General Terms and Conditions of Sale of voestalpine Böhler Welding Spain S.A.

Scope (1)

(1) The following Terms and Conditions apply to all business relationships with customers, unless otherwise expressly stipulated in writing. The version valid at the time of concluding 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.

Conclusion of the contract (2)

(1) All our offers are non-binding and subject to alteration. Within reasonable limits, we reserve the right to make technical and other alterations. The documents and information furnished to this end may be subject to changes, illustrations and samples as well as weight, measure, performance, and consumption information, serve as a mere information and do not represent any special agreed characteristics. We reserve the propriety of making alterations, amendments and additions to our products, such as drawings, illustrations, samples and data; these documents, information and data shall not be made available to third parties or used for their own purposes.

(2) The customer’s order shall be deemed to be his binding acceptance of the offer. In connection with acceptance of order or contract, 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 confirmation 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 customer 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-confirmations by the customer only become binding by means of our written order confirmation.

(7) Under no circumstances shall silence be considered as consent. Changes or amendments to the contract, or order cancellations, or suspensions are only binding with the written agreement of both parties. Any expenses or disadvantages resulting thereof shall be for the exclusive account of the customer, unless otherwise agreed.

Payment & payment terms (5)

(1) The offered prices are daily rates and apply until revoked. Price indications are non-binding. The prices do not include the applicable VAT. Regarding small quantities (≤100kg), we reserve the right to refer customers to a distributor, or to apply a surcharge of up to EUR 300 for minimum order quantities.

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

(3) Any applicable alloy surcharge at the time of delivery, as well as surcharges relating to a change in price of input materials and raw materials, and changes relating to additional or increased official charges shall be applied in full.

(4) Unless otherwise agreed, any cost or other surcharge shall be determined by us. Increases in freight charges occurring between the date of the order confirmation and the actual shipment shall be charged separately to the customer.

(5) The customer undertakes to transfer the invoiced amount to our business account after receipt of the total or partial delivery within 30 days from the date of the invoice.

(6) 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.

(7) We only accept letters of exchange and cheques when this has been explicitly agreed, in written, and only as payment for outstanding amounts. All discounting and commission charges shall be for the accounts of the drawers.

(8) In cases of default, we shall charge interest on default as set forth in the Spanish Law against delayed payments (Ley 3/2004, 29 December). In cases of default, the customer commits himself to paying all expenses related to the dunning process, the collection, and any other expenses that may be incurred. As well as the payment of interest. The customer is entitled to offset amounts only when his counterclaims have been legally established or recognized by us. The customer is not entitled to withhold any payments.

(9) If the customer does not comply fully or in part with his payment obligations, or a letter of exchange or a cheque is dishonoured, 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 creditor, 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 resale and processing of delivered goods be terminated immediately. In the event of the customer not accepting to our request for advance payment, for securities or to our demand for payment, or the presentation of securities for all outstanding deliveries. In addition, we are entitled to demand that the resale and processing of delivered goods be terminated immediately. If the delivery period expires and the agreed purchase price becomes due.

(10) In the event of hidden defects that were notified in time, the customer shall be entitled to demand a price reduction or, when it is not a decisive quantity at least 2 months prior to the delivery date, unless otherwise agreed. Additional charges caused by the customer, relating to a delayed call-off or a later change of the call-off destination or quantity shall be borne by him and be based on our calculations. The customer shall be obliged to accept the goods on the day when the validity period expires and the agreed purchase price becomes due.

In cases of default, the delivery periods shall be calculated from the date of the order confirmation, 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 withdraw from the contract when the delay in the delivery date is attributable to gross negligence on our side, and he has conceded us, but unsuccessfully, a reasonable period of grace for the delivery. The withdrawal from the contract must be notified by registered letter.

Retention of Title (10)

(1) We retain title to the goods until full payment of the purchase price has been made. The customer must immediately notify us 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 undertakes to register and to notify us in writing of the seizure of our goods. We are therefore entitled to the goods and to demand a corresponding reimbursement in its books or invoices. We hereby accept this assignment. Following this assignment, the customer is entitled to collect the receivables ourselves if the third party is in default of payment.

(2) If the goods are processed by the customer, we acquire co-ownership of the new item proportionally to the value of the goods delivered by us. The same shall apply if the goods are processed or mixed with other objects which do not belong to us.

Warranty (11)

(1) In cases of defective goods, we shall provide warranty for the defect, at our choice, by way of improvement or exchange. If an improvement or exchange 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. Minor deviations from quality, form, colour, weight, or design, or that are technically unavoidable, are in line with the nature of the contract and notice, are not deemed defects and may not be claimed against. The same applies to deliveries based on samples and specifications. Damaged packaging falls under minor defects and does not convey the right to refuse acceptance.

(2) The goods in which the buyer is entitled to issue notices of defects, such notices must be given, in written, 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.

(3) The warranty period for the goods is 12 months from the date when the risk has transferred to the customer. This period also applies to hidden defects. Assumption of defective goods at the time of delivery shall be explicitly excluded.

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

(5) We offer no guarantees to customers as defined in law. Unless otherwise contractually agreed, we do not warrant or accept any liability for the characteristics or the usability of the goods for a specific purpose, other than those explicitly agreed to by us.

Obligation to accept, storage period and storage costs (7)

(1) The customer commits himself to accepting the delivered products at the contractual 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. The goods are deemed accepted three months after our notice of readiness to despatch and the total purchase price becomes due at that point. Storage costs calculated from the 14th day after the goods were declared ready for dispatch, but were not delivered to or collected by the customer.

Long-term and call-off contracts (8)

(1) All open-ended contracts can be terminated by either party with a notice period of 3 months.

(2) In the event that, in connection with long-term contracts (contracts with a duration of more than 4 months and generally open-ended contracts), there is a change in the cost of labour, material or energy, each contract partner is entitled to demand negotiations for a reasonable price adjustment, taking into account the aforementioned factors.

(3) In connection with call-off orders, the customer must inform us, in written, of the definitive quantity at least 2 months prior to the delivery date, unless otherwise agreed. Additional charges caused by the customer, relating to a delayed call-off or a later change of the call-off destination or quantity shall be borne by him and be based on our calculations. The customer shall be entitled to accept the goods on the day when the validity period expires and the agreed purchase price becomes due.

In cases of call-off orders, all as yet undelivered quantities of products ordered by the customer shall be delivered, at the latest, on the day when the validity period of the order confirmation expires.
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Liability (12)
(1) Other than in those cases provided for by the Product Liability Act, our liability is limited to intent and gross negligence. The liability for slight negligence, such as, but not limited to, compensation for consequential damages, financial loss, loss of interest, loss of profit and damages arising from claims of third parties against the customer, whereby the damage is limited to the net value of the order in case of individual shipment related to the damage (excl. any surcharges for transport, packaging, storage or duties).
(2) The above limitations of liability do not apply to injury to body or health, or loss of the customer's life.
(3) For the extent permissible by law, joint and several liability, irrespective of their legal grounds, is limited to the total net value of the order of the individual shipment related to the damage.
(4) To the extent permissible by law, all rights to claim for compensation cease 12 months after the end of the year in which the damage occurred, claims of third parties against the customer from excluded.
(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 (13)
(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. This obligation remains valid within the duration of the contract.

Data protection (14)
(1) To comply with the data protection obligations, we refer to our privacy policy, available at https://www.voestalpine.com/welding/Data-Privacy in the currently valid version.

Force majeure (15)
(1) In the event that circumstances change under which the contract has been concluded, 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 of our goods or services due to official directives, or sanctions by international authorities, as well as any causes that would make the delivery unreasonable difficult or impossible, relieve us of our duty to perform for the duration and the scope of the impact of such disturbances, or entitle us 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 us.

Export controls (16)
(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 embargoes 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 us, 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 also undertakes to ensure that the items are not put either directly or indirectly to a military end-use in or in the People's Republic of China, or in a country which is subject to an arms embargo pursuant to section 5 para. 2 of Regulation (EC) No. 223/2008, and which is included in the current lists of the European Commission of countries subject to arms embargoes, unless he holds the required licenses.
(5) In addition, he undertakes to be in possession of the required authorisations in accordance with the laws such as in Austria Standards of the Austrian Foreign Trade Act 2005 (AußWSG) as well as the Austrian Foreign Trade Regulation 2011 (AüFVi).
(6) The customer (purchaser, consignee) commits to neither directly nor indirectly selling, exporting, re-exporting, supplying, transferring or making the supplied goods otherwise accessible to persons, companies, institutions, or organisations, or in countries when this would contravene European, Austrian, UN or, to the extent applicable, US (re-)export regulations.
(7) In the case of re-selling/transfer of the supplied goods, the customer (purchaser, consignee) commits to making his customer aware of all export-related regulations and to passing on all obligations resulting therefrom.
(8) On request, the customer commits to issuing an end-use certificate and to sending the documents in order to enable us to prove the end-use and intended purpose.
(9) The customer (purchaser, consignee) shall be liable to the fullest extent for any damages resulting to us from any culpable non-compliance with the European, Austrian or US (re-)export regulations by the customer (purchaser, consignee) and release us from any liability towards third parties.
(10) Our offers, order confirmations, and the contract, as well as the fulfillment thereof, are subject to us 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 (17)
(1) The customer is to comply with all regulations and guidelines for a sustainable economically, morally, and legally unobjectionable behaviour 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 https://www.voestalpine.com/en/group/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 us harmless of any damages and disadvantages resulting therefrom.

Place of jurisdiction and applicable law (18)
(1) The place of performance of our goods and services is the location of our plant, and the exclusive place of jurisdiction is agreed to be the competent court in Rueil (Spain).
(2) However, we are also entitled, at our option, to initiate legal proceedings against the customer at his legal domicile. The customer is obliged to refund any dunning and collection expenses from claims from third parties against the customer from excluded.

Warranty for welding machines (20)
(1) The warranty period for welding machines is 12 months.

Guarantee for welding machines (21)
(1) If the customer registers the serial number of the welding machine and the address of the customer at https://www.voestalpine.com/welding/Brands/Boehler- Welding/Equipment/Warranty, we grant the customer a manufacturer’s guarantee of up to 5 years for welding machines in accordance with the guarantee conditions for welding machines available after registration on the above website. This guarantee period already includes the warranty period for welding machines mentioned in section (20).

Provision of spare parts and replacement material for welding machines (22)
(1) We guarantee a supply of spare parts and other replacement material of our welding machines for 9 years from the date of order confirmation by us.

CE conformity of welding machines (23)
(1) We declare that our welding machines are CE compliant and labeled accordingly.

Software of welding machines (24)
(1) We reserve all intellectual property rights, such as copyrights, trademarks, design rights, patent rights, utility model rights, know-how, and non-propatory inventions, commercial experience, company secrets, etc., regardless of when they are disclosed to the client.

Provision of spare parts and replacement material for welding machines (22)
(1) We guarantee a supply of spare parts and other replacement material of our welding machines for 9 years from the date of order confirmation by us.

Warranty for welding accessories (26)
(1) The warranty period for welding accessories is 24 months from the date when the risk has transferred to the customer. This period also applies to hidden defects.

CE conformity of welding accessories (27)
(1) We declare that our welding accessories are CE compliant and labeled accordingly.

Liability (12)