General Terms and Conditions of Sale and Delivery

1. Scope of Application

1.1 These General Terms and Conditions of Sale and Delivery ("GTC") shall apply to all deliveries and services (including goods, any software and related services) of voestalpine Krems GmbH ("Supplier").

1.2 These GTC also apply to all offers, enquiries, orders, negotiations and other communications in connection with an intended or existing business relationship between the Supplier and the customer.

1.3 Any conflicting, deviating or supplementary terms and conditions of the customer – in particular purchasing terms – shall not become part of the contract, even if their applicability is not expressly objected to. They shall apply only to the extent that the Supplier has expressly agreed to their application in writing in the individual case.

1.4 Deviations from these GTC shall apply only to the respective individual case and require an express written agreement in order to be effective.

2. Conclusion of Contract, Amendments, Written Form

2.1 Offers made by the Supplier are non-binding unless they are expressly designated as binding. They may be amended or withdrawn at any time before conclusion of the contract.

2.2 A contract shall only be concluded upon written order confirmation by the Supplier or by an agreement signed by both parties. Automatic confirmations of receipt, in particular by e-mail, shall not be deemed acceptance of an order.

2.3 Amendments, supplements, suspensions or cancellations of contracts or orders require the Supplier's prior written consent. The Supplier is entitled to charge the customer for all reasonable costs and disadvantages incurred as a result.

2.4 Legally relevant declarations by the customer (e.g. notices of defects, declarations of withdrawal, setting of deadlines) must be made in writing. Transmission by e-mail shall suffice unless mandatory law requires a stricter form.

3. Prices, Delivery Clause, Taxes and Duties

3.1 Unless expressly agreed otherwise, all prices are net prices. Deliveries shall be made FCA Works Krems/Donau (Schmidhüttenstrasse 5, A-3500 Krems), Incoterms® 2020, unless otherwise agreed.

3.2 Packaging, transport, insurance, customs duties, taxes and other public charges are not included in the price and shall be borne by the customer unless expressly agreed otherwise.

3.3 The customer shall bear all taxes, customs duties, fees or other charges incurred in connection with the delivery. Statutory value added tax shall be charged additionally at the applicable rate.

4. Price Adjustment for Long-Term Contracts

4.1 In the case of contracts with an agreed term of more than twelve (12) months or where the period between the date of conclusion of the contract and the scheduled delivery date exceeds twelve (12) months, the Supplier is entitled to adjust the agreed prices appropriately if material cost-relevant circumstances change after conclusion of the contract, in particular wages and related labour costs, raw material, energy and transport costs or statutory charges and framework conditions.

4.2 If no agreement on a price adjustment can be reached within a reasonable period, the Supplier is entitled to terminate the contract with respect to the part not yet fulfilled by giving reasonable notice.

5. Payment Terms, Retention of Title, Delay in Delivery

5.1 Unless expressly agreed otherwise, invoices are due for payment without deduction no later than fourteen (14) calendar days after invoicing.

5.2 In the event of delay in payment, the customer shall pay interest on arrears pursuant to Section 456 of the Austrian Commercial Code (UGB) at a rate of 9.2% above the respective base interest rate of the European Central Bank per annum, as well as reimbursement of all reasonable reminder and legal enforcement costs.

5.3 The Supplier shall retain title to all deliveries until full payment of all amounts due under the relevant invoice has been received. The customer is entitled to further process the goods subject to retention of title; the Supplier shall remain co-owner in the ratio of the value of the goods subject to retention of title to the finished product. The customer is entitled to resell the goods subject to retention of title in the ordinary course of business and hereby assigns to the Supplier, by way of security, the claims against its customers arising from such resale. The customer shall immediately inform the Supplier in writing of any third-party claims to deliveries subject to retention of title or of the commencement of insolvency proceedings against the customer.

5.4 Performance of the contract is subject to the reservation that the Supplier's claims against the customer arising from the contract are sufficiently covered in accordance with the Supplier's internal requirements by credit insurance or other receivables security deemed adequate by the Supplier. If corresponding cover by the Supplier's credit insurance is not granted, is refused, restricted, reduced, cancelled or is no longer maintained to a sufficient extent during the term of the contract, the Supplier is entitled, at its discretion, to withhold delivery or performance until adequate security is provided, to demand advance payment, a bank guarantee or other reasonable security, or to withdraw from the contract in whole or in part. This also applies if the absence, restriction, reduction or cancellation of cover occurs only after conclusion of the contract or during the term of a longer-term contract. The customer is obliged, upon request, to provide the Supplier fully, correctly and in good time with all information and documents required to assess creditworthiness and insurability of the receivables. If the customer fails to comply with this obligation or if security requested by the Supplier is not provided within a reasonable period, the Supplier is entitled to suspend deliveries or services not yet performed or to withdraw from the contract with respect to the part not yet fulfilled. Payment claims already accrued and claims of the Supplier for reimbursement of costs, expenses and damages already incurred shall remain unaffected.

5.5 Without prejudice to the Supplier's rights pursuant to Section 5.4, the Supplier may, in the event of the Customer's default in payment or where there are reasonable doubts as to the Customer's ability to pay, withhold any deliveries or services not yet performed and make their performance conditional upon advance payment or the provision of suitable security. Any further statutory or contractual rights of the Supplier shall remain unaffected.

5.6 Set-off or retention by the customer is permissible only to the extent that its counterclaim has been expressly acknowledged by the Supplier or has been finally determined by a court or arbitral tribunal.

6. Delivery Periods

6.1 Delivery periods and delivery dates are non-binding indicative values unless expressly agreed in writing as binding.

6.2 Compliance with delivery periods requires the timely and proper fulfilment of all cooperation, ancillary and payment obligations incumbent upon the customer.

6.3 In the event of non-compliance with non-binding delivery periods, the customer is not entitled to assert claims for damages. Withdrawal from the contract is permissible only after the unsuccessful expiry of a reasonable grace period set by the customer and only with respect to the part of the contract not yet fulfilled.

7. Delivery, Transfer of Risk, Partial Deliveries

7.1 Deliveries shall generally be made FCA Works Krems, Incoterms® 2020, unless otherwise agreed.

7.2 Upon handover of the goods to the carrier, but no later than upon leaving the Supplier's works premises, the risk of loss of or damage to the goods shall pass to the customer.

7.3 Partial deliveries are permissible to the extent reasonable for the customer and may be invoiced separately. The customer is not entitled to reject partial deliveries.

7.4 (Partial) deliveries shall generally be made in full transport units (trucks).

8. Default in Acceptance, Storage

8.1 If the customer does not accept the goods made available in accordance with the contract in due time, or if collection or acceptance is delayed for reasons attributable to the customer, the customer shall be in default of acceptance.

8.2 In such case, the Supplier is entitled to store the goods at the customer's cost and risk, including outside the Supplier's works premises. The purchase price shall become immediately due upon the occurrence of default in acceptance.
8.3 Further statutory or contractual claims of the Supplier, in particular for compensation for damage caused by default in acceptance, shall remain unaffected.

9. Packaging, Loading, Unloading
9.1 Unless expressly agreed otherwise, deliveries shall be made unpackaged. Corrosion caused by packaging, dirt or other transport-related impairments shall not constitute a defect.
9.2 Loading shall be carried out in accordance with the safety and organisational regulations applicable on the Supplier's works premises.
9.3 Unloading of the goods shall be carried out exclusively at the customer's responsibility, risk and cost. The customer shall comply with the relevant safety, traffic and unloading regulations and shall also ensure compliance by third parties engaged by it.

10. Transport Damage, Inspection of Delivery, Notice of Defects
10.1 The customer is obliged to notify the carrier immediately of any visible transport damage upon acceptance of the goods and to record such damage accordingly in the consignment note, delivery note or comparable transport documents. Failure to make such a note shall give rise to the presumption that the goods were accepted properly and undamaged. Hidden transport damage must be asserted by the customer in writing against the carrier immediately after discovery, but no later than within seven (7) calendar days after acceptance of the goods. The customer shall inform the Supplier immediately of any transport damage identified and shall take all measures necessary to preserve recourse claims and provide corresponding evidence. If the customer fails to comply with these obligations, it shall bear the resulting disadvantages, in particular evidentiary disadvantages and the loss of claims for compensation against the carrier.
10.2 The customer shall subject the goods to a careful inspection immediately after delivery. Obvious defects must be notified to us in writing by the customer within no more than fourteen (14) calendar days from delivery.
10.3 Defects that were not detectable even upon careful inspection (hidden defects) must be notified in writing immediately after discovery, but no later than within three (3) months from delivery.
10.4 If the customer fails to give timely and proper notice of defects, the deliveries shall be deemed approved. The legal consequences of Sections 377 et seq. UGB shall remain unaffected.

11. Warranty
11.1 The Supplier warrants for a period of twelve (12) months from transfer of risk that the deliveries are free from defects in materials and workmanship and comply in all material respects with the agreed specifications.
11.2 The customer bears the burden of proof that an alleged defect already existed at the time of transfer of risk. Section 924 sentence 2 of the Austrian Civil Code (ABGB) shall not apply.
11.3 In the case of justified defects notified in due time, the Supplier is obliged, at its discretion, to remedy the defect, replace the goods or grant an appropriate price reduction. These remedies are exhaustive.
11.4 Minor defects shall not entitle the customer either to refuse acceptance or to withdraw from the contract.

12. Warranty Exclusions
12.1 Warranty is excluded for defects attributable in particular to: a) incorrect or incomplete requirements, drawings or specifications provided by the customer, b) improper application or application not approved by the Supplier, c) improper transport, storage, processing or assembly by the customer or third parties, d) natural wear and tear or deviations customary in business.
12.2 The Supplier gives no warranty as to the suitability of the goods for any particular purpose intended by the customer unless this has been expressly agreed in writing.

13. Liability, Limitation of Liability

13.1 The Supplier shall be liable – irrespective of the legal basis – exclusively for damage caused intentionally or by gross negligence.

13.2 Liability of the Supplier for slight negligence is excluded to the extent permitted by law.

13.3 Compensation for loss of profit, production stoppage, business interruption, pure financial loss and indirect, incidental or consequential damage is excluded.

13.4 The Supplier's liability is limited in total – to the extent permitted by law – to a maximum of one hundred percent (100%) of the order value of the delivery that caused the damage.

13.5 The limitations of liability shall not apply in the event of personal injury, intentional causation of damage or in cases of mandatory statutory liability, in particular under the Product Liability Act.

14. Limitation Period

14.1 All claims for damages of the customer – irrespective of the legal basis – shall lapse after six (6) months following the date on which the customer became aware of the damage or reasonably should have become aware of it, but no later than three (3) years after the time of transfer of risk of the respective delivery, unless mandatory statutory limitation periods provide for a longer period.

14.2 The customer bears the burden of proof for the existence and extent of any damage and for the causal link with a breach of duty by the Supplier.

15. Export Control

15.1 Performance of the contract is subject to the reservation that no national or international provisions of foreign trade law, export control law, customs law or sanctions regulations prevent its performance.

15.2 The customer is responsible for complying with all applicable export control, customs and sanctions regulations, obtaining any required licences or approvals, and providing the Supplier fully and in good time with all information and documents required for review and performance. The Supplier shall make all commercially reasonable efforts to support the customer. However, the Supplier is not obliged to act as applicant or guarantor for export licences.

15.3 The customer may not deliver the supplied goods directly or indirectly to sanctioned persons, organisations or states, nor use them for legally prohibited end uses or end uses requiring approval, in particular in connection with prohibited military or other sensitive applications.

15.4 If delivery or performance by the Supplier is legally or factually impossible or unreasonable due to the aforementioned provisions, the Supplier is entitled to suspend delivery or withdraw from the contract in whole or in part. No claims for damages or other liability claims against the Supplier shall arise therefrom.

15.5 The customer is obliged to pay for goods already delivered, produced or in production, including the materials procured for them.

16. Compliance

16.1 The customer undertakes to comply with the principles of lawful, ethical and responsible business conduct set out in the respective current Code of Conduct of voestalpine AG and in the Code of Conduct for voestalpine Business Partners. These apply in their current version and are available on the following website at:
https://www.voestalpine.com/group/en/group/compliance/

16.2 The customer undertakes to comply with all applicable regulations on combating corruption, bribery, money laundering and terrorist financing and not to take any actions capable of violating such regulations.

16.3 In the event of serious or repeated violations of these principles, the Supplier is entitled to suspend deliveries or terminate the contract for good cause with immediate effect.

16.4 The customer shall ensure in an appropriate manner that third parties, subcontractors and affiliated companies engaged by it also comply with these obligations.

17. Audit and Inspection Rights

17.1 The Supplier is entitled, after reasonable prior notice, to verify compliance with the obligations under Clauses 15 and 16 to an objectively and temporally reasonable extent or to have such compliance verified by third parties.

17.2 Audits must not unreasonably impair the customer's business operations and shall be subject to reasonable confidentiality and protection interests of the customer.

18. Data Protection

18.1 The parties undertake to comply with all applicable data protection regulations, in particular the General Data Protection Regulation (GDPR).

18.2 The Supplier's data protection policies are available in their current version on the following website: https://www.voestalpine.com/group/en/data-protection/

18.3 Data processing on behalf of another party shall take place only on the basis of separate written agreements.

19. Confidentiality

19.1 All commercial, technical or other information that is not publicly accessible and becomes known to a party in connection with the business relationship ("Confidential Information") shall be treated as confidential and used exclusively for the purposes of performing the contract.

19.2 Confidential Information may not be made accessible to third parties, in whole or in part, without the prior written consent of the respective other party.

19.3 This obligation shall not apply to information that demonstrably a) is generally known or becomes known without breach of contract, b) was lawfully obtained from third parties without a duty of confidentiality, or c) must be disclosed due to statutory or judicial obligations.

19.4 The confidentiality obligation shall apply for three (3) years from disclosure or for as long as the information is protected as trade secrets.

19.5 Upon termination of the contract, Confidential Information shall be returned or destroyed upon request, unless statutory retention obligations exist.

20. Termination of Contract

20.1 The Supplier may terminate the contract with immediate effect by written notice if the customer has materially breached its contractual obligations and, if the breach is capable of remedy, fails to remedy such breach within thirty (30) calendar days after receipt of the notice describing the breach.

20.2 In the event of termination for material breach of contract, the customer is obliged to pay immediately all amounts due and to compensate the Supplier for all costs incurred in connection with the work performed, in particular the costs of raw materials and work in progress, as well as for all additional losses (including lost profit) resulting from the termination.

20.3 The Supplier is entitled to terminate the contract with immediate effect by written notice if the customer becomes insolvent or insolvency or comparable proceedings are opened or threaten to be opened over the customer's assets. In such case, the customer shall compensate the Supplier for all costs and losses in accordance with Clause 20.2.

21. Force Majeure

21.1 "Force Majeure" means any event beyond the reasonable control of a party and not caused by its fault or negligence, including but not limited to natural disasters (e.g. typhoon or earthquake), war (declared or undeclared), terrorism, government acts, riot, revolution, civil unrest, fire, epidemic, pandemic, strike or piracy. Neither the Supplier nor the customer shall be liable for contractual penalties, interest, damages or other compensation for delays or non-performance due to Force Majeure for as long as the Force Majeure continues.

21.2 A party invoking Force Majeure shall immediately inform the other party in writing of the commencement and end of the Force Majeure. Once the Force Majeure ends, the Supplier and the customer shall consult with each other in order to agree on an amended delivery schedule for the deliveries.

21.3 If Force Majeure prevents performance for more than six (6) months from notification, both the Supplier and the customer may terminate the contract by written notice without being obliged to pay termination fees. In such case, the customer is obliged to pay the Supplier immediately for deliveries already delivered, produced or in production and for raw materials already procured. The paid deliveries or materials shall be delivered to the customer.

22. Intellectual Property

22.1 All intellectual property rights, know-how, drawings, technical documents and documentation of the Supplier shall remain exclusively with the Supplier.

22.2 The customer shall not acquire any further right of use; use is permitted only to the extent required for performance of the contract.

22.3 Reverse engineering, imitation, decompilation or any other analysis of the delivered goods or documents with the aim of using and exploiting the Supplier's intellectual property for the customer's own purposes is prohibited.

22.4 The disclosure of documents or information to third parties is prohibited without the Supplier's prior written consent.

22.5 The customer shall indemnify and hold the Supplier harmless against all claims if third-party intellectual property rights are infringed as a result of specifications, drawings or requirements provided by the customer.

23. Governing Law, Place of Jurisdiction, Arbitration, Place of Performance

23.1 All disputes arising out of or in connection with the contract between the Supplier and the customer shall be governed exclusively by Austrian law, excluding its conflict-of-law rules and referral provisions, and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

23.2 The exclusive place of jurisdiction for all disputes arising out of or in connection with the contract shall be, to the extent legally permissible, the court having subject-matter jurisdiction in Krems/Donau.

23.3 However, the Supplier shall alternatively be entitled to have all disputes arising out of or in connection with the delivery and provision of services finally resolved in arbitration proceedings under the Rules of Arbitration of the International Chamber of Commerce (ICC Rules) by three arbitrators appointed in accordance with those Rules. Such disputes shall also be governed by substantive Austrian law, excluding its conflict-of-law rules and referral provisions, and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). The place of arbitration shall be Vienna, Austria. The language to be used in the arbitration proceedings shall be English. Upon request by the Supplier, the customer shall be obliged to confirm in writing the existence of the arbitration clause and governing law clause.

23.4 The place of performance for delivery and payment shall be Krems/Donau, unless expressly agreed otherwise.

24. Written Form, Assignment

24.1 Amendments and supplements to the contract or to these GTC must be made in writing in order to be effective. E-mail shall suffice.

24.2 The customer's rights and obligations under the contract may be assigned only with the Supplier's prior written consent.

25. Severability Clause

Should individual provisions of these GTC be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by a valid provision that comes as close as possible to the economic purpose of the invalid provision.

26. Survival of Individual Provisions

Provisions concerning liability, limitation periods, export control, compliance, data protection, confidentiality, intellectual property, as well as place of jurisdiction and governing law shall survive termination of the contract.

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