

## GENERAL CONDITIONS OF SALE

Edition December 2013

### 1. GENERAL PROVISIONS

The following General Terms and Conditions shall apply to all supplies and services unless an explicit written deviation has been agreed upon.

The Seller is not obliged by the Buyer's Terms of Purchase, unless explicitly accepted by us in writing. Lack of objections does not imply the Seller's acceptance.

Seller's offers are not binding. All Sales contracts shall become binding only after confirmation in writing by Seller.

### 2. PRICES AND PAYMENT TERMS

All prices and payment terms shall always be specified in the purchase order and sales order confirmation. No contract shall be valid without clear understanding of price and payment terms.

Unless otherwise agreed, all prices are to be understood net without any deductions.

If payment is not made on time, Seller shall be entitled, in addition to its other legal rights, to charge default interest in the applicable statutory amount.

The interest rates are shown in the Sellers' dunning letter.

Buyer shall have no right to set off, retention or reduction unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by Seller.

### 3. RETENTION OF TITLE

All delivered goods shall remain Seller's property until full and complete payment of the goods.

### 4. QUALITY

Unless otherwise specified, the relevant standards with the applicable tolerances will be decisive for quality dimensions. In the absence of existing standards, this will be governed by trade usage.

### 5. QUANTITY

Seller may deliver and Buyer will accept up to +/- 3 % of the contractual quantity unless agreed upon in writing.

## **6. DELIVERY**

Delivery of goods is subject to Incoterms 2010 of the International Chamber of Commerce.

The transport route and means of transport as well as the forwarder or freight carrier are at Seller's discretion under the exclusion of any liability. Buyer's wishes however, shall be considered to the extent as is possible.

Goods booked on EXW and FCA basis that are notified as ready for dispatch must be called immediately. Appropriate cargo securing and safety equipment shall be provided by Buyer.

For goods booked on FOB basis the Buyer shall be obliged to arrange onward transport in a timely manner.

For goods booked on CIF, CIP, CPT, DAP, DDP basis, Buyer shall arrange the discharge of cargo in a timely manner.

For goods, booked on DAT basis, Buyer shall arrange free and suitable storage space.

For any delay caused by Buyer the latter shall be kept liable for any related costs such as but not limited to intermediate storage, insurance, demurrage, handling charges etc.

All visible damages as well as any deviations of the agreed contractual quantities of the specified item shall be claimed by Buyer or its representatives, with full particulars in writing immediately upon arrival of the goods. Buyer shall grant Seller and its insurer access to the claimed goods for inspection and investigation. In case Buyer fails to comply with the stipulations of this clause, all Buyer's claims shall be deemed forfeited.

## **7. DELAY IN DELIVERY, FORCE MAJEURE**

In case of force majeure or other unforeseen incidents, which are beyond the control of the Seller or of Seller's supplier, (such as e.g. strike, lockout, delay in transports, acts of public authorities, shortages of energy, raw materials) delivery time shall be extended accordingly. If, however, the event of force major last for a period of more than ninety (90) days, Buyer shall be entitled to withdraw from the contract, but without any right to claim damages.

If Seller fails to deliver the materials within the agreed time period, except in the case of force majeure, as described above, Buyer shall have the right after having granted an adequate grace period of minimum 30 days, to terminate the contract. The Buyer shall not be entitled to any further rights or remedies, unless in cases of wilful misconduct or gross negligence on Seller's part.

## **8. SUSPENSION OF FUTURE SHIPMENTS – CHANGE OF CREDIT TERMS**

Buyer hereby represents that it is solvent and Buyer's signing of any delivery receipt (however denominated) furnished by Buyer to the delivering carrier shall constitute a further

representation of solvency at the time of signing such receipt. Seller shall have the right to withhold shipment of any portion of the material covered by this contract or any other existing contract between Seller and Buyer, in the event, Buyer fails to make payment when due under any contract between Buyer and Seller. Said action on the part of Seller shall not release Buyer from its obligation to accept and pay for such remaining portion of material if and when shipped by Seller.

If at any time there is a change in the financial circumstances or structure of Buyer, arising from a change in business or market conditions or otherwise, or arising from a merger, reorganization or other change in business form, or if Buyer becomes insolvent, makes an assignment for the benefit of creditors, or a petition in bankruptcy with respect to Buyers is filed, or if any lien, arising from judicial process or otherwise, is placed upon any material asset of Buyer, Seller shall have the right to cancel the contract without liability on its part or to change the credit terms of the contract, including but not limited to requiring the payment of cash in advance of delivery.

## **9. CANCELLATIONS**

Cancellations and suspensions of orders shall not be accepted without the prior written consent of Seller. If the Buyer cancels the contract without the Seller's acceptance all costs that have arisen between the date of contract and the time of cancellation shall be borne by the Buyer.

## **10. WARRANTY**

Seller warrants that the Goods will conform to the Specifications and to such of the Buyer's quality standards and technical specifications as may be agreed in writing between the parties. There are no warranties, express or implied, of merchantability, fitness or otherwise, which extend beyond the description on the face of the contract.

The warranty period for the goods shall be 18 months after acceptance of the goods.

All notices of defects must be made in writing within a reasonable period of time after the arrival of the goods at the place of destinations. Latent defects shall be reported immediately upon their discovery.

The notice must clearly specify the kind of the alleged defect. On request, Buyer shall make available the material rejected or adequate samples thereof and give Seller the opportunity to inspect the defective goods.

In case of a dispute as to whether material meets contract specifications Seller or Buyer may designate a mutually accepted independent testing/inspection company and/or surveyor to make an examination and in such case said company's and/or surveyor's findings shall be conclusive and binding on both parties (the expense of which examination shall be borne by the Seller with respect to each item found not to conform to specifications and by the Buyer with respect to each item found to conform to specifications).

## **voestalpine Tubulars GmbH & Co KG**

In the event the Buyer's claims are justified, Seller shall at its option and at its own cost repair or replace the Goods within a reasonable time period.

Buyer's obligation to accept and make payment on time for the balance of the goods delivered or to be delivered under the contract shall not be affected thereby.

The Buyer shall not be entitled to any further rights or remedies. Further claims, particularly with regard to reduced price, do not apply to the extent that this was not previously agreed upon.

### **11. LIABILITY**

In no circumstances will Seller be liable to Buyer for any indirect, incidental or consequential damages, including without limitation, loss of profit, interruption of business and or any other kind of pure financial loss.

However, the exclusion does not extend to claims under the product liability act.

### **12. IMPORT DUTY AND TAXES**

If the contract calls for Seller to pay duty, Seller shall pay the amount of import duty at the rates stated in the Tariff Schedules of the import country in effect on the date of the contract.

In the event that any new or increased import taxes, however denominated, are imposed upon the imported material after the date of the contract, such new or increased taxes shall be for the account of and charged to Buyer.

### **13. ARBITRATION AND APPLICABLE LAW**

All disputes arising out or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said rules. The decision of the arbitrators shall be final and binding.

Venue of the arbitration will be Vienna and the proceedings will take place in the English language.

Austrian law excluding its conflict of law provisions shall apply. The application of the United Nations Convention on Contracts for the International Sales of Goods (CISG) shall be expressly excluded.

#### **14. CLAUSE PARAMOUNT**

In the absence of a sales contract duly executed by Buyer and Seller the terms of sale are determined in the Buyer's purchase order and in the Seller's sales order confirmation. Then the terms of the sales order confirmation shall prevail.

#### **15. MODIFICATIONS**

Any changes in the sales terms and conditions after issuance of the Buyer's purchase order and Seller's order confirmation shall be expressed and accepted by both parties in writing. All notices shall be in writing, posted or sent by fax or email.

#### **16. MISCELLANEOUS**

If individual provisions of the present terms and conditions of sale and delivery should be entirely or partly ineffective, then these provisions shall have no effect on the validity of the remaining provisions.

These General Conditions of Sale have been prepared in the English and German language. As required Seller will translate these conditions also into other languages. It shall be noted that the English version is the one with legal bearing.

For Buyers within the German speaking part of Europe the German Version shall be valid.

#### **17. COMPLIANCE**

The Buyer acknowledges the code of conduct for voestalpine business partners, which is enclosed as an annex and undertakes to observe this code of conduct.