

## **Terms & Conditions**

**GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND LEASE OF VOESTALPINE RAILPRO BV (hereinafter referred to as 'voestalpine Railpro'), having its registered office and principle place of business at the Nieuwe Crailoseweg 8 in Hilversum.**

**Date of last modification to our Terms & Conditions: 17 June, 2019.**

### **ARTICLE 1 - GENERAL**

1. All offers of, agreements with and the performance thereof by Railpro are governed solely by these terms and conditions and, if declared applicable by Railpro to an offer or agreement, by the “Railtransport General Terms and Conditions of voestalpine Railpro BV”, filed with the Chamber of Commerce of Gooi- en Eemland on 12 June 2009, under file reference number 2037B. Deviations from the contents of these terms and conditions and/or the “Railtransport General Terms and Conditions of voestalpine Railpro BV” between the other party and voestalpine Railpro are subject to these deviations having been explicitly agreed by mutual consultation and in writing. In the event of contradictions or inconsistency between these terms and conditions and the “Railtransport General Terms and Conditions of voestalpine Railpro BV” declared applicable to an offer or agreement, the “Railtransport General Terms and Conditions of voestalpine Railpro BV” shall prevail.
2. In these terms and conditions, 'the other party' is understood to mean: each (legal) person having entered into an agreement with voestalpine Railpro or who wish(es) to do so and, in addition to this/these person(s), his representative(s), authorised agent(s) and successors under universal title.
3. The applicability of the general terms and conditions of the other party is hereby explicitly excluded. Stipulations deviating from these terms and conditions can only be invoked by the other party if and insofar these have been accepted by voestalpine Railpro in writing.

### **ARTICLE 2 - OFFERS**

1. All offers made by voestalpine Railpro, regardless of the format thereof, are without obligation, by approximation and apply only to the other party for whom they are intended, unless explicitly stated otherwise. Orders and acceptances by the other party are irrevocable.
2. Images, catalogues, drawings and recommendations are not binding and remain the property of voestalpine Railpro. The other party bears responsibility in terms of preventing these from being copied and/or disclosed to third parties or made available to them for inspection. Voestalpine Railpro is not obliged to provide detailed drawings.
3. Weights, dimensions, capacities, prices, returns and other information detailed in catalogues, prospectuses, circulars, advertisements, images, pricelists and other descriptions are indicative.
4. The expressiveness of sample results in terms of properties, quality and suchlike in relation to the goods to be delivered, demonstrated or provided by voestalpine Railpro for the formation of the agreement, must be deemed of indicative value only.
5. All offers are valid for a period of 30 days, unless stated otherwise.

6. Verbal promises by and agreements with staff of voestalpine Railpro do not bind voestalpine Railpro until after confirmation by voestalpine Railpro in writing.

### **ARTICLE 3 - AGREEMENT**

1. Subject to the provisions set out below, voestalpine Railpro is bound only by written acceptance and/or having started the execution of the agreed service(s) or delivery/deliveries. Furthermore, voestalpine Railpro is bound only as stipulated in its written acceptance. The written acceptance by voestalpine Railpro must be deemed correct and fully reflecting the agreement, unless the other party has forthwith submitted a notice of objection.
2. Voestalpine Railpro is bound to any subsequent agreements or changes, subject to written confirmation by voestalpine Railpro. Voestalpine Railpro shall be compensated by the other party for all costs, including loss of profits, as a result of supplements or changes to the agreement requested by the other party.
3. If either party cancels an agreed (sub)delivery, that party shall be responsible for any of the costs arising from that, irrespective of the nature thereof, and shall furthermore compensate the other party for any lost revenue.
4. If there is valid ground to believe that the other party shall fail to fulfil its obligations towards voestalpine Railpro – this solely to the discretion of voestalpine Railpro – the other party is obliged to produce security at first request of voestalpine Railpro, instantly satisfactorily and in the format as desired by voestalpine Railpro, and, if so required, to supplement these for the fulfilment of its obligations. If the other party fails to comply with such a request, all its obligations become immediately due and payable.

### **ARTICLE 4 - PRICES**

1. Unless agreed otherwise, voestalpine Railpro prices are:
  - based on delivery ex Works, according to Incoterms version 2010: ex works, warehouse or other storage facility of voestalpine Railpro;
  - exclusive of VAT, import duties and other taxes, levies and duties;
  - exclusive of maintenance train, lease of wagons and other (train and/or road) transport and/or delivery costs;
  - exclusive of packaging and insurance;
  - stated in Euros; any currency fluctuations are passed on.
2. In the event of a considerable increase in one or more of the cost price factors, voestalpine Railpro reserves the right to increase the order price accordingly; all this with due observance of any relevant statutory regulations and with the proviso that known future price increases are stated as part of the order confirmation.
3. Packaging intended for reuse must be returned by the other party as soon as possible to the address given by voestalpine Railpro; failure to do so shall result in the packaging costs being charged to the other party.
4. Return prices: voestalpine Railpro is not obliged to accept goods ordered and returned by the other party at any one time. If voestalpine Railpro accepts goods that are returned, the applicable return price of the goods shall be at least 20% less than the price for which they were sold to the other party, unless explicitly stated otherwise. Voestalpine Railpro only

accepts returned goods which meet the applicable specifications and which were supplied to the other party no more than three months prior to the return date.

#### **ARTICLE 5 - TRANSPORT AND RISK**

1. The method of transport, shipment, packaging etc. is determined by voestalpine Railpro, unless agreed otherwise. Any specific wishes of the other party in terms of transport, shipment or packaging are met only if the other party has declared to pay for the additional costs thereof.
2. Unless agreed in writing that loading/unloading is carried out by voestalpine Railpro, the risks and costs for loading and unloading are at the expense of the other party.
3. In the event of delivery at one or more specific locations, where further instructions apply by virtue of (a) specific regulation(s), the other party must ensure that these are complied with at their own expense and risk.
4. The risk of the goods to be delivered by voestalpine Railpro is transferred to the other party from the moment these goods are deemed delivered as referred to in article 6, paragraph 3, without prejudice to the provisions in article 6, paragraphs 5 to 7.

#### **ARTICLE 6 - DELIVERY**

1. The other party shall promptly provide voestalpine Railpro with any information regarding the destination, delivery date and quantity of the Products and render every assistance in order to properly execute the agreement, at all times.
2. Voestalpine Railpro shall carry out the work in accordance with what has been agreed and, in the event that nothing has been agreed, voestalpine Railpro reserves the right to carry out the work at their discretion, whether or not by engaging third parties and whether or not in separate parts. Voestalpine Railpro is committed to carrying out the work with care and to the best of its ability.
3. Delivery of the goods is deemed to have taken place once voestalpine Railpro or voestalpine Railpro's contracted common carrier physically delivers the goods, or makes these available, at the agreed place of delivery. A representative of the other party must be present during delivery of the goods, in order to fill in and sign the consignment note. If this is not possible, voestalpine Railpro can confirm the physical delivery or availability by telephone, after which the goods are deemed to have been delivered. In that case, voestalpine Railpro shall leave a copy of the packing slip with the materials and take a picture of the goods delivered onsite.
4. If, for whatever reason, the other party cannot accept the goods or does not wish to do so, voestalpine Railpro is entitled to store the goods in its warehouse or elsewhere, at the expense and risk of the other party, including the risk of loss of quality. Any transport or other related costs are also at the expense of the other party.
5. The other party is will inspect the goods and/or packaging upon delivery and check for any shortages and/or damage and/or notify Railpro of deficiencies by e-mail to agree contact.

6. Any shortages and/or damage and/or faults of the goods and/or packaging upon delivery, must be noted on the packaging slip, the invoice and/or transport documents (or arrange for this to be done).
7. If the other party fails to carry out the inspection as referred to in paragraph 5 or note down the findings as referred to in paragraph 6, the agreement between the parties is deemed to have been executed correctly.
8. Voestalpine Railpro is entitled to rectify a previous unsatisfactory performance, unless the omission cannot reasonably be corrected.
9. Voestalpine Railpro will endeavor to minimize transportation costs through consolidation of orders and shall not unreasonably divide shipments.
10. The performance by voestalpine Railpro is deemed satisfactorily by the parties, if the goods, or a part thereof, have been commissioned, worked or processed by or on behalf of the other party, unless the other party has observed paragraphs 5 and 6 of this article.
11. Voestalpine Railpro is entitled to deliver in parts (partial deliveries), which can be invoiced by voestalpine Railpro separately. For the purpose of these terms and conditions, each partial delivery is deemed an independent delivery.
12. The indicated delivery time is always by approximation, unless explicitly agreed otherwise in writing. Exceeding the delivery time does not entitle the other party to additional or replacement compensation or to non-fulfilment of any obligation by virtue of the agreement. Deviating from a delivery time and/or place explicitly agreed in writing at the request of the other party, is subject to mutual consultation with voestalpine Railpro. Any additional costs are passed on to the other party. The exact time of delivery is communicated between voestalpine Railpro and the other party no later than on the day of delivery. The time of delivery is a rough indication (am or pm) and depends on the progress when in transit. If, at the request of the other party, delivery is set to take place at a specific time, any additional costs arising from that are passed on to the other party.
13. If a final delivery date has been agreed and the other party wishes for changes and/or additions to be made to the order, voestalpine Railpro shall inform the other party of the consequences of those changes and/or additions for that final delivery date.

## **ARTICLE 7 - TERMINATION**

1. The other party is not allowed to terminate the agreement unilaterally.
2. If the agreement is terminated, voestalpine Railpro is entitled to be compensated by the other party for any damage, including consequential damage as a result thereof, to an amount of at least 10% of the invoice value for the entire order.
3. Voestalpine Railpro, without being obliged to pay compensation and without prejudice of the provisions in paragraph 2, is entitled to partly or fully terminate the agreement with immediate effect, by means of a written notice to that effect given to the other party, if:
  - a) the other party has been granted a provisional or definite moratorium on payments, bankruptcy of the other party has been filed for, the other party assigns the assets, the company of the other party is liquidated or terminated or if part or all of its properties are seized.

- b) the other party discontinues trade, or its company or an important part thereof is transferred, which includes the contribution of its company to a new or existing company and/or changes the business purpose;
- c) the other party acts or has acted in breach of the law, whereas subsequent compliance or rectification is no longer possible; including failure of the other party, after proper notice of default by voestalpine Railpro, to pay an invoice amount, or part thereof, within the stipulated term.
- d) the other party has repeatedly failed to fulfil its obligations to the extent that voestalpine Railpro cannot reasonably be required to continue to observe the agreement.

#### **ARTICLE 8 - WARRANTY**

1. With due observance of the limitations stated below, voestalpine Railpro provides 12 months warranty with regard to the goods delivered by them. This warranty is limited to manufacturing faults and thus does not include breakdowns due to parts of the goods having been subject to wear and use.
2. The warranty lapses if the other party and/or third parties engaged do not properly follow the Work Instructions or guidelines or use the goods incompetently.
3. The warranty also lapses if the other party and/or third parties engaged by him carry out work on or changes to the goods.
4. A claim by the other party under the warranty provided by voestalpine Railpro does not suspend the obligation of the other party to pay.

#### **ARTICLE 9 - LIABILITY**

1. Voestalpine Railpro can only be held liable insofar as imperatively prescribed by law, subject to the other party having given proper notice of default to voestalpine Railpro.
2. In all cases in which voestalpine Railpro is obliged to pay compensation, the amount shall not exceed the invoice value of the goods delivered within the framework of the relevant agreement (exclusive of VAT), this at the discretion of voestalpine Railpro, at least the part thereof which caused the damage or in relation to which the damage was caused.
3. In any case, voestalpine Railpro cannot be held liable if:
  - a) the instructions or recommendations provided by voestalpine Railpro for storage and/or use, among other things, have not been strictly observed;
  - b) the goods delivered have been used incompetently or in accordance with a purpose other than agreed or what is usual
  - c) the other party fails to (promptly or properly) fulfil any obligation arising from the underlying agreement towards voestalpine Railpro.
  - d) the goods delivered haven been impaired as a result of external causes, such as (rain) water, extreme temperatures, fire, etc.;
  - e) the other party repairs the goods or makes changes to it without prior written approval of voestalpine Railpro.

#### **ARTICLE 10 - COMPLAINTS**

1. Any claims for product nonconformance are tendered to voestalpine Railpro by e-mail, clearly describing the nature and reason of the nonconformance. Claims will be processed

by voestalpine Railpro if they are received within 5 days of delivery of the relevant performance, clearly describing the nature and reason of the complaint.

2. After this term has expired, the other party is deemed to have approved of the performance that has been provided. Complaints received after the aforementioned term shall not be accepted by voestalpine Railpro.
3. If the claim for product nonconformance is accepted by voestalpine Railpro, voestalpine Railpro is solely obliged to remedy any breaches; the other party is not entitled to compensation. Voestalpine Railpro determines how any breaches shall be remedied. Voestalpine Railpro may cure conformances by repair or replacement.
4. If and insofar the claim for product nonconformance is accepted by voestalpine Railpro, the obligation of the other party is suspended, at least payment of that part of the invoice to which the claim relates to, until the claim has been dealt with.
5. Goods can only be returned subject to prior written approval of voestalpine Railpro, under terms to be stipulated by them.

#### **ARTICLE 11 – FORCE MAJEURE**

1. Voestalpine Railpro is not responsible for any damage, and is entitled to invoke force majeure, if the execution of the agreement, whether or not temporarily, is partly or fully prevented or impeded by circumstances beyond the control of voestalpine Railpro, including yet not limited to: business embargos, strikes; selective strikes and instances of work-to-rule, including actions by Rail Traffic Control and lockouts; delayed or improper delivery of parts, items and/or services ordered by third parties to voestalpine Railpro; import and export restrictions; transport breakdowns (including power failures or low water level); and operational failures.
2. If, according to voestalpine Railpro, the force majeure is temporary in nature, the obligations of voestalpine Railpro are suspended, until the circumstance causing the force majeure has ceased to exist.
3. If, according to voestalpine Railpro, the force majeure is permanent in nature, the parties can come to an arrangement in terms of terminating the agreement and the consequences thereof.
4. Voestalpine Railpro is entitled to claim payment for activities within the framework of the execution of the relevant agreement, carried out prior to the events causing force majeure to take place.
5. If voestalpine Railpro believes to be in or enter a situation of force majeure, the other party shall be forthwith informed in writing.

#### **ARTICLE 12 - PAYMENT**

1. Invoices must be paid within 30 days from receipt without deductions or compensations. The value day on the bank/giro statements of voestalpine Railpro is the determining factor for confirmation of receipt and is therefore deemed the day of payment.

2. All payments made by the other party shall first be applied to settle all interest payable and collection costs incurred by voestalpine Railpro and subsequently to settle those invoice amounts which have been outstanding for the longest period.
3. Any claim with regard to invoices must be submitted by e-mail within 10 days of the invoice date. Invoices that have not been disputed within this period are deemed to have been approved by the other party.
4. In the event of one or more circumstances as referred to in article 7, paragraph 3, all obligations of the other party are immediately due and payable, without prejudice to the right of voestalpine Railpro to be compensated for damages, costs and interest incurred.

#### **ARTICLE 13 – INTEREST AND COSTS**

1. If payment has not been made within the term stated in the aforementioned article, the other party is in default by operation of law and, as from the invoice date, owes the statutory commercial interest by virtue of article 6:119a of the Netherlands Civil Code to the day of full settlement, during which part of a month shall be considered a full month.
2. Any in and out-of-court costs to be incurred shall be at the expense of the other party. The extrajudicial collection costs amount to at least 15% of the amount owed by the other party and includes the aforementioned interest.
3. Unless agreed otherwise, voestalpine Railpro is entitled, subject to voestalpine Railpro having given proper notice of default, to apply charges for goods which have not been accepted by the other party on the agreed delivery date.

#### **ARTICLE 14 - RETENTION OF TITLE**

1. All goods remain the property of voestalpine Railpro until they have been paid for in full, including any interests and costs. Termination of the agreement and repossession of the goods does not affect the right of voestalpine Railpro to be compensated for loss or damage.
2. Within the framework of their ordinary business operations, the other party may sell on or use the goods, yet they may not be given as security nor serve as such in relation to third-party claims.

#### **ARTICLE 15 – APPLICABLE LAW**

All agreements between the other party and voestalpine Railpro are governed solely by Dutch law.

#### **ARTICLE 16 - DISPUTES**

Any dispute whatsoever - including those classified as such by only a single party – arising from or in relation to the contents, interpretation or execution of the agreement and to which these terms and conditions apply or arising from or in relation to the terms and conditions themselves, both factually and legally in nature, shall be settled by the competent court of Amsterdam.