

**Definitions****Scope (1)**

(1) The following General Terms and Conditions (GTCs) apply to all business relationships with customers, unless otherwise expressly agreed in writing. The version valid at the time of entering into the contract applies.

(2) Differing, conflicting or supplementary General Terms and Conditions shall not form part of the contract, even if they are known, unless their applicability is expressly agreed in writing.

**Entering into the contract (2)**

(1) All our offers are non-binding and subject to alteration. Documentation and information pertaining to our offers – such as drawings, illustrations, samples and patterns, dimensional, weight, performance and consumption data contain or themselves constitute only approximate data and information, which is not deemed to be specially agreed characteristics or specifications unless not otherwise provided.

(2) The customer's order shall be deemed to be his binding acceptance of the offer. In cases of goods being ordered electronically, we shall confirm receipt of the order within three days. The confirmation of receipt does not constitute an acceptance of an order.

(3) Our order acceptance constitutes the only binding acceptance of an order.

(4) We are entitled to refuse acceptance of an order e.g. after reviewing the creditworthiness of the customer.

(5) If the consumer orders the goods electronically, the legally effective GTCs shall be sent to the customer by e-mail.

(6) Oral agreements are not binding. Written counter-offers by the customer only become binding by means of our written order acceptance.

(7) Under no circumstances shall silence be considered as acceptance. Changes or amendments to the contract, or order cancellations, or suspensions are only binding with the written agreement of both parties.

(8) We reserve the right to make changes to the technical or other composition of our products within the framework of legal standards and/or applicable product standards, as well as other product modifications that the customer can reasonably accept.

**Payment & payment terms (3)**

(1) The offered prices are daily rates and apply until revoked. Price indications are non-binding. The customer is responsible for any tax or governmental charges, which will be added to the invoice.

(2) Unless otherwise stated, all offers and prices are submitted on an FCA basis, **Incoterms 2010**®, excluding packaging, insurance and transportation.

(3) Unless otherwise agreed, the type of packaging shall be determined by seller. Increases in freight charges occurring between the date of the order acceptance and the actual shipment shall be charged separately to the customer.

(4) The customer shall pay all invoiced amounts to our business account after receipt of the total or partial delivery within 30 days from the date of the invoice. We reserve the right to cancel the terms of payment. Nevertheless, we are entitled, without giving any explanation, to make deliveries conditional upon advance payment or the presentation of collateral.

(5) We only accept letters of credit or checks when this has been explicitly agreed, in writing, and only as payment for outstanding amounts.

(6) The customer shall pay interest on all late payments at the lesser of the rate of 10% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. The customer shall reimburse seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these GTCs or at law (which seller does not waive by the exercise of any rights hereunder), seller shall be entitled to suspend the delivery of any goods if customer fails to pay any amounts when due hereunder.

(7) The customer is entitled to offset amounts only when his claims have been legally established or recognized by seller. The customer is not entitled to withhold any payments.

(8) If the customer does not comply fully or in part with his payment obligations, or a letter of credit or check is dishonored, or if we receive information that makes his creditworthiness questionable, or if an application for the initiation of insolvency proceedings is filed, or the customer proposes terms of a voluntary arrangement to his creditors, or the customer is the subject of a bankruptcy, receivership, liquidation, dissolution or similar proceeding, we shall be entitled to demand immediate payment of all unpaid, as well as not yet due or deferred invoices, and to demand advance payment, or the presentation of securities for all outstanding deliveries. In addition, we are entitled to demand that the re-sale and processing of delivered goods be terminated immediately. In the event of the customer not complying with our request for advance payment, for securities or to our demand letter within a reasonable period, we shall be entitled to withdraw from the contract, or to repossess the goods, and to invoice the customer for all costs and expenses, including lost profit, that have accumulated up to that time.

**Transfer of risk (4)**

The customer bears the risk of the loss and accidental damage of the goods from the moment of the tender of the goods to the carrier at our facility, in accordance with the terms of this contract.

**Storage instructions for products (5)**

The customer is aware of the proper and adequate use of our products. Improper usage results in our warranties and liabilities becoming null and void. When using our welding equipment, the customer is obliged to painstakingly observe all safety regulations, technical rules, operating instructions and user manuals.

**Obligation to accept, storage period and storage costs (6)**

(1) The customer commits himself to accepting the delivered products at the contractually agreed delivery terms and conditions within 14 calendar days, otherwise the customer is in default of acceptance.

(2) In the event that the customer unjustifiably refuses the acceptance of the goods, he must pay all transport and storage costs, notwithstanding his payment obligations.

(3) The goods are deemed accepted three months after our notice of readiness to dispatch, and the total purchase price becomes due at this point. Storage costs and any additional costs shall be charged to the customer from the 14th day after the goods were declared ready for dispatch, but were not delivered to or collected by the customer.

**Delivery Periods (7)**

(1) We are entitled to effect partial deliveries. The contracting parties agree that partial deliveries of goods or services are deemed the subject of an independent contract separate from the order acceptance, and that they are subject to these General Terms and Conditions of Sale.

(2) Our liability for goods not delivered on time is explicitly limited to those cases in which we have confirmed the shipping date in writing.

(3) Unless otherwise agreed, the delivery periods shall be calculated from the date of the order acceptance, and they are subject to the timely receipt of the input goods required by us. The delivery period shall be deemed fulfilled when the goods are shipped prior to the deadline, or the customer has been notified of the readiness of the goods for collection.

(4) The customer is only entitled to terminate the contract when the delay in the delivery date is attributable to gross negligence on our side, and he has granted us, but unsuccessfully, a reasonable period of grace for the delivery. The written termination of the contract must be delivered via registered mail.

**Retention of Title (8)**

We retain a security interest in and to the goods until full payment of the purchase price has been made. The customer must immediately notify seller in writing of any seizure of the goods by third parties, in particular of enforcement measures, damage to, or destruction of the goods. We are entitled to withdraw from the contract and to demand handover of the goods in cases of breach of contract, in particular in the event of a delay in payment. The customer is entitled to resell the goods in the course of his ordinary business. The customer hereby grants to seller a lien on and security interest in and to all of the right, title and interest of customer in, to and under the goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this section constitutes a purchase money security interest under the New York Uniform Commercial Code.

**Warranty (9)**

(1) We warrant to Customer that the goods will be free from material defects in material and workmanship.

(2) **EXCEPT FOR THE WARRANTY SET FORTH ABOVE, WE MAKE NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(3) In cases of defective goods, we shall provide warranty for the defect, at our choice, by way of repair or replacement. If a repair or replacement is not possible, or has failed, the customer shall be entitled to demand a price reduction or, when it is not a minor defect, to rescind the contract. **THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH ABOVE.**

(4) Minor deviations from quality, form, color, weight or design, or that are technically unavoidable, or are in line with commercial practice, are not deemed defects and may not be claimed against. The same applies to deliveries based on samples and specimens. Damaged packaging falls under minor defects and does not convey the right to refuse acceptance.

(5) In cases in which the buyer is entitled to issue notices of defects, such notices must be given, in writing, within 14 days after the delivery of the goods; otherwise the assertion of a warranty claim is excluded. Hidden defects must be reported, in writing, immediately upon discovery and any processing must be terminated. The notice of defects must be specified exactly.

(6) The warranty period for the goods is 24 months from the date when the risk has transferred to the customer. This period also applies to hidden defects. Assumption of defectiveness at the time of delivery shall be explicitly excluded.

(7) In the event of hidden defects that were disclosed to seller in time, the customer shall be obliged to give seller an opportunity to review the delivery in question within a reasonable period of time.

**Liability (10)**

(1) **IN NO EVENT SHALL WE BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT WE WERE ADVISED OF THE POSSIBILITY OF**

**SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(2) **IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO US FOR THE RELEVANT PRODUCT SOLD HEREUNDER.**

(3) The limitation of liability set forth above shall not apply to (i) liability resulting from our gross negligence or willful misconduct and (ii) death or bodily injury resulting from our acts or omissions.

(4) To the extent permissible by law, all rights to claim for compensation cease 12 months after becoming aware of the damage and of the injured party.

(5) Technical consultations and information about processing and possible uses of our goods that we provide free of charge are deemed a service without commitment, and for which we assume no liability.

(6) We are only liable for our own content on the company's website. In the event that we provide links to other websites, we are not liable for the third party content included in such websites. In the event that we obtain knowledge of illegal content on external websites, we shall immediately block access to such sites.

**Nondisclosure (11)**

(1) The customer shall exclusively use all documents and knowledge that we declare as confidential and in whose confidentiality we are obviously interested, which he obtains in the course of our business relationship, for the jointly pursued purposes and treat them with the same care towards third parties that he would use in the treatment of his own documents and knowledge.

**Data protection (12)**

(1) With our data protection information, we inform our customers of:

- » the nature, scope, duration and purpose of the collection, processing and use of personal data required for the execution of orders and invoicing;
- » their right to object to the preparation and use of his anonymized user profile for the purpose of advertising, market research and tailoring of our offerings;
- » the transfer of data to companies commissioned by seller and subject to statutory data protection provisions for the purposes, as well as for the duration of credit assessments, and for the dispatch of goods or services;
- » the right to gratuitous disclosure of his personal data stored by seller.

(2) Any collection, processing and use of personal data beyond the scope of section (1) requires the customer's consent. The customer shall be offered an opportunity to give this consent before he places his order. The customer has the right to revoke his consent at any time. Further documents are available on our website.

**Force majeure (13)**

In the event that circumstances change under which the contract has been entered into, or events of force majeure occur that include, without limitation, natural catastrophes, non-delivery of input material, breakdown of machinery, interruption of operations of any kind, strike, lockout in our own company or in companies related to the fulfillment of the performance, or hindrances due to official directives, or sanctions by international authorities, as well as any causes that would make the delivery unreasonably difficult or impossible, excuse seller of our duty to perform for the duration and the scope of the impact of such disturbances, or entitle seller to withdraw from the contract entirely or from that part that has not yet been fulfilled, without the customer having the right to raise legal claims against seller.

**Export controls (14)**

(1) Our goods and services are supplied with the provision that their delivery is not impeded by national or international regulations, especially export control regulations such as embargos or other sanctions.

(2) The customer commits to not selling the products to third parties of whom he has reason to assume will disregard such regulations or circumvent them. Upon request, the customer must provide seller, without delay, all required information, especially as regards the final recipient, final destination and end-use of the goods or services.

(3) The customer (ordering party, consignee) commits to not using the goods, neither directly nor indirectly, in any way in connection with the development, production, handling, operation, maintenance, supply, detection, identification or dissemination of chemical, biological, or nuclear weapons, or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons, unless he holds the required official licenses for these purposes.

(4) The customer shall not, and shall not permit any third parties to, directly or indirectly, export, reexport, or release any regulated goods to any jurisdiction or country to which, or any party to whom, the export, reexport, or release of any regulated goods is prohibited by applicable federal or foreign law, regulation, or rule. The customer shall be responsible for any breach of this Section by its, and its successors' and permitted assigns', affiliates, employees, officers, directors, customers, agents, distributors, resellers, or vendors. The customer shall comply with all applicable federal and foreign laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, reexporting, or releasing any regulated products.

(5) In the case of re-selling/transfer of the supplied goods, the customer commits to making his customer aware of all export-related regulations and to passing on all obligations resulting therefrom.

(6) On request, the customer commits to issuing an end-use certificate and to sending the original to seller, in order to enable us to prove the end-use and intended purpose.

(7) The customer shall be liable to the fullest extent for any damages resulting to seller from any culpable non-compliance with any federal or foreign law, regulation, or rule by the customer and hereby releases seller from any liability towards third parties.

(8) Our offers, order acceptances, and the contract, as well as the fulfillment thereof, are subject to seller obtaining all required export or transfer licenses, or any other permits in connection with export regulations or releases from the relevant authorities, and to there not being other legal obstacles in connection with export regulations that we, as exporters or shipper, or any of our suppliers, must adhere to.

**Compliance (15)**

The principles and guidelines for a sustainable ethically, morally, and legally unobjectionable behavior in business, as defined in the latest version of the 'Code of Conduct of voestalpine AG' and the related 'Code of Conduct for voestalpine Business Partners' are available under <http://www.voestalpine.com/grup/en/grup/compliance/> and are explicitly deemed accepted by the customer, who supports their underlying principles and regulations. In individual cases, when patently clear and severe breaches of the underlying principles and regulations by the customer become evident, and which make a continuation of the business relationship untenable, we are entitled to terminate the contractual relationship for good reason and, therefore, with immediate effect. The customer commits to holding seller harmless of any damages and disadvantages resulting therefrom.

**Place of jurisdiction and applicable law (16)**

(1) The place of performance of our goods and services is the location of our plant, and the exclusive place of jurisdiction and venue is agreed to be any court of competent jurisdiction in Erie County, New York.

(2) However, we are also entitled, at our option, to initiate legal proceedings against the customer at its legal domicile. All matters arising out of or relating to this contract are governed by and construed in accordance with the laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

(3) If one or more of the provisions become ineffective, the other provisions remain binding.