

voestalpine Krems Finaltechnik GmbH

General Terms and Conditions of Sale and Delivery (Dated: 01.01.2015)

1. General regulations

The following General Terms and Conditions of Sale and Delivery apply to all deliveries of goods and services supplied by voestalpine Krems Finaltechnik GmbH (in the following referred to as Contractor) to customers (in the following referred to as Customer), insofar as no special deviating conditions are explicitly agreed. All transactions and agreements only become binding for the contractor after written confirmation has been provided. All changes, supplements, collateral agreements, explanations regarding the termination of transactions or agreements as well as all other explanations and communications within the framework of the business relationship must be undertaken in writing, via fax or in electronic form, insofar as nothing to the contrary is required by these General Terms and Conditions of Sale and Delivery. Purchasing conditions of the customer are only binding for the contractor if they have been explicitly recognised by the contractor. Failure to oppose such conditions does not imply the agreement of the contractor. Offers are always provisional; the right of intermediate sale of stored products is reserved. Goods purchased for national use may not be exported without modification. Goods purchased for international use may not be used nationally. The currently applicable INCOTERMS apply to the interpretation of commercial terms, insofar as nothing to the contrary has been agreed.

2. Pricing

All prices are net and are valid ex-factory (EXF), insofar as nothing to the contrary is explicitly specified. If supply of goods has been agreed with delivery, the prices are calculated without unloading costs and without moving costs on the basis of full load and fares and full usage of the permissible loading weight. All applicable taxes and other dues, for example, fees, customs and excise duties and additional statutory taxes will be detailed separately on the invoice by the contractor and are to be reimbursed by the customer. In the event that the prices cannot be calculated in euros, the customer bears the risk of exchange rate fluctuation from the day of order confirmation until the full amount has been paid. The relevant reference exchange rates published by the European Central Bank shall apply. The costs of the raw materials and transportation detailed in order confirmations and contractually specified prices are based on the corresponding day of order confirmation or contract. The contractor reserves the right to undertake corresponding price corrections for each quarterly period in the event of significant changes to the costs of these raw materials or haulage prices. In the event that agreement cannot be reached in relation to this, the contractor reserves the right to unilaterally withdraw from the contract.

3. Delivery period

The specified delivery periods are subject to alteration, in other words, they are not legally binding. For this reason, claims for damages or any kind resulting from delivery dates or schedules are excluded. The customer is not permitted to reject partial deliveries. Delivery deadlines and schedules are based on the time of shipping / collection ex-factory. Such deadlines are considered maintained with the notification of shipping, even if they cannot be shipped promptly, insofar as this is not through the fault of the contractor. As long as the customer is in arrears with his obligations from this or other agreements, then the contractor is not obliged to undertake deliveries - notwithstanding of any other rights that he may be entitled to resulting from the arrears of the customer. The terms of this point also apply, even if the delivery deadlines and schedules are explicitly agreed as fixed.

4. Loading and shipping

Insofar as nothing to the contrary is agreed, loading and shipping is always undertaken at the risk of the customer - even for carriage paid delivery. The selection of the means of transportation as well as the haulage and protective equipment, which has to be calculated for separately, is a matter for the customer to decide to the exclusion of any liability. The customer will, however, take the requests of the contractor into consideration where possible. Insofar as customs and equivalent duties are to be paid, such costs are to be borne by the customer. Goods notified as being ready for dispatch must be claimed immediately, otherwise the costs of storage and risk transfers to the customer. The customer is obliged to maintain road traffic regulations and to carry the required lashing equipment as needed for loading and haulage. Suitable safety clothing is to be worn during the loading process. The customer is to ensure that these regulations are maintained by the haulage firm contracted on his behalf. The customer is explicitly aware, that failure to maintain these regulations will result in the goods not being made available for loading or not being released to leave the factory site. The contractor cannot be made liable for damages in relation to this in any manner whatsoever.

5. Delay in acceptance

If the customer rejects the incoming goods, he is nevertheless obliged to meet his financial obligations pertaining to all costs for transportation and storage. The sales price is payable immediately in the event of a delay in acceptance. The contractor is also authorised to claim damages due to default, should he choose to do so. Insignificant faults are not cause for the customer to reject acceptance of the goods.

6. Statute of implementation, storage

The respective appropriate standards, together with the deviations specified here and in the event of lack of existing standards, usual industrial practice shall apply for the implementation in terms of quality, dimension and weight, insofar as nothing to the contrary is agreed. Calculation is undertaken in accordance with m2, lfm, pieces or by the weight determined by the customer's weighing technicians. The appropriate standards are to be observed in terms of transportation and storage. Galvanised products should be transported and stored in a dry state and be protected from moisture - also condensate.

7. Long-term orders and exceeding long-term orders

In case of repeated orders over longer durations, the customer purchases by releasing orders and corresponding specifications for approximately the same monthly quantities. If the orders are not released promptly or not specified, then, after having unsuccessfully set a subsequent deadline, the contractor is entitled to specify and deliver the goods himself, or to withdraw from the remainder of the agreement and to claim damages due to default. If the contractually agreed quantity is exceeded by the customer's orders, then the contractor is entitled but not obliged to supply the excess quantity at the current market price at the time.

8. Acceptance

Insofar as the contractor provides services which go beyond mere delivery services (especially working services or services rendered), the services provided by the contractor are to be subjected to an acceptance procedure. Acceptance is undertaken immediately after assembly is completed and will be announced by the contractor 5 days in advance. The results of the acceptance process will be recorded in a written acceptance certificate. Acceptance is considered as granted in the event that it has not been made by at least 2 weeks after the planned acceptance date, insofar as the delay is not caused by the contractor. If an acceptance procedure is undertaken, the transfer of perils is made with the acceptance, however, at the latest when the area is opened for traffic.

9. Notification of defects and liability

The contractor exclusively provides warranty for services in accordance with the state agreed in the General Terms and Conditions of Sale and Delivery and the provision of services in accordance with the generally accepted rules of technology. Provision for warranty beyond the scope of this is excluded, especially for usual pre-supposed qualities. In cases where the customer is entitled to claim for defects, this must be undertaken in writing within 14 days after receipt of the goods at the destination. Defects which cannot be discovered even after careful inspection within this period are to be notified immediately after discovery and any working or processing must be discontinued immediately. The warranty period amounts to 2 years commencing from the time of successful delivery and acceptance, insofar as this is to be undertaken. After expiry of this period, all liability for defects is excluded, regardless of the reason. The burden of proof lies with the customer for proving that any defects were already present at the time of transfer. Any claims in accordance with § 933b ABGB by the customer are explicitly excluded. The contractor provides no guarantee for damage, especially corrosion damage, caused by improper transportation or improper storage on the part of the customer or third-parties commissioned by him for these purposes (see also Item 7). This also applies for the period between determination of a fault and possible fault rectification by the contractor.

Likewise, any liability for damage which can be traced to incorrect design specifications on the part of the customer or his incorrect selection of material qualities or surface treatments is excluded. Goods recognised as defective shall, at the discretion of the contractor, either be replaced or the calculated price reimbursed upon return of defective goods to the factory by the customer, or the respective faults will be rectified at the cost of the contractor. The consignment note for return deliveries is to include the customer's order number together with the dispatch papers and the haulage firm invoice. Any further claims for compensation, of any kind, especially claims for damages resulting from minor negligence, loss of profits, non-realised savings, interest loss, financial loss or consequential damage (especially due to loss of production or interruption of operation) is explicitly excluded. However, this exclusion does not include mandatory claims in accordance with product liability laws. Liability is limited to services from the contractor's manufacturer's liability insurance. Beyond this, in the event of violation of contractual obligations, it is limited to the material value of those deliveries which were responsible for the damage. The restriction of liability does not apply to personal injuries due to injury of the physical state, physical integrity or of the health of a person. The customer is to hold the contractor completely free of damage liability or incrimination resulting from the execution of his order at the first request, where through the execution of his instructions relating to certain quality and other characteristics based on the use of drawings, models, samples, tools, etc. could violate the national and international intellectual property rights of third-parties, especially pertaining to copyright, patents, brands or protection of registered designs.

10. Terms and conditions of payment

Unless otherwise agreed, invoices of the contractor, including those for partial deliveries, are to be paid in cash without any discount within 30 days of the date of the invoice. Discounting costs, bank expenses and any bill charges are to be borne by the client. In the event of arrears, the contractor is to be reimbursed with interest amounting to 8% above the basic interest rate at the Austrian bank. Non-compliance with the terms and conditions of payment or any conditions which are suitable for reducing the credit-worthiness of the client (in particular the cancellation of limits by the credit lending insurance) entitle the contractor to immediately call in all debts. They further entitle the contractor to only perform outstanding services against advance payment or to withdraw from the contract / to claim damages for non-performance. The reservation of payments due to supposedly non-recognised counterclaims of the client is not permitted. Neither is offsetting with such counterclaims.

11. Offsetting and right to withhold

The contractor is entitled to offset all those claims from the business relationship against the client. The client can only offset those undisputed claims or legally ascertained claims or exert the right to withhold. In the event of non-performance of a service, the client is entitled to withhold the payment in part until the services have been performed in accordance with the contract.

12. Reservation of ownership

The contractor reserves the right of ownership to the delivered goods until full payment of the purchase price has been made including any interest on arrears, dunning charges, collection charges and legal costs. The client only has the right to resell the conditional commodity in the normal conduct of business. He is not entitled to dispose of it in any other manner, in particular to pawn it or to assign it as collateral. The client is to inform the contractor immediately in the event of intervention by third parties into the rights of the contractor as conditional owner. The client hereby cedes all claims he is entitled to from the sale of the conditional commodity against his customers as security of the claims against him. At the request of the contractor, the request being valid at any time, the client is to report to his customers the ceding of rights and to provide all necessary information as well as to submit all necessary documents for the assertion of claims of the contractor. The client is only authorised to collect a claim from a resale if the contractor himself is not entitled to collect the claim. The client is authorised to process and treat the conditional commodity. The contractor remains co-owner of the processed and treated goods to the ratio of value of his conditional commodity compared to the end product.

13. Force majeure

Events of force majeure, including strikes, major interruptions of operation, excessive occurrence of defects, absence of the supply of energy and start materials and all unforeseen and inevitable conditions which make it considerably complicated or impossible for the contractor to supply the contractual goods entitle the contractor to interrupt the delivery for the duration of the hindrance and a suitable preparation time or to withdraw from the contract with regard to the part of the non-performed part of the contract. The client is entitled to request from the contractor an explanation whether the contractor intends on withdrawing or delivering within an appropriate period. Should the contractor not provide this explanation, the client is entitled to withdraw from the contract.

14. Termination / cancellation

The contract can be cancelled by both parties for important reasons, especially for breach of contract or should the project be terminated. In the event of premature termination by the client, the contractor is entitled to full remuneration of the costs accrued to date for the deliveries and services performed by the contractor according to the contract. The client is entitled to withdraw from the contract against the payment of a cancellation fee amounting to 10% of the agreed remuneration without citing any reasons (§ 909 ABGB). In this case, this cancellation fee is payable plus the value of the services performed to date (such as already completed or mounted goods).

15. Secrecy

The client is obliged to treat confidentially all information of a commercial or a technical nature which is not generally known and which he acquires during the course of the business relationship.

16. Partial invalidity

Should terms in these General Terms and Conditions of Sale and Delivery be or become fully or partially legally invalid or not feasible, the validity of the other terms in these General Terms and Conditions of Sale and Delivery are not affected.

17. Place of performance, court of jurisdiction, choice of law

Unless otherwise expressly agreed, Krems/Donau is the place of performance for the performance and the payment of all contracts, including when carriage prepaid destination or factory is agreed. Krems/Donau is the exclusive court of jurisdiction for all disputes. However, the contractor is entitled to choose a different court responsible for the client. All legal relationships between the contractor and the client are based exclusively on Austrian law, excluding its referral and conflicting rules, and excluding the UN Convention on Contracts for the International Sale of Goods. The client is obliged, upon request from the contractor, to confirm in writing the existence of the venue clause.

18. Arbitral jurisdiction

Should the headquarters of the client not be located in an EU member state or in a member state of the EC, the following applies: unless otherwise agreed in writing, all disputes arising from this contract or based on its violations, cancellation or invalidity are decided on according to the arbitration or conciliation regulation of the international arbitration tribunal of the Economic Chamber of Austria in Vienna (Viennese regulations) by one or more arbitrators appointed according to these regulations.

Austrian material law excluding its referral and conflicting rules excluding the UN Convention on Contracts for the International Sale of Goods, applies. The language to be used in cases of arbitration is German. The client is obliged, upon request from the contractor, to confirm in writing the existence of the arbitration agreement.

19. Returns

Returns not caused by the contractor are possible following consultation with the contractor. The client is charged freight charges and a handling fee of 15% of the value of the goods!