

**GENERAL COMMERCIAL TERMS AND CONDITIONS**  
**voestalpine Steel Service Center Polska Sp. z o.o.**  
**(October 2009)**

**I. Contract conclusion**

1. These General Commercial Terms and Conditions apply to all our shipments and sale contracts. For their validity, any modifications are required in writing. The General Commercial Terms and Conditions of the Buyer are hereby excluded and do not form part of the contract. Any supplements to present General Commercial Terms and Conditions shall be agreed in writing for their validity.
2. All our shipments and services, also future ones, additional services included, comply exclusively with the following provisions.
3. Our offers are not legally binding.  
Illustrations, drawings and information on the products are not legally binding.  
The contract is concluded, once the Buyer's order is acknowledged in writing or once the order is actually fulfilled.
4. Verbal agreements, alterations to the following provisions, supplements or exclusions to them as well as warranty and insurance stipulations by our co-workers and representatives shall be, for their validity, acknowledged in writing. This applies also to the written form demand.

**II. Prices**

Prices are considered net, without any deductions.

**III. Shipments**

1. Goods are delivered ex works and the Buyer bears the risk of damage or accidental loss from the moment of setting the goods at his disposal. Shall the delivery be agreed differently, the Buyer bears the risk from the moment of setting the goods ready for unloading at the place agreed. The Buyer bears the risk as well during the time, in which the goods are stored, at the Buyer's request, at our place.

2. Alterations to shipment terms demand an additional written agreement and the INCOTERMS, actual at the time of each alteration, shall be applied.
3. The shipment is considered completed once the goods are in due time reported ready for shipment.
4. Once the goods are reported to be ready for shipment, the Buyer is obliged to collect them immediately. Shall the Buyer not collect the goods immediately, he bears the risk of damage or accidental loss from the moment of setting the goods at his disposal, which permits issue of an invoice for the delivery of the goods. In this case, we are merely obliged to store the goods at the Buyer's risk and cost and our liability is limited to actions in high negligence.
5. Up to date EURO - norms are binding for each shipment. Our products are delivered of a commercial standard quality and performance, including commercial customs of production tolerance for dimensions, weight and standards considered. Referring to norms, material specifications or production research does not constitute a quality guarantee. Public declarations on our part, on our staff's part or on part of producers' and their staff, in particular enclosed in advertising materials concerning our products' specifications, may constitute a cause for warranty claims only if such declarations were subject to an additional agreement between the parties on quality standards. In regard to weight of the products only weighing by us or our suppliers shall be competent. Weight of the product is proved by presenting a weighing document. If laws do not regulate the matter otherwise, the weight may be defined on the basis of Polish Norms (PN). Customary in the Republic of Poland over- and under- weight remains in force (commercial weight).
6. Unless otherwise agreed upon, the goods are delivered without packing.

#### **IV. Term of the shipment**

1. Unless otherwise agreed upon, information regarding term of shipment and services is only approximate. Claims for delay in shipment are excluded.
2. The term of shipment begins at the moment of sending order acceptance, but no sooner than all of the questions regarding contract execution had been settled. If the Buyer is obliged to fulfil defined preliminary conditions (such as forwarding documents, permits or earnest), the term of shipment begins from the moment of their fulfilment. This shall apply also when the date or the term of shipment, has been explicitly agreed on.

3. Should the Buyer not collect the goods on time, we are entitled to, without any detriment to our breach of contract and other claims, demand compensation for additional costs concerning unexecuted order and also to store the goods at the Buyer's cost and risk.

## **V. Payment**

1. Payment shall be made without any deductions until 15th of the month following the month of the shipment. Divergent provisions require for their validity a written form.
2. If payment conditions were breached or any circumstances that may diminish financial situation of the Buyer occurred, all our claims become executable. In addition we shall then be entitled to refrain from any further shipments, simultaneously fixing an apposite term for the Buyer to cover the payment and with ineffective lapse of the term we are entitled to rescind the contract and forward a claim for damages arising from breach of contract.
3. In case of delay in payment, the Buyer is obliged to provide a guarantee in our favour regarding all our receivables due by means of a cession, pawn or other guarantees according to our choice.
4. According to Art. 359 § 1-3 of Polish Civil Code dated 23 April 1964, including all following amendments, statutory interest shall be charged for any period of delay in payment.
5. If there are more unpaid debts of the Buyer and the payment does not cover all of the debts, a claim having the lowest guarantee is covered in the first place, out of claims being equally guaranteed - earlier debts are covered and in case of earliest debts - each of those proportionally. Any contrary provisions of the Buyer are ineffective.
6. An offset of our credits or right to detain the goods is only admissible if regards mutual, definite and incontestable claims of the Buyer.

## **VI. Property clause**

1. Until the payment in full has been made, the goods remain our property.
2. All goods delivered remain our property until all the claims are satisfied, in particular resulting from the balance of our accounts, available for us on any legal base. The above concerns as

well payments made in favour of covering individual claims. In case of transformation of the items we are entitled to the co-property in newly created product, provided that the value of efforts exceeds the value of material.

3. Transforming of the reserved goods, until the payment in full was completed, is excluded. In case of transformation, it is considered to be done in bad faith. Art. 192 § 2 of Polish Civil Code shall be applied.
4. If the reserved goods are joined or mixed with any mobile items of the Buyer in a way that the value of the Buyer's item considerably exceeds the value of the reserved goods, the Buyer hereby transfers its property rights of the item or its share in the co-property of the item in proportion to the value of the reserved goods to the value of the mixed mobile item.
5. The Buyer is obliged to inform us immediately on seizure or any other actual or legal actions that might constitute a threat to the reserved goods or to the other guarantees secured in our favour.
6. The Buyer undertakes to insure the reserved goods from any damages caused by fire, water or theft to the amount answering the value of reserved goods. The Buyer hereby transfers to us his claims deriving from the insurance policy of the reserved goods.
7. If the property reservation or transfer of credits turn out to be void or unfeasible due to foreign legislative norms, the property reservation or transfer of credits shall be considered as a binding guarantee. If any co-operation on the matter is needed on the Buyer's part, the Buyer is obliged to undertake every possible action to ensure the guarantee.

## **VII. Warranty**

1. To define whether the product is compliant to the contract, the moment of the transfer of risk of damage or accidental loss is to be taken into account (see point IV). Warranty claim of the Buyer must be issued immediately in writing, by means of an e-mail or fax, that is within 14 days from the date of the delivery at the place agreed on.
2. Defects, that due to their nature could not be immediately discovered within the mentioned period, shall be questioned as soon as they are discovered, but no later than 3 months from the delivery of the goods.

If any defects occur, processing and transforming must be ceased immediately.  
After the lapse of this term, liability for defects, on any legal basis, is excluded.

The Buyer carries the burden of proof regarding proving the existence of any defects at the moment of delivery.

3. If the goods delivered have defects or such defects reveal themselves during the period of warranty, the Buyer may forward a warranty claim regarding only reparation or delivery of a good free of defects in relevant term. In regard to other claims, in particular claims for price reduction, based on any legal foundation, are excluded, unless the opposite shall be separately agreed by the parties of the contract. Claims for damage, exceeding the ones foreseen above, are limited only to direct damages and may be forwarded by the Buyer only if caused by high negligence or wilful misconduct, ours or of the persons with whom the obligation is being fulfilled. Indirect or consequential damages shall not be repaired.
4. If the Buyer does not allow us to verify the existence of the defects, all claims in that matter are excluded. If examinations of supposed defected goods present no premise to a claim action, the Buyer is obliged to bear all the cost of such examinations.
5. Goods of diminished value (class IIA material) as well as bargained goods may be examined by the Buyer before sending. Such a material is not subject to the warranty.

#### **VIII. Liability**

Our liability is restricted to the limits prescribed in this paragraph. All the claims, which right to is not expressly given to the Party, including claim for damages deriving from negligence, indirect damages (in particular production suspension or hold up) or loss suffered and gain and interest loss, material damages - founded on any legal basis - are excluded. This restriction does not concern legal claims under product liability laws referring to hazardous goods.

#### **IX. Reservation of shipments' regularity**

Our obligation depends on proper and timely fulfilment of our suppliers' obligations.

All circumstances that render the shipment difficult or impossible, entitle us to a delay in shipment for the period of those circumstances and to a period for restarting the production or to rescind from the unfulfilled part of the contract within 14 days from the moment such circumstances had occurred.

**X. Force majeure and other unforeseeable incidents**

Incidents caused by force majeure, that is also strike, grave interruptions in production and other circumstances that render the shipment difficult or impossible, no matter if such circumstances occur at our place or the suppliers' place, entitle us to refrain from shipment for the period of those circumstances and to a period for restarting the production or to rescind from the unfulfilled part of the contract within 14 days from the moment such circumstances had occurred.

We are not liable for any of the circumstances mentioned above, even if they occurred during the period of delay. We shall inform the Buyer on such circumstances as soon as possible. If, after concluding the contract, any circumstances that may be a constant impediment to execution of contract (for instance: general mobilization, state actions, also affecting foreign trade) occur, we may demand apposite alternations to the contract. Besides that, statutory provisions concerning exclusion of obligation, right to refusal, an extraordinary change of circumstances and rescission on important grounds are applied.

**XI. Place of execution**

The obligation is executed in Tychy.

**XII. Law applicable and legal venue**

The law applicable is exclusively Polish substantive law. The United Nations Convention on the International Sale of Goods is hereby excluded.

All legal claims deriving from the execution of the present agreement, in particular regarding its validity, conclusion and interpretation, shall be submitted for resolution of the court competent for the seat of voestalpine Steel Service Center Polska Sp. z o.o..

**XIII. Costs return**

In case of their delay, the Buyer undertakes to return to voestalpine Steel Service Center Polska Sp. z o.o. per-trial, non-judicial costs of credit execution.

#### **XIV. Partial invalidity**

Should one of these provisions or contract stipulations be invalid or become invalid, as well as in case of any gaps in contract, the validity of other stipulations remains intact. In place of an invalid provision, statutory law is applied, if there are no statutory provisions, commercial customs in the seller's seat are to be applied. This applies also to gap filling in the contract.