

I. Welding Products

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, even though its applicability shall be excluded when customer refers in submitted documents to his General Terms and Conditions

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 belonging to our offers, such as drawings, 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 proprietary rights and copyrights to all documents and information pertaining 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 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 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 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-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.
 (8) We reserve the right to make changes to the chemical 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.

Prices & payment terms (3)

(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 FCA 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, the type of packaging 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. 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.
 (6) We only accept letters of exchange and cheques when this has been explicitly agreed, in writing, and only as payment for outstanding amounts. All discounting and collection charges are for the customer's account.
 (7) In cases of default, we shall charge interest on default of 9.2% above the applicable base rate of the European Central Bank plus VAT. In cases of default, the customer commits himself to paying all expenses related to the dunning process, the collection, and the pursuit of legal remedies, as well as the court fees. 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.
 (8) 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 creditors, 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 reacting to our request for advance payment, for securities or to our dunning 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)

(1) The customer bears the risk of the loss and accidental deterioration of the goods from the moment of the handover of the goods, in accordance with the agreed Incoterms 2010.
Storage instructions for products (5)
 (1) The customer is aware of the requirement to store our products properly and is conversant with our product storage conditions. Improper storage results in our warranties and liabilities becoming null and void. The storage conditions can be found on our website under 'Storage Conditions'.
Use of products (6)
 (1) The customer is aware of the proper use of our products. Improper use leads to exclusion of any liability and warranty. When using the products supplied by us, the customer is obliged to comply with all regulations, technical regulations, operating and user instructions that protect against dangers.
Obligation to accept, storage period and storage costs (7)
 (1) If 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.
 The goods are deemed accepted three months after our notice of readiness to despatch, 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.
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 writing, 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 obliged to accept the goods on the day when the validity period expires and the agreed purchase price becomes due.
 (4) In the case 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.
 (5) The customer must bear the risk of any foreign exchange devaluation against the Euro until the date of payment, and in such a case, the purchase price shall be adjusted accordingly.
Delivery Periods (9)
 (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 confirmation, and that they are subject to these General Terms and Conditions of Sale.
 (2) Production-related deviations from the total order quantity of plus or minus 10% are permissible. The purchase price shall change according to the actual volume.
 (3) Our liability for goods not delivered on time is explicitly limited to those cases in which we have confirmed the shipping date in writing.
 Unless otherwise agreed, 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 is entitled to resell the goods in the course of his ordinary business. The customer henceforth assigns to us all receivables to the full invoice amount, which are due him by the resale of the goods to third parties, and he undertakes to make a corresponding remark in his books or invoices. We herewith accept this assignment. Following this assignment, the customer is entitled to collect the amounts due him. We reserve the right 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) The warranty period is one year from delivery or, if acceptance is required, from the time of acceptance. This period does not apply to claims for damages by the customer resulting from injury to life and limb or health, or from intentional or gross negligent breaches of obligations by the seller or his vicarious agents, which in each case shall become statute-barred in accordance with legal provisions
 (2) The delivered goods must be inspected carefully immediately upon receipt by the customer or by a third party appointed by him. If we do not receive a notification of defects in text form within seven working days after delivery, the goods shall be deemed to have been approved by the buyer as regards obvious defects or other defects which would have been identified during an immediate and careful examination. With regard to any other kind of defects, the delivered goods shall be deemed to have been accepted by the customer if the notice of defect is not received by us within fourteen working days, commencing on the date on which the defect was identified. When, under normal conditions of use, the defect was already apparent to the customer at an earlier date, that earlier date is decisive for the commencement of the notice period. Upon our request, the defective item shall be immediately returned to us, freight pre-paid. In the case of justified complaints, we shall reimburse the costs of the most economic means of transport. This does not apply if the costs increase because the item to be shipped is located at a place other than that of the intended use.
 (3) In cases of defects of the delivered items, we are, at our discretion, obliged and entitled to rectification or to replacement within a reasonable period of time. In the event of non-performance, i.e. the impossibility, unacceptability, refusal, or occurrence of unreasonable delays in the rectification or replacement, the customer may withdraw from the contract or reduce the purchase price by a reasonable amount
 (4) If a defect is attributable to us, the customer is entitled to claim damages under the conditions specified in Clause 11 herein.
 (5) The warranty ceases to apply when the customer modifies the delivered item without our consent or has it modified by third parties, and as a result thereof, the remediation of defects is made impossible or unreasonably difficult. In any case, the customer shall bear the additional costs of rectifying the defect caused by the alteration.

(6) Deliveries of used goods agreed upon in individual cases with the customer will be effected without any warranty for material defects.
Liability (12)
 (1) In the case of our culpability, our liability for damages, for whatsoever legal reason, in particular for impossible, delayed, inadequate or incorrect delivery; breach of contract; breach of obligations in contract negotiations; and unlawful acts, shall be limited as stated in Clause 11.
 (2) We shall not assume liability in the case of slight negligence caused by our management, legal representatives, employees or other vicarious agents, unless they relate to a violation of essential contractual obligations. Essential contractual obligations are timely delivery and installation of the delivery items, their freedom from defects of title, and such material defects that affect their functionality or serviceability more than insignificantly, as well as advisory, protective and duty of care obligations that ensure the customer's use of the goods in accordance with the contract, and prevent harm to life and limb of the customer's personnel, and protect his property from significant damage.
 (3) Liability for damages in accordance with Clause 11 (2) shall be limited to damages which, at the conclusion of the contract, we have foreseen as a possible consequence of a breach of contract, or which we should have foreseen by applying due care and attention. Indirect damage and consequential damage which are the result of defects in the delivery items shall only be compensated for to the extent that such damage can typically be expected when the delivered items are used for the intended purpose.
 (4) In cases of liability for slight negligence, our obligation to pay compensation for material damage and subsequent further financial loss shall be limited to an amount of twice the project value per case of damage, even if it is in violation of essential contractual obligations.
 (5) The above stated exclusions and limitations of liability apply to the same extent to our management, legal representatives, employees, and other vicarious agents.
 (6) For technical information, or when we are acting as a consultant, and such information or consultancy services are not included in the contractually agreed scope of goods and services, we do not assume any liability for such information or advice.
 (7) The restrictions defined in Clause 11 do not apply to liability in connection with intentional behaviour, guaranteed characteristics, injury to life and limb or health, or those defined in the Product Liability Act.

Non-disclosure (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.
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) We assume no liability for the impossibility of delivery or delays in delivery, when these are caused by force majeure or other events not foreseeable at the time of the conclusion of the contract and for which we are not responsible (e.g. business disruptions of any kind; difficulties in material or energy procurement; transport delays; strikes; lawful lockout; shortage of labour, energy, or raw materials; official measures; or lack of, incorrect, or untimely delivery by suppliers). When such events make the delivery or services significantly more difficult or impossible for us and the hindrance is not only temporary, we are entitled to withdraw from the contract. In the event of hindrances of a temporary nature, the delivery or service periods shall be extended, or the delivery or service dates shall be postponed for the duration of the hindrance, in addition to a reasonable start-up period. Insofar as the customer cannot be reasonably expected to accept the delivery or service as a result of the delay, he can withdraw from the contract by immediately presenting us with a written declaration.
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 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 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 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. 428/2009 and which is included in the current lists of the European Commission of countries subject to arms embargoes, unless he holds the required licences.
 (5) In addition, he undertakes to be in possession of the required authorisations in accordance with applicable Standards of the Austrian Foreign Trade Act 2005 (AußWG) as well as the Austrian Foreign Trade Regulation 2011 (AußHV).
 (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, 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 original to us, in order to enable us to prove the end-use and its 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 fulfilment 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 principles and guidelines for a sustainable ethically, 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 <http://www.voestalpine.com/group/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) If the customer is a consumer, the place of jurisdiction for all disputes arising from the business relationship between the seller and the customer is, according to our choice, Düsseldorf or the principal's domicile. In cases of lawsuits against us in aforementioned cases, however, Düsseldorf shall be the exclusive place of jurisdiction. Mandatory statutory provisions on exclusive jurisdictions remain unaffected by this provision.
 (2) The business relation between us and the customer is exclusively subject to the laws of the Federal Republic of Germany. The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) and the conflict of law rules shall be excluded.
 (3) In case these General Terms and Conditions contain gaps in its regulations, those gaps shall be replaced by valid or enforceable provisions that are as close as possible to the purpose and intentions of the parties.

II. Special terms and conditions of sale for welding machines (19)

(1) For deliveries and other services in connection with welding machines, the provisions of the General Terms and Conditions of Sale (I) shall apply, if the following provisions for welding machines do not deviate.
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-proprietary inventions, commercial experience, company secrets, etc., regardless of when they are disclosed to the client.
III. Special terms and conditions of sale for welding accessories (25)
 (1) For deliveries and other services in connection with welding accessories, the provisions of the General Terms and Conditions of Sale (I) shall apply, if the following special provisions for welding accessories do not deviate.
Warranty for welding accessories (26)
 (1) The warranty period for welding accessories is 26 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.