

# GENERAL TERMS AND CONDITIONS OF PURCHASE OF voestalpine Böhler Welding Canada Ltd. FOR PRODUCT DELIVERIES AND SERVICES

Version: MARCH 2018

## 1. General

1.1. Unless otherwise agreed in writing or stipulated in the terms and conditions below, statutory provisions shall apply. The general terms and conditions of the vendor or supplier (also referred to hereinafter simply as the "Vendor") shall only apply if expressly acknowledged and agreed by us in writing.

1.2. Only orders placed by us in writing, using our signed company order forms, shall be binding; the same requirement shall apply to orders which are based on previous orders and to changes to orders already placed. Electronic signatures shall serve as a valid legal substitution of signatures given by hand. In the case of prolonged contractual relationships (limited or unlimited continuous obligations) applicability of the GTCP shall also extend to future contractual relationships with the relevant Vendor.

1.3. Submitted order has to be confirmed in written form by the Vendor, without necessity of comprising the submitted order's text, within 7 calendar days as of its receipt. Until receipt of your written order confirmation, our original submitted order is and remains free and revocable by us without cause at all times. Additional amendments and/or deviations of our original order text in terms of technical and/or commercial aspects must be marked and addressed unambiguously by the Vendor and shall only be legally effective when approved by us in written form.

1.4. No remuneration shall be paid for cost estimates/cost evaluation/quotation, plans and suchlike.

1.5. Where reasonable, we are entitled to change request of deliverables in terms of construction and performance.

## 2. Delivery

2.1. Unless not otherwise provided in the purchase order, delivery shall be effected according to DDP Incoterms® 2010 at the agreed lump sum and during normal business.

## 3. Delivery Delays

3.1. Delivery lead times shall start from the date of written order. If the order or complete order is not delivered by that deadline, we may enforce our statutory rights without setting a period of grace for completion of the order or the outstanding part thereof. Delivery lead times shall only be construed as satisfied once all the contractual and legal obligations and where applicable, the necessary documentation (e.g. technical test documentation) has been delivered. In case of early delivery we shall be entitled to store the goods at Vendor's expense. Vendor shall hold us harmless and shall indemnify us for all costs and losses caused to us by the early delivery. If the early delivery is accepted, the purchase price shall be due on the basis of the agreed delivery lead time.

3.2. Vendor must provide a notice to us of any anticipated delays in deliveries or part deliveries immediately in writing, stating the reasons and expected length of the delay. If we do not exercise our right in accordance with the previous clause, we may set a time period within which the Vendor shall complete the delivery. If that time period expires to no effect, we may cancel the contract for the entire delivery or the outstanding part thereof and purchase the goods from a third party at Vendor's expense.

## 4. Transport

4.1. Deliveries shall be made in accordance with our transport instructions. If Vendor dispatches deliveries contrary to our transport instructions and without our express order, it shall be liable for any losses sustained by us as a result, including loss of earnings. Vendor shall notify us of delivery in writing well before goods arrive on our premises. Where no transport instructions are given, Vendor shall select the cheapest method of delivery that ensures goods arrive on time.

4.2. Goods which we return to the Vendor shall be sent on Vendor's account and at Vendor's risks. Vendor shall contract adequate transport insurance at its own expense.

4.3. Delivery notices and packaging lists must be sent to us prior to delivery and must quote our order number.

4.4. Unless agreed otherwise, goods must be packaged in the standard commercial form or at least adequately packaged and protected against all forms of damage. Any labelling requirements notified by us must be applied as described. Vendor's packaging materials shall be taken back free of charge after delivery has been effected.

4.5. Goods valued over EUR 250,- which are purchased by us by open account shall be handed over by the Vendor to the person that picks up the delivery in our name, if the Vendor has verified the identity of the

person by telephone confirmation of our materials management department.

4.6. Goods shall only be delivered COD (cash on delivery) by express agreement.

## 5. Payment

5.1. We shall make payment following receipt of a verifiable invoice and due delivery/service. Unless agreed otherwise, payment shall be made subject to 3% discount within 30 days of receipt of goods and invoice, subject to 2% discount within 45 days or net within 90 days.

5.2. We shall require a single copy of invoices, except for consignments sent abroad, for which a duplicate invoice must be supplied. Invoices must quote the number and date of the order and delivery schedule, any additional data, unloading site, number and date of delivery note(s) and quantity of goods.

5.3. We shall be entitled to offset all manner of accounts receivable and payable, including accounts owed to/payable by our affiliates.

5.4. Vendor shall only be entitled to assign its rights or obligations under the contract subject to our prior expressed written consent. The transfer must quote the order number and invoice number.

5.5. Non-conformities and defects of the goods or services shall entitle us to withhold payment.

## 6. Passing of risk and transfer of title

6.1. The risk shall, in principle, pass according to the agreed Incoterms® 2010 clause.

6.2. Unless otherwise agreed in writing, title to the Deliveries/Services (in particular also with respect to documentation, including transfer of the relevant rights to use the same) shall, in principle, pass simultaneously with the risk or, if payment by installments has been agreed, with respect to the part of the deliveries/services concerned in no case later than upon payment (including by setoff, where applicable) of the installment agreed for that part and provided that the payment date is before the date the risk will pass according to the agreed Incoterms® 2010 clause.

## 7. Warranty

7.1. Vendor warrants that its deliveries/services will be provided as agreed in the contract and will be free from defects in quality and/or title of any kind both at the time of delivery and throughout the warranty period and will have the usually expected and, in particular, the specifically agreed properties.

7.2. Unless agreed otherwise, the warranty period shall be three years from commissioning or commencement of use. The warranty period shall start anew for replacement deliveries or repairs.

7.3. The goods must be fit for the intended purpose, comply with our specifications, be the state of the art and be in line with current statutory requirements, relevant standards and the requirements of the authorities and professional associations.

7.4. Vendor hereby waives objection of late notification of defects. Notification of defects shall be deemed to have been given in due time if given within the warranty period.

7.5. Our Acceptance or approval of drawings or designs submitted by the Vendor shall not be construed as waiver of any of our rights.

7.6. Our statutory rights notwithstanding, if Vendor fails to remedy defects or replace goods within the deadline set by us, we shall be entitled to remedy defects by ourselves or by third parties or to purchase the goods from a third party at Vendor's expense.

7.7. Vendor warrants that goods can be purchased and marketed without infringing third party industrial and other property rights, especially trademark, design, patent and copyrights and without infringing advertising laws. Vendor agrees to defend all such third party claims at its expense and to reimburse us for any related costs, and to hold us harmless and indemnify us in this respect.

7.8. Vendor undertakes to manufacture spare parts for goods delivered for at least 15 years after the date of the order in question. Vendor must submit a notice to us in writing if production of spare parts ceases. We shall be entitled following such notice to demand a delivery of spare parts for stock purposes.

## 8. Damages, Product liability

8.1. The Vendor shall be liable according to statutory provisions (including product liability provisions) for damage caused by him (or persons attributable to him).

8.2. We must be given written notice of any sub-contractors used by Vendor; however, such notice is not be construed as establishing any legal or business relations between us and sub-contractors. We shall be entitled without stating reasons to require that Vendor refrain from using sub-contractors named by us. Vendor shall be liable for the choice of

**GENERAL TERMS AND CONDITIONS OF PURCHASE OF voestalpine Böhler Welding Canada Ltd.  
FOR PRODUCT DELIVERIES AND SERVICES  
Version: MARCH 2018**

and any fault on the part of its sub-contractors.

8.3. Vendor shall be liable both for his subcontractors and his suppliers as for himself, independent of the relevant influence on the provision of Deliveries/Services.

8.4. No limitations of liability are agreed.

8.5. Vendor further warrants that products ordered (including raw materials or sub-products) are free of defects within the meaning of the Product Liability Act in respect of their design, production and instructions. Vendor specifically warrants that, with the current state of the art, no defects could be identified in the products at the time of marketing.

8.6. Supplier shall provide us with all information required in order to supply a defect-free product within the meaning of the Product Liability Act (e.g. operating instructions, warnings, approval specifications etc.). Should circumstances subsequently come to our attention that might substantiate a product defect within the meaning of the Product Liability Act, Vendor shall notify us of any such observations immediately, hold us harmless and indemnify us against all third party product liability claims and reimburse all costs incurred in calling in defective products. Where products are called in, Vendor shall be liable to refund any purchase price already paid, plus our loss of earnings and any other costs incurred by us by reason of the unavailability of the goods ordered.

8.7. We shall not recognize any manner of limitations in Vendor's favour under the Product Liability Act or any obligations pursuant to any foreign product liability regulations or any limitations on any manner of compensation claims vested in us under that law or other provisions.

8.8. If our customers enforce claims against us, Vendor shall hold us harmless and indemnify us completely and pay any applicable damages. We shall assume that the products which we have received from the Vendor are products, for which the vendor is liable as manufacturer or importer. Should it subsequently appear that all or individual sub-products were not manufactured or imported by Vendor, Vendor shall nevertheless accept manufacturer's or importer's liability towards us.

8.9. It is expressly agreed that the Court in the Province of New Brunswick with material jurisdiction shall also have sole jurisdiction for all product liability claims. Product liability laws of Canada shall apply.

**9. Quality and environmental management; REACH; RoHS 2; Conflict Minerals**

9.1. (1) Vendor shall apply the quality principles and environmental management principles of the relevant standards ISO 9001, ISO TS 16949 (relevant to automobile-relevant upstream suppliers) and/or ISO 14001 or EMAS in providing his Deliveries/Services. (2) Vendor shall ensure in an appropriate manner that the said obligations will also be complied with at the level of his agents/upstream suppliers. The relevant regulations of the Customer's QSE policy applicable at the time of conclusion of the contract and the regulations on REACH/RoHS 2/Conflict Minerals to be observed by the Vendor may be retrieved from the following internet addresses.

<http://www.voestalpine.com/group/en/group/environment/reach>

<http://www.voestalpine.com/group/en/group/environment/rohs>

<http://www.voestalpine.com/group/en/group/environment/conflictminerals>

(3) The criteria of energy efficiency and greenhouse gas efficiency will also be taken into account in the process of procuring energy-related goods. Upon our request Vendor shall provide additional data, such as information on consumption, the product life cycle (Life Cycle Assessment LCA) and relevant classifications according to efficiency classes.

**10. Force majeure**

10.1. (1) The parties shall be released from the duty of timely performance of the contract in whole or in part if they are hindered by events of force majeure. (2) Events of force majeure shall, but not limited to be war, strike organised by a union, armed- or unarmed riot, acts of God and fire. (3) However, a Vendor who is hindered by an event of force majeure may claim force majeure only if he informs us about the start and the expected end of the disruption immediately and not later than five (5) calendar days after the event occurred.

**11. Our rights to rescind/dissolve the contract**

11.1. (1) Apart from the rights of rescission explicitly resulting from these GTCP we expressly reserve all rights to rescind or dissolve a contract to which we may be entitled by law or contract in connection with specific transactions or continuous supply relationships with the Vendor. (2) In addition, we shall, in particular, be entitled to dissolve existing contracts with the Vendor for important reason (cause) without notice or meeting

formal requirements (notice of default, granting of a grace period, etc.) and with immediate effect. (3) Important reasons/causes include, but are not limited to, situations where the Vendor violates material (in particular contractual) obligations, reorganisation or insolvency proceedings or proceedings having similar effects are petitioned for or opened over the Vendor's assets or a petition for the opening of such proceedings is dismissed for lack of sufficient assets, in the case of a material change in the Vendor's corporate structure due to which it is unacceptable for us to adhere to the relevant contract for understandable reasons (e.g. an imminent loss of or harm to reputation or image) or in the case of violations of compliance regulations of these GTCP. (4) In the case of our rescission or dissolution of the contract, we shall be entitled to all statutory and additional contractually agreed rights and claims against the Vendor. In addition, the contractor shall indemnify and hold us harmless in the case of a justified rescission or dissolution of the contract by the Vendor.

**12. Compliance; Code of Conduct**

12.1. (1) The principles and guidelines for sustainable, ethical/moral and legally unobjectionable business conduct defined in the "Code of Conduct of voestalpine AG" and the related "Code of Conduct for voestalpine Business Partners" as amended from time to time may be retrieved from the internet address

<http://www.voestalpine.com/group/en/group/compliance> and shall expressly be acknowledged and accepted by the Vendor. (2) Vendor shall ensure in an appropriate manner that compliance with those principles and guidelines will be warranted by his agents/major subcontractors. (3) Vendor reserves the right to check compliance with the Codes of Conduct upon prior notice, including on the Contractor's premises, to a reasonable extent and safeguarding the contractor's legitimate interests.

**13. Confidentiality and Advertising**

13.1. Vendor undertakes to treat all data and information obtained during the course of business with us as business secrets. This obligation shall extend to Vendor's employees and sub-contractors and shall apply even after termination of such business.

13.2. Drawings, models, templates, designs and suchlike shall remain our property and shall not be divulged or otherwise made accessible to unauthorized third parties. Such items may only be reproduced to the extent needed in order to process the order.

13.3. Vendor shall only advertise that we are his customer with our prior written approval.

**14. Place of Performance, Place of Jurisdiction, Applicable Law**

14.1. The place of performance shall be the delivery address supplied by us.

14.2. The Province of New Brunswick shall be the sole place of jurisdiction; however, we may also sue Vendor upon courts with jurisdiction in the place of its head office.

14.3. The laws of the Province of Ontario and federal laws of Canada shall apply. Application of the UN Convention on Contracts for the International Sale of Goods (Federal Law Gazette 1988/96) and the conflict of law rules are hereby excluded.

**15. Miscellaneous**

15.1. If individual terms herein are invalid, the remaining terms shall still be binding. The invalid or unenforceable provision shall be deemed to be replaced with such legally permissible provision which comes as close as possible to the economic purpose of the invalid or unenforceable provision.

15.2. Amendments to orders must be made in writing. Verbal agreements shall be null and void.