opportunity to check the goods subject to complaint; on request, the goods subject to complaint or a sample thereof must be provided at our expense. In cases of unjustified complaints, we reserve the right to debit the customer for freight and transshipment costs as well as the costs of examination.
- With goods sold as declassified material, e.g. so-called II-a material, the customer shall not be entitled to any warranty claims with regard to the defects stated and with regard to defects with which he must normally reckon.
- Given the presence of a material defect, we shall, at our choice and taking account of the interests of the customer, provide subsequent fulfilment through either replacement delivery or repair. If the subsequent fulfilment by us is not carried out successfully within an appropriate period, the customer can set an appropriate deadline for subsequent fulfilment; following unsuccessful expiry of this deadline, he can either reduce the selling price or withdraw from the contract; no farther-reaching claims exist.
- Given the presence of a legal defect, we shall have a right of subsequent fulfilment through removal of the legal defect within two weeks of receipt of the goods.
- The warranty period in cases of defective delivery shall end one year after delivery. The statutory warranty periods for goods, used for a structure in accordance with their normal manner of use and which have caused defectiveness of the structure, shall remain unaffected.
- Recourse claims of the customer against us under Section 478 BGB are limited to the statutory scope of the third-party defect claims asserted against the customer, and presuppose that the customer has complied with his obligation to report defects to us as per Section 377 HGB.

C. General limitations of liability

- In the absence of any ruling to the contrary in the present terms and conditions, we shall only be liable for damages, based on violation of contractual or extra-contractual obligations or during initiation of the contract, in cases of intentional conduct or gross negligence on the part of our legal representatives or vicarious agents as well as in cases of culpable violation of essential contractual obligations. In cases of culpable violation of essential contractual obligations, we shall only be liable for contractually typical, foreseeable damage - with the exception of cases of intentional conduct or gross negligence on the part of our legal representatives or vicarious agents -
- The above limitations of liability do not apply in cases of injury to life, limb and health; claims based on personal damage or damage to privately used items under the product liability law are unaffected.

D. Miscellaneous

I. Evidence of export

If a customer, based outside the Federal Republic of Germany (ex-territorial customer), or his authorised representative collects goods or sends them to the ex-territorial area, the customer must provide us with the evidence of export required for tax purposes. If this evidence is not provided, the customer will then be required to pay the value added tax, at the rate applicable to deliveries within the Federal Republic of Germany, on the invoice amount.

II. Applicable law

The law of the Federal Republic of Germany is applicable, subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980.

III. Place of performance and place of jurisdiction

Place of performance and place of jurisdiction for both contract parties is Düsseldorf. We are also entitled to bring legal action against the customer at his general place of jurisdiction.

E. Export Control

The customer is aware and shall fully comply with all national and international export and re-export control laws and regulations, sanctions and embargoes, as amended from time to time, including without limitation, any restrictions on domestic transactions, brokering services and anti-circumvention prohibitions, that apply directly or indirectly to its activities (including re-sale of our products), as well as voestalpine Group's internal resolutions - to the extent made available to the customer - in regard to the supply of products or services to specified countries, specified end users or for specified end uses.

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