

# General Commercial Terms



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for procurement of plant, plant components and other goods and/or services  
voestalpine Stahl GmbH, version of September 2009

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# 1. Definitions

1.1 In these "General Commercial Terms – CGT", the following definitions apply:

Client	=	CL = voestalpine Stahl GmbH (or as separately specified)
Contractor	=	CO = legal entity selected by legally binding order (by facsimile, written document)
Order	=	Contract between CL and CO with respect to goods and/or services to be provided by CO
Documentation	=	the entirety of all information which has been agreed; general information, logistic information, technical and other information, in written, image-based or electronic form
Review Team	=	CL's personnel or its agents

## **SUPPLEMENTAL DEFINITIONS:**

By way of supplementation, the following Definitions should be noted (project-specific modifications or supplementations shall be stipulated in the Order in question):

Completion of erection	=	due and proper completion of erection
Commissioning	=	
a.) Cold Testing	=	Cold Testing shall inter alia be deemed to have been completed where the entire facility has been tested as to individual elements and lock operations etc. (without the use of operating media), where all systems, plant components and control and operating devices have been tested for serviceability/have been adjusted to nominal settings. In addition, all circuits must be tested for proper functioning and pre-set.
b.) Hot Testing	=	Start-up of entire plant with operating media
Completion of Commissioning	=	Successful completion of Cold Testing and Hot Testing
Test Run	=	Operation of complete system under normal operating conditions
Performance Test	=	Performance test of entire system at continuous full capacity over a period of time to be agreed.
Positive Performance Test	=	Achievement of all contractually agreed/guaranteed specifications and functional parameters, securing permanent operations comporting with the CL's specifications.
Final Acceptance	=	see definition in sec. 7, in particular: secs. 7.10 – 7.11;
Warranty	=	see definition in sec. 8, in particular: secs. 8.1 – 8.6 and 8.15;

All references to statutes, norms and standards etc. contained in this document and which may be contained in other components of the Order shall be understood to refer in each case to the most recent version thereof in force, unless expressly otherwise stated.

## 2. General provisions

### **SCOPE:**

- 2.1 The present "General Commercial Terms – GCT" shall govern the relations between the CO and the CL in fundamental respects. Upon adoption of these GCT, the Terms of Conditions of Purchase referenced in the order form shall be deemed superseded and of no further effect. Irrespective of the individual contents thereof, no general terms and conditions of business/terms and conditions of sale or other contract forms of the CO shall apply, and the parties hereby entirely exclude any applicability thereof. They shall apply only where the CL expressly acknowledged them in writing. The CO's mere reference to general terms and conditions of business/terms and conditions of sale or other contract forms during the preparatory/performance stages of an Order shall likewise not, in any event, be deemed an acknowledgement of such terms and conditions by the CL, even where the CL does not expressly reject them.
- 2.2 At the latest at such time as the CO begins to perform the Order, the CO shall be deemed to have acknowledged these GCT of the CL.

### **BINDING EFFECT:**

- 2.3 The Contractor's offers shall only be deemed to apply where the CL has confirmed them expressly as the basis of its Order. Where the CL's Order documentation makes reference to offering documentation, then – in cases of doubt – they shall apply only with respect to technical specifications. However, they shall in no case be deemed an acknowledgment of the CO's general terms and conditions of business/general terms and conditions of sale or any other contract forms of the CO.
- 2.4 Without exception, the CL's Purchasing Department places its legally binding orders in written form or by FACSIMILE. The CO may only rely on amendments, extensions and/or addenda to the Order (including the annexes thereto) where the CL's Purchasing Department has expressly confirmed them in writing. The parties may only depart from this requirement of a writing by written agreement. Where orders, amendments/extensions and/or addenda are issued in some other form or where it cannot be ascertained without any doubt that they have been issued in consultation with the CL's Purchasing Department, the CO shall inform the CL's Purchasing Department without delay in a documented fashion and shall obtain its express written confirmation. Where the CO should fail to do so, the CL shall be entitled to reject the foregoing statements/declarations of intent as not legally binding on it and any direct or indirect costs/disadvantages arising therefrom shall, without limitation, be for the account of the CO.
- 2.5 Individuals providing statements and declarations on behalf of the CO to the CL shall be deemed to have unlimited authority to do so.

### **RANK OF PRIORITY:**

- 2.6 In the event of conflicts and deviations, the following rank of priority shall apply:
- written order specifications including the itemised bases of the Order, in particular the minutes of negotiations
  - general commercial term for the procurement of plant, plant components and other goods and/or services, together with annexes
  - invitation to tender documents
  - technical part of CO's offer

## 3. Particular obligations of Contractor

### **GENERAL MATTERS:**

- 3.1 The CO shall comply with the laws and regulations in the CL's country and in the country in which the Order is to be performed, in particular with respect to norms, standards, taxes and duties, approvals, customs, registrations etc. under environmental and employment law as well as in technical respects, unless otherwise provided. The same shall apply to corresponding regulations under European law (Directives, Regulations, etc.).
- 3.2 The CO's goods and/or services are to be incorporated into a complete plant to be erected by the CL/into an existing plant. In light of the significance of these goods and/or services in the context of a complex plant system, the CO hereby undertakes to exercise particular care exceeding the ordinary level of care when performing the Order. If and to the extent construction works and/or excavation works are associated with the CO's goods and/or services, the CO hereby undertakes to execute and proceed in accordance with the notice of excavations [*Grabungsarbeitenanzeige*] and the

associated official treaty of work [*Arbeitsübereinkommen*]. Where, in the course of the CO's performance of its services, decommissioning of plants/components becomes necessary, the CO hereby undertakes to timely inform the CL thereof by a notice of decommissioning and to procure the CL's written consent.

3.3 The CO hereby undertakes to procure and to take account of all information governing the engineering, environmental and process-related conditions impacting its goods and/or services and which may have an influence on them.

3.4 Where the CO claims the existence of fault on the part of the CL with respect to a breach of contractual obligations, the CO must furnish proof thereof.

#### **CONTACTS:**

3.5 The CO shall identify to the CL in writing, immediately upon receipt of the CL's Order, the CO's responsible contacts (and those of its major suppliers) in the realms of technology, logistics (inspection, testing, examination, shipping, packing) and sales. The CL's Order and/or the annexes thereto list the CL's responsible contacts.

#### **QUALITY ASSURANCE:**

3.6 The CO hereby undertakes that, as minimum requirements, it and its sub-contractors/sub-suppliers shall comply with the applicable quality management and environmental management norms such as ISO 9001 Revision 2008, ISO TS 16949 (applicable to all automotive suppliers/sub-suppliers)/ISO 14000ff or EMAS in rendering its goods and/or services, shall fully meet the foregoing and shall furnish evidence of their compliance by submitting current certificates from certification entities authorised to issue them. The CL reserves the right to review the CO's quality and environmental management system and that of its sub-contractors for conformity with these norms and standards at times to be agreed (audit), and where necessary, to require the CO to undertake appropriate action to correct and prevent non-compliance. In addition, the CO hereby undertakes to inform itself on a regular basis with respect to the updates to the CL's QA policies and its Code of Conduct, and to train its staff/sub-contractors/sub-suppliers accordingly and to impose an obligation on them to comply therewith. The most recent versions of the CL's QA policy and of its Code of Conduct, respectively, may be downloaded from the website [www.voestalpine.com](http://www.voestalpine.com).

#### **COMPLETENESS:**

3.7 The CO hereby undertakes and imposes an obligation on its suppliers to completely and properly perform and render the contractually agreed goods and/or services as well as all contractual obligations associated therewith, irrespective of whether all of the goods and/or services necessary for such purpose are stated in detail in the technical specifications to the Order, such that erection free of defects and errors and satisfactory permanent operations are guaranteed. The CO shall timely alert the CL to any discernible conflicts/errors in the technical specifications to the CL's Order and, where appropriate, shall submit relevant measures/recommendations to eliminate the same. 'Completeness' shall specifically, also mean that the functionality and performance capacity of the goods and/or services ordered is guaranteed for their intended purposes under the operating conditions anticipated at the location of their deployment (in particular in light of their incorporation into a complex overall system), and in light of other influences, safety standards, applicable norms and standards and regulatory requirements, etc.

#### **PROCEDURE TO BE FOLLOWED IN THE EVENT OF DEVIATIONS DURING THE COURSE OF PROJECT PERFORMANCE:**

3.8 It is a fundamental principle that changes may only be made following express written consent of the CL.

The CO shall submit all changes/extensions and/or reports on events/circumstances affecting the project in a timely fashion to the CL's project manager, indicating their causes, effects and any action which may be needed. This means that any changes/extensions which may be of relevance in terms of costs, contractual effects, deadlines, quality and/or in terms of processes/in terms of engineering plans must be communicated to the CL by written change notice/offer. Any contractual amendment/addenda resulting therefrom shall in all cases require the express written consent of voestalpine's project manager and Purchasing Department. Any amendments/addenda which have been coordinated and agreed with the CL in this way may, in certain circumstances, be incorporated in a +/- list. Where the CO should fail to do so, the CL shall be entitled to reject the foregoing changes/extension as not legally binding on it and any direct or indirect costs/disadvantages arising therefrom shall, without limitation, be for the account of the CO.

Changes to the technical execution of the works, however, made by the CO in its performance of its contractual obligations, may not give rise to any additional costs for the CL (including with respect to permanent operations of the scope of goods and/or services) or result in reductions to the functionality and performance capacity of the scope of goods and/or services.

**CORRESPONDENCE:**

- 3.9 All correspondence between the CO and the CL must in all cases reference the complete order number (and/or tender number), as well as the letter reference and date of the prior correspondence. With respect to all correspondence from the CO to the CL, the CO shall be deemed to bear the burden of proof as to its genuineness, correctness and the CL's receipt thereof.

**RADIATION PROTECTION:**

- 3.10 The CO hereby warrants that its goods are free of any materials which could be subject to special rules on handling and use and specifically to any obligations of duties of labelling or designation under the relevant Austrian regulations on radiation protection including: General Directive on Radiation Protection BGBl. II No. 191/2006 as from time to time amended, Austrian Radiation Protection Act BGBl. I No. 227/1969 as from time to time amended, Regulation on Natural Sources of Radiation BGBl. II No. 2/2008 as from time to time amended) and under international and corresponding EU radiation protection regulations. The CO further warrants that permitted radioactive substances are, in any event, below the threshold values set forth in Council Directive 96/29 Euratom dated 13 May 1996, and that it does not constitute manipulated materials which have been knowingly adapted to the threshold value requirements.

The CO shall bear liability to the CL (without any limitation on the CO's liability whatsoever) for any and all damages or losses (in particular: for any and all costs related to the need to take emergency action as well as for consequential losses of any and all types) incurred by the CL as a result of the CO's delivery of contaminated material, contrary to the restrictions set forth in the foregoing paragraph.

## 4. Prices

**GENERAL REMARKS:**

The CO's offers for its goods and/or services shall be at competitive prices which are in line with the market. The foregoing shall also apply to all spare parts, wear parts and parts associated with changes of operating media.

**PRICING:**

- 4.1 Unless otherwise agreed in the CL's Order (but, in particular, in the minutes of negotiations), the following pricing rules shall apply: Prices are quoted as net fixed prices, and do not include VAT; they are quoted DDP voestalpine Stahl GmbH, unloaded at the specific works site at the Linz works, pursuant to INCOTERMS 2000, and shall include documentation, technical checks, coatings, corrosion protection, markings, signs etc. The CO shall, as an alternative, offer reduced prices for delivery FCA manufacturer's works pursuant to INCOTERMS 2000.

**MANNER OF PRICING:**

- 4.2 The prices agreed in the Order shall include any and all goods and/or services, to be rendered within the meaning of the present GCT and the referenced annexes to the Order, as well as all costs of documentation and financing in accordance with the agreed terms and conditions etc. In particular, they shall include all costs for shipping, insurance, packaging, taxes (except for VAT), customs and duties associated with the goods and/or services of the CO in the countries in which they are rendered. The CL shall only bear such costs as are expressly referenced in its Order as being the obligation of the CL.
- 4.3 The same terms and conditions (in particular with respect to the pricing base/price reductions) shall apply to extensions, changes, supplements/addenda to the Order (in particular including with respect to spare and wear parts) as in the case of the primary Order.

## 5. Mode of payment

### **PAYMENTS:**

- 5.1 Unless otherwise expressly agreed, payment of the agreed instalment/of the agreed payment amount shall in each case be made within 45 days, net, following receipt of a written demand for payment/following receipt of the invoice, in each case at the end of the month in which the payment fell due in accordance with the CL's relevant internal payment schedule (collective invoice procedure, 1 x per week) and following satisfaction of all conditions precedent referenced in the Order, in particular including proper delivery of Documentation.
- 5.2 The CL's payment shall not constitute any acknowledgment that the CO's goods and/or services (including the documentation thereto) are correct and complete and thus shall not constitute any waiver of any claims to which the CL may be entitled, irrespective of the legal grounds thereof.
- 5.3 In the event of a payment default for which the CL bears responsibility, default interest of 5% *per annum* shall be deemed to have been agreed.

### **SET-OFF:**

- 5.4 The CL shall be entitled to set off payments which have fallen due against counterclaims arising out of the same transaction and all transactions of the CL or other companies belonging to the same corporate group as the CL. Complaints as to the goods and/or services shall entitle the CL to retain payments which have fallen due.

### **ASSIGNMENT OF RECEIVABLES:**

- 5.5 Assignments of receivables by the CO are only permitted with the CL's express consent. The foregoing shall not apply with respect to claims for money between entrepreneurs arising out of entrepreneurial transactions.

### **RETENTION:**

- 5.6 Unless otherwise agreed, the CL may retain 10% of the total Order value to cover claims for compensatory damages, warranty/guarantee as well as claims for unjust enrichment as a non-interest-bearing security until the expiry of the warranty, plus a 45-day period. Redemption of this security by the furnishing of a bank guarantee is only permitted by prior agreement. In such case, the CL shall only acknowledge acceptable bank guarantees of first-rate European banks or insurance providers which are free-of-charge to it, and are irrevocable and abstract and which have a term running to the end of the warranty period plus 45 days. With respect to bank guarantees furnished in this way, the rule shall apply that in cases in which serious and well-founded doubts as to the guarantor entity's solvency/liquidity arise during the term of such guarantee, the CL shall be entitled to demand that the CO, within a reasonable time, furnish adequate security within the meaning of the foregoing paragraph, and running to the expiry of the original term.

### **INVOICING:**

- 5.7 Invoices must be furnished in duplicate together with a copy of the delivery notice/of the consignment note (construction invoices must be submitted in triplicate) and forwarded to voestalpine Stahl GmbH, Abteilung Rechnungsprüfung [Invoice Verification Department], Postfach 3, 4031 Linz. Where invoices are addressed in any other way, the invoice shall not be deemed to have been received by the CL until such time as it is actually received by the CL's Invoice Verification Department. The invoice must clearly and visibly reference the order number, partner number of the CL, etc. Invoices for services must, in addition, be supported by statements of work. In the case of domestic Austrian companies, invoices must contain a reference of the VAT percentage and in all cases must separately state the amount of VAT, i.e. even on invoice amounts of less than EUR 100.00.

### **FINAL INVOICE:**

- 5.8 The CL shall not release the final instalment/payment until such time as it has received a final total invoice in accordance with the terms and conditions set forth in the Order and after all agreed conditions have been satisfied.



## 6. Sub-contracting

### **APPROVAL:**

- 6.1 The CO shall inform the CL with respect to any intended sub-contracting of elements of the goods and/or services in a timely fashion and to obtain the CL's written consent thereto. Excepted from the foregoing are norm and standard parts and equipment listed in a list of suppliers approved by the CL prior to its award of the Order.

### **RECIPROCAL TRANSACTIONS:**

- 6.2 The CO hereby undertakes, on its own behalf and on behalf of its sub-suppliers, to submit enquiries with respect to any and all ongoing requirements or any sub-contracts (independent of the present transaction) in connection with the CL's range of products and services to the CL, and to grant the CL a right of first refusal on contracts with a value of EUR 70,000.00 or more. The Purchasing Department of the CL shall provide the CO with support in this respect. The CL's right of first refusal must be on such terms and conditions as do not impair the scheduling and other requirements on the subject Order.

## 7. Performance

### **DELIVERY DATE:**

- 7.1 With respect to goods and/or services, the date of performance shall be deemed to be the date on which all of the respective CO obligations have been completely satisfied in accordance with the Order specifications, the contractual bases of the Order (in particular the minutes of negotiations), these GCT and, in particular, submission of complete and correct documentation.
- 7.2 With respect to the Documentation, the delivery date is deemed to be the respective date of the CL's 'received' stamp/the date of the CL's confirmation of receipt. Delivery of Documentation shall be deemed to have been completed where it has been submitted in accordance with the specifications, in a complete and correct manner within the meaning of the respective Order agreement/Order specifications and these GCT.
- 7.3 All agreed deadlines (including interim deadlines) and periods are deemed to be fixed. Within the meaning of this provision, 'fixed' means that in the event the deadline is not met, the CL shall, even without setting any grace period, be entitled to resile from the contract in whole or in part in cases of imminent danger or where there is a risk of significant losses, and/or to effect cover at the CO's expense and risk, without any limitation whatsoever on the CO's liability. The foregoing shall also apply with respect to periods and deadlines under sec. 7.4 hereof. In all such cases, the CO's contractual obligations shall remain unaffected hereby.
- 7.4 Where the CO realizes that, at a high degree of likelihood, it will be unable to comply with the agreed periods and deadlines (in particular including interim deadlines from the planning and manufacturing schedule), the CO shall notify the CL immediately and in writing thereof, indicating the grounds of the delay and its anticipated duration, and shall notify the CL in writing of appropriate/necessary action (in particular including acceleration measures) in order to prevent/to reduce the threatened delays to the deadlines.

In the cases referenced and where the CL has well-founded grounds for assuming that compliance with the periods and deadlines is not assured, the CL shall be entitled to subject the activities associated with the performance of the subject-goods and/or services to reasonable supervisor monitoring (including, in particular, review of the CO's planning, manufacturing in respect of execution, quality and schedule compliance, detailed testing reports, measurement logs, etc.), at the CO's cost and expense. The CL shall inform the CO hereof in a timely manner. If it appears necessary to do so due to the findings of the supervisory monitoring, the CL shall, in any event, be entitled to stipulate, by mutual agreement with the CO, such further measures as are necessary to ensure due and proper performance of the CO's contractual obligations (in particular by setting additional periods and deadlines). If, however, no such agreement can be reached within a reasonable time for reasons for which the CO bears responsibility, the CL shall specifically be entitled to resile from the contract in whole or in part, without the need to set any further grace period, and/or to obtain contractual cover/to effect cover on its own, and to directly invoice the CO for any costs and losses which may arise as a result thereof, without any limitations on the CO's liability whatsoever.

- 7.5 In the event that scheduling requirements arise with respect to the CL as a result of the present Order, the CO shall prompt the CL with respect thereto in a documented and timely fashion. Where the CO fails to do so, then it may not rely thereon in the event of delays as to its own goods and/or services.
- 7.6 If, despite having issued prompts to the CL, it should be impossible for the CO to meet deadlines due to the belated provision of documents/information etc. by the CL, then the agreed deadlines and periods shall be deemed extended by a maximum of the period of delay for which the CL bears liability. The CO's duty of mitigation shall continue in such case. The CL and CO shall reach mutual agreement with respect to any direct additional costs which may arise and which must be documented no later than at the time of stipulating the new deadlines. The old periods and deadlines, extended by such delay, shall automatically be deemed the new reference dates for purposes of contractual penalties.

**STORAGE:**

- 7.7 If the delivery dates agreed in the Order are changed for reasons not attributable to the CO, the CO hereby confirms that it shall undertake proper storage of the goods for the CL's benefit for up to 6 months, at the CO's cost and risk. Payments affected by this may, in such circumstances, be made in exchange for declarations of passage of title to materials [*Materialübereignungserklärung*] and/or in exchange for submission of a bank guarantee etc. in accordance with written special agreements to be made in such case. The parties hereby expressly note that the CO shall have no other claims, irrespective of the legal grounds thereof.

**PARTIAL DELIVERIES, EARLY DELIVERIES:**

- 7.8 Entire or partial deliveries and/or early deliveries/early provision of services shall only be permitted with the CL's prior written consent (approval for shipping). The premature provision of goods and/or services shall not give rise to any premature claims for payment. Where goods and/or services are rendered prematurely without the CL's consent, the CL reserves the right to charge the CO for such costs as are associated therewith (warehouse rent etc.).

**PASSAGE OF TITLE:**

- 7.9 Unless otherwise agreed, title shall pass in accordance with the passage of risk under INCOTERMS 2000. If the CL's scope of goods and/or services includes installation, erection or Commissioning, then the title shall pass, with the provision of the goods and/or services and passage of the risk, no earlier than at the time of completed FINAL ACCEPTANCE.

**FINAL ACCEPTANCE:**

- 7.19 FINAL ACCEPTANCE is deemed to occur where the following conditions have been met:
- all goods and/or services of the CO have been rendered in accordance with the Order,
  - proper and complete delivery of the entire Documentation thereto,
  - Final Acceptance log, executed by both parties, is in place, pursuant to which the test run (including performance test for the entire system) has been successfully completed. Where the foregoing has been subject to a reservation (list of defects), however, FINAL ACCEPTANCE shall not be deemed to arise until such time as all of the defects noted in the Final Acceptance log have been completely resolved.
- 7.11 Where the CL accepts the goods and/or services although the contractually agreed key performance specifications etc. were not met in the performance test, then a Final Acceptance log shall be prepared covering the last performance test, containing a detailed depiction of the improvements to be made. Stipulations with respect to price abatement or contractual penalties in such situations shall only be binding on the CL where they are made by the CL's Purchasing Department.
- 7.12 Unless otherwise provided or mandatorily required by law, the CL shall not bear liability for losses incurred by the CO or third parties in connection with the CO's overall performance of the Order; in particular, the CL shall have no duty of care or duty to warn with respect to any technical or financial calculations to be performed by the CO, where the CO is acting in its capacity as a specialist in the field.

## 8. Warranty

**SCOPE OF WARRANTY:**

- 8.1 The CO hereby warrants that its goods and/or services have been rendered in accordance with the Order, that they have such characteristics as it has expressly warranted and as are ordinarily assumed in trade or business and that they are fit for their intended use, in particular including consideration of the operating conditions to be anticipated at the place of

deployment and due to their being incorporated within a complex overall system; the CO further warrants that the design, utility and engineering of its goods and services and the expressly warranted characteristics thereof comport with the latest state of the art and with the applicable regulations, that it has used new materials of first-class and appropriate quality and that the subject-matter of the Order is free of defects pursuant to the terms set forth in sec. 8.10 hereof.

- 8.2 In addition, the CO hereby warrants that its goods and/or services shall be executed in accordance with the norms, regulations and standards applicable in Austria, that they comport with any relevant EU requirements and, unless otherwise agreed, that they are based on the metric system. In the event that there are no relevant, explicit Austrian norms, regulations and standards, the CO shall apply appropriate comparable norms, regulations and standards, preferentially from the territory of the German legal system. The CO hereby undertakes to alert the CL immediately to any technical innovations of which it becomes aware. Notwithstanding what is set forth above, the application of norms, standards, regulations and terms and conditions other than those from the territory of the Austrian legal system shall not be permitted except with the CL's written consent.

If the location of the intended use/execution of the Order lies outside Austria, then – unless otherwise agreed – in addition to the obligations contained within the foregoing paragraph, the CO shall in executing the Order comply with the norms, regulations and standards which are, in particular, applicable at the site of intended use/execution of the Order. In all further and other respects, the obligations contained in the foregoing paragraph shall be applicable *mutatis mutandis*.

- 8.3 The CO hereby warrants that it shall achieve and reliably comply with all specifications, performance data and functional parameters pursuant to the parties' contractual agreements. The CO hereby warrants that it shall, at its own cost and expense and without giving rise to any additional costs to the CL, undertake any and all such additional provision of goods and/or of services as may be necessary therefor within a reasonable time, and shall carry out all repairs, calibrations, supplementations and erection works, etc./shall make all arrangements necessary to ensure that all of the specifications, performance data and functional parameters are achieved and maintained in accordance with the parties' contractual agreement.

The CO shall bear the expense of any additional personnel required for the analysis of the Final Acceptance testing.

- 8.4 The scope of the CO's Warranty expressly excludes normal wear and tear and damage due to improper use by the CL.

- 8.5 The CO hereby assumes a full warranty for the correctness and completeness of its engineering, advisory and documentation services and, in cases in which it deploys personnel to site, for the correctness and completeness of written and oral instructions and of actions taken in that context. The CO accordingly bears unlimited liability for all of the consequences of engineering, documentation and advisory errors and defects and for errors and defects in connection with the deployment of personnel to site.

- 8.6 Unless otherwise agreed, the CO hereby warrants that its replacement parts, wear and tear parts and parts associated with changes of operating media shall be available at prices in line with the market for the subject-matter of its deliveries for a period of up to 10 years from the expiry of the warranty period. Upon expiry of that period, the CO shall offer the CL an equivalent technical solution at comparable prices which are in line with the market.

#### **BURDEN OF PROOF, NOTIFICATION OF DEFECTS, ASSERTION OF DEFECTS:**

- 8.7 The CO shall bear the burden of proof that a defect arising during the warranty period within the meaning of sec. 8 is not present. The provisions of sec. 377 of the Austrian Entrepreneurial Code shall, obviously, not be inapplicable. The CL shall have no duty to inspect the CO's goods and/or services prior to the agreed functional and Performance Tests. With respect to asserting by legal action any warranty claims which may arise, the statutory prescription period shall apply.

#### **WARRANTY REMEDIES:**

- 8.8 The CO shall eliminate any defects which may arise, rapidly and free of charge to the CL, without regard to whether the defects could have been ascertained at any earlier point in time or not, (at the CL's option) by making improvements, by replacing and/or making supplemental deliveries and taking account of the project-specific situation and scheduling requirements. Notwithstanding the foregoing sentence, the CL shall continue to be free, at its discretion, to avail itself of the options/remedies of abatement of the purchase price and rescission of the contract. Complete performance of the contract shall not be deemed to have been achieved until such time as the defects have been eliminated and any Final Acceptance which may be contemplated has occurred and the agreed warranty period has expired.

- 8.9 In cases of minor defects (of a magnitude of EUR 10,000 per individual case) or in the case of defects which must be eliminated without delay, the CL shall be entitled, without undertaking any prior notice to CO, to eliminate them itself or have them rectified without delay at the CO's cost and expense (contractual cover/self-help), with it being understood

that the CL's warranty claims shall remain unaffected thereby. This shall also apply where the CO does not eliminate the defects in accordance with the schedule despite a demand to do so (setting a short but reasonable deadline, in particular in phases which are schedule-critical, e.g. Test Run) (contractual cover/self-help). With respect to contractual cover/self-help, the provisions in sec. 9.4 and 9.5 shall apply *mutatis mutandis*. The CL shall inform the CO rapidly with respect to the elimination of the defects.

**ORIGINATION OF WARRANTY CLAIMS:**

- 8.10 The warranty period shall end, unless otherwise agreed, 24 months after FINAL ACCEPTANCE of the overall system (Positive Performance Test, e.g. of a steel plant), but no later than 36 months after the entirety of goods and services have been delivered to site, except where the CO bore joint responsibility for belated FINAL ACCEPTANCE.
- 8.11 The warranty period (24 months) for replacement parts, wear and tear parts and parts associated with switching operating media shall, in each case, begin to run at the time they are installed/at the time these parts are commissioned and shall end no later than 36 months from the date they were delivered in accordance with the contract.
- 8.12 Every full or even partial interruption of satisfactory industrial permanent operations occurring during the warranty period which has been caused by the CO and which exceeds permitted down times shall give rise to an extension of the warranty period equal to the duration of the interruption.
- 8.13 In the event of an improvement to, a replacement of and/or a supplemental delivery of goods, the warranty period for the relevant scope of goods/services and the associated serviceability thereof shall be 24 months from the date of successful resumption of operations.
- 8.14 In the event of a latent defect, the warranty period shall not begin to run until such time as the defect is objectively capable of detection. In the case of goods which are customarily left in packaged condition until use, defects which only become visible after the goods are removed from their packaging shall be deemed 'latent defects'.

**MISCELLANEOUS:**

- 8.15 Any other rights to which the CL may be entitled shall remain unaffected by this independent warranty undertaking/obligation of the CO.
- 8.16 The CO hereby warrants that where a functionality/a component of its scope of goods/services is subsequently modified by the CL during the warranty period, and where such modification is undertaken by consultation between the CO and the CL, the warranty period for this functionality/for this component of the CO's scope of goods/services (as well as of interlinked components connected in a fundamental way therewith) shall begin to run anew.

## 9. Rescission

**BREACH:**

- 9.1 Where the CO fails to comply with its contractual obligations in whole or in part (e.g. also including failures to meet interim deadlines in the planning and manufacturing sequence as well as in respect of dependent ancillary services), then, unless a more specific rule is applicable and notwithstanding the provisions set forth in sec. 10.1 "Contractual penalties for defaults", the CL may resile in whole or in part from the contract after setting a reasonable grace period to no avail (as a rule: 14 days) and without regard to any potential divisibility of the CO's contractual performance.
- 9.2 In respect of any grace periods, it shall be deemed sufficient if the CL affords a grace period in *de facto* terms, e.g. by issuing repeated warnings regarding contractual compliance.
- 9.3 In particular in cases involving breach of express warranties, the CL shall be entitled in any event to resile from the contract in whole, irrespective of any divisibility of the CO's performance.

**CONTRACTUAL COVER/SELF-HELP:**

- 9.4 In cases of rescission of the contract in whole or in part, the CL shall, *inter alia*, be entitled to carry out or supply the goods and/or services the CO has failed to render/insufficiently rendered on its own or to have a third party render them, at the CO's cost and risk and without this entailing any limitation whatsoever on the CO's liability. The additional costs arising in this context shall be invoiced directly to the CO, and it is understood that the parties are deemed to have agreed a payment period of 45 days from the date of the invoice in such a case.

- 9.5 Where the exercise of the CL's right to effect contractual cover/self-help requires the ability to access equipment or materials in the custody of the CO or its sub-suppliers, etc., the CO shall be obliged to surrender the same to the CL. Where the exercise of the CL's right to effect contractual cover/self-help requires access to intellectual property, to Documentation (such as workshop drawings, calculations) or other information, the CO shall be obliged to procure the rights, Documentation, information, etc. necessary for this purpose free of charge to the CL.

**RESTITUTION:**

- 9.6 In the event of rescission, the CO shall pay restitution of amounts the CL has already paid to the CL for any goods and/or services which have not yet been rendered in a contractually compliant fashion, plus such financing costs as the CL has incurred.

**CREDITWORTHINESS OF CO:**

- 9.7 In the event of composition with creditors/bankruptcy proceedings initiated against the CO or its suppliers or of proceedings which are the equivalent as to their effects/in the event of a change of ownership of the CO, the CO shall notify the CL without delay, and the CL shall be entitled (notwithstanding the consequences under procedural law) to resile from the contract in whole or in part with immediate effect and to take special action in this regard.
- 9.8 In the event of a composition with creditors/insolvency proceedings or of proceedings which are the equivalent thereof as to their effects, the CL shall (taking account of the provisions of applicable law) have an immediate and unlimited right of disposition with respect to the goods and/or services held in storage by the CO and/or its sub-suppliers. The CO shall make appropriate arrangements to ensure that this provision is enforceable.
- 9.9 The CO shall inform the CL without delay with respect to the initiation, the course of and any setting aside of or discontinuation of reorganisation proceedings under the Austrian Corporate Reorganisation Act and shall furnish monthly reports to the CL regarding the status of the reorganisation during the reorganisation period.

**CANCELLATION:**

- 9.10 The CL has the right to resile at any time from the contract, in whole or in part, even without any fault on the part of the CO.
- 9.11 In such case, the CL shall pay to the CO the contract price *pro rata* in proportion to the goods delivered and/or services rendered and shall, in addition, reimburse the CO for such direct costs of goods and/or services then already in processing as the CO has documented/shall reimburse the CO for cancelled subcontracts. Upon the payment of the above-referenced costs, title to the goods and/or services in question/to the portions thereof shall pass to the CL. The CO shall bear the burden of proof of the actual existence of the foregoing costs. The CO shall undertake all reasonable efforts following a declaration of rescission to keep the direct costs to be reimbursed by the CL as low as possible. The parties hereby expressly agree that the CO shall have no claims beyond the foregoing, irrespective of the legal grounds thereof.

**SUSPENSION OF PERFORMANCE:**

- 9.12 The CL shall have the right to demand at any time, without any need to provide reasons, that the CO interrupt its further performance of the contract.
- 9.13 In such case, the CO shall alert the CL without delay to the associated consequences and to the actual direct costs arising therefrom and shall offer to the CL the best possible modification to the schedule in economic terms in connection with the project. The additional direct costs resulting from suspension of performance shall be documented by the CO and borne by the CL. The parties hereby expressly agree that the CO shall have no claims beyond the foregoing, irrespective of the legal grounds thereof.

## 10. Liability

**10.1 CONTRACTUAL PENALTIES FOR BREACH:**

- 10.1.1 Where the CO overshoots/does not meet or satisfy the periods, deadlines, warranty characteristics agreed in the Order and in the contractual bases of the Order, then the CO shall (unless otherwise or supplementally provided in the minutes of negotiation) pay contractual penalties, each of which shall be calculated on the basis of the total Order value. These contractual penalties shall in each case be deducted from the CO's current invoices/from the CO's receivables.

Delay in effecting delivery of goods/services: 1% per week or portion thereof of objective delay, to a maximum of 10% of the total Order value. This rule shall also apply with respect to stipulated individual deadlines, unless the parties have made agreements to the contrary.

Delay in delivering Documentation: 0.5% per week or portion thereof of objective delay per individual deadline, to a maximum of 5% of the total Order value.

Contractual penalty for failure to achieve warranted characteristics/warranties/capacities /performance data, etc.: Separate details are set forth in the respective minutes of negotiation, the Order, technical specifications and/or annexes, taking account of sec. 8 "Warranty".

- 10.1.2 Upon expiry of the period subject to a contractual penalty and in the event of rescission of the contract by the CL, the CO shall bear unlimited liability to pay compensatory damages. Payment of contractual penalties shall not relieve the CO of its obligations to perform the contract, nor shall it relieve the CO from any contractual obligations due to any breach and/or from liability resulting from warranties.
- 10.1.3 The obligation to pay a contractual penalty shall arise with respect to the CO at such time as default/delay within the meaning of the foregoing occurs, without any need for the CL to furnish proof of damages. It is not necessary for the CL to express any reservations at the time of accepting goods, even in the case of a default, to preserve its claim for a contractual penalty from the CO. Unless otherwise agreed in writing, the general statutory prescription periods shall apply.
- 10.1.4 In all cases of imminent default/delay or defaults/delays which have actually occurred, the CO shall bear an obligation (irrespective of the cause of the default/delay) to structure its performance of the contract with sufficient flexibility so that defaults/delays may be minimised.

**PRODUCT LIABILITY:**

- 10.2 Where claims are made against the CL due to a violation of regulatory safety rules or on the basis of domestic or foreign product liability regulations or statutes, and where such claim is attributable to defective products supplied by the CO, the CO shall compensate the CL for any and all damages resulting therefrom and shall in all further and other respects indemnify and hold the CL harmless, without any limitation whatsoever on the CL's liability.

**LIABILITY OF VICARIOUS AGENTS:**

- 10.3 The CO shall bear full liability for its sub-suppliers as vicarious agents, in particular in respect of the criteria:
- Quality and environmental safety
  - Technical cross-standardisation
  - Sub-supplier specifications
  - Customs pre-notation, customs transit, import and shipping, etc.

**LIMITED LIABILITY OF CO:**

- 10.4 To the extent not otherwise provided, the CO shall compensate the CL for any and all damages in their entirety, within the scope of and subject to the limitation on liability set forth below:  
The CO shall not bear any liability for damages in the form of lost profits and production losses caused by its slight negligence.

**OTHER LIABILITY:**

- 10.5 The CO shall also bear liability for damages/shall assume all costs attributable to defects in shipping, documentation of origin, packaging, incorrect shipping instructions, loading, corrosion protection, incorrect or missing part labelling and signage (spare parts shall be separately labelled and packed) and any failures to procure approvals, documents of Government authorities, etc.

## 11. Insurance

- 11.1 Unless otherwise agreed, it shall be the responsibility of the CO itself to take out policies of insurance deemed necessary. The policies of insurance taken out by the CO must contain a waiver of recourse in favour of the CL. With respect to the scope and amount of insurance and of the excess to be assumed by the CO, the CO must inform the CL and shall submit the insurance policy/confirmation to the CL upon its request. The taking out of such insurance shall not in any manner be deemed to limit the CO's obligations and liability under this section, even if the CL does not raise any objections to the insurance policy/confirmation submitted to it.

- 11.2 If the CO is covered by a policy of insurance taken out by the CL, the CO shall acknowledge the terms and conditions of insurance in question as binding on it. The CO thus undertakes to satisfy all obligations associated therewith, as well, such as obligations to provide information requested, to comply with instructions, to adhere to restrictions, etc.

## 12. Documentation

- 12.1 "Documentation" within the meaning of the Order shall, in particular, be deemed to include all written, illustration-based and electronic documents (including source code) which are specified in order to ensure the performance of all activities associated with the proper erection and operation of a plant/plant components.

- 12.2 This Documentation must be submitted in such scope as is described in the Order and in the annexes thereto/must be submitted in German and in electronic form to enable the proper performance of the above-referenced activities.

'Proper Documentation' shall be deemed *inter alia* to include:

- Corrected final Documentation (as-built documentation) with
    - Risk analysis/risk assessment and technical documents
    - EC Declaration of Conformity OR if not applicable manufacturer's declaration/Declaration of Incorporation
    - Operating manual/operating instructions, source codes, drawings, assembly, Commissioning and maintenance instructions, safety manuals
    - Replacement and wear and tear parts: The CO shall develop an offer for spare parts for 1 and 2 years of operation and this shall be valid until the date of Final Acceptance. The CO shall give the CL timely notice with respect to spare parts with longer delivery periods so that such spare parts will be available from the time of the Test Run. The CO shall deliver the spare part lists together with the original manufacturer details (address, type, part designation, norms, materials used, dimensions, assembly drawings, detail drawings) and details of delivery times in IT-processable format (standardised voestalpine format) so that the CL shall, in any case, also be in a position to effect direct procurement of the relevant parts and equipment from the original manufacturer in question. The CO shall label all parts supplied by it with an adhesive label or a permanent designation label showing the voestalpine material number.
    - Documentation of origin
    - Transport specifications
- 12.3 The CO shall submit the Documentation free of charge DDP Linz Works, pursuant to INCOTERMS 2000, such that rapid identification (details such as order number, identification number, standardised item description with description of goods, dimensions, materials, design, norms and standards, etc.) of the various modules and individual parts of the plants/plant components supplied (machines, equipment, etc.) and/or goods and/or services and performance of shipping, customs clearance, erection and assembly, maintenance and repair work as well as procurement of spare parts, wear and tear parts and parts associated with changes of operating media are guaranteed, even without involvement of the CO's specialists.
- 12.4 If changes should arise in the course of performance of an Order, the CO shall incorporate them free of charge without delay into all of the technical documents and the CO's Documentation so that end Documentation which is correct in its entirety will be guaranteed.
- 12.5 Unless otherwise agreed, the final, corrected erection and assembly Documentation must be available for erection/assembly planning in so timely a fashion that effective and cost-effective assembly/erection as assured.
- 12.6 To the extent necessary in connection with the Order or to the extent required under EU Directives/norms and standards, the testing Documentation to be supplied by the CO shall consist of reports with respect to quality assurance for engineering, manufacturing, Final Acceptance and other tests, test reports, etc., and of time schedules and progress reports.

- 12.7 The CL may use any and all Documentation delivered to it by the CO within the voestalpine AG corporate group for its own purposes of any kind whatsoever, freely and free of charge.

**CE LABELLING:**

- 12.8 If CE labelling is required for the CL's goods and/or services, this must be in documented and verifiable conformity with all provisions of applicable law in this respect (EU Directives on the basis of Art. 95 of the EU Treaty and Austrian law). Where this should not be the case, the CL reserves the right to rectify the status to conform with the law at the CO's cost and expense.

The CO shall deliver risk analyses/risk assessments, operating instructions, technical Documentation evidencing conformity with the requirements of applicable law and the necessary EU Declarations of Conformity, in both the original language and in German translation to the CL. The CO shall consistently implement the measures defined from the risk analyses/risk assessments.

The CO shall apply the CE marking and shall supply the technical Documentation to the CL. If devices which are ready for use do not exhibit any CE marking, CE marking shall be prepared at the CO's cost and expense following completion of the erection and assembly works.

- 12.9 In the even of delivery of incomplete machines, a manufacturer's declaration/Declaration of Incorporation, and, as from 29.12.2009, the procedure under MSV 2010 shall be applied. In addition, the product requirements under the relevant EU Directives shall be complied with. In addition, the CO shall notify the CL as to the technical safety devices and measures yet to be satisfied in order to obtain complete CE certification of the machine.
- 12.10 The CL hereby reserves the right to engage experts to audit the CL's goods and/or services for conformity with the provisions of applicable law. The engagement of an expert and the agreement of an appointment with such expert shall be by mutual consultation between the CL and CO from such time as the CL's entire scope of goods and/or services are in place (including Declaration of Conformity). The CO shall bear comprehensive liability for any and all costs/damages incurred by the CL due to missing, defective or improper CE labelling.

## 13. Inspection

- 13.1 During the course of performance of the Order, either on its own or through its testing officers/agents (= Review Team), the CL hereby reserves the right to subject drawings, materials, equipment, packaging to be furnished by the CO pursuant to the Order in question to testing upon prior notice at the CO's offices/manufacturing sites/warehouses as well as those of its suppliers of roughly the following scope: Inspection, sampling for purposes of quality control, deadline and progress checks, etc. In all further and other respects, sec. 7.4 shall apply.

**TESTING:**

- 13.2 Prior to shipping the goods in question, the CO shall, where necessary, conduct technical testing of the goods in question and shall submit the results of such testing (test reports, measurement logs, etc.) to the CL upon request.
- 13.3 The CL shall be entitled to attend the CO's technical testing sessions and, in well-founded cases, to demand that the CO undertakes special technical tests. The CL shall furnish timely notice thereof to the CO, who, in turn, shall issue a timely invitation to the CL to attend such technical testing sessions.
- 13.4 For purposes of carrying out testing, the CO shall, at its cost and expense, furnish assistance, materials, personnel, interpreters, power, appropriate testing facilities, testing devices.
- 13.5 The CO and the CL, respectively, shall each bear the costs arising for their own staff/Review Teams. Where a test is unsuccessful for reasons for which the CO bears responsibility, then the CO shall assume the entirety of costs resulting from the need to undertake a subsequent re-test.
- 13.6 Where the Review Team waives testing or fails to attend a testing date, the CO shall forward the testing Documentation to the CL immediately/pursuant to agreement, but in any event no later than prior to delivering the plant/plant components.



- 13.7 The CO shall not be deemed relieved of its contractual obligations by carrying out testing or as a result of a waiver of testing.

## 14. Shipment, storage, Documentation of origin

- 14.1 INCOTERMS 2000, the rules set forth in the Austrian Packaging Regulation of 1996 as amended, BGBl II No. 364/2006, and any project-specific packaging guidelines of the CO, shall apply.
- 14.2 Except where it is the subject of special instructions, goods shall be packaged in a manner which is customary in the trade, expedient, as environmentally friendly as possible and free of defects. Packaging which is classified as waste within the meaning of the Packaging Regulation 1996 shall be returned freight collect to the CO (except where otherwise separately agreed)/the CL's disposal costs shall be charged to the CO. Unit load devices and packing cases shall pass to the ownership of the CL. Packaging must comport with the characteristics of the goods being shipped as well as the shipping conditions for the type of transport in question, taking account of multiple reloadings.
- 14.3 The CO shall assume the cost of additional costs for special shipping (e.g. air freight) resulting due to the fault of the CO (e.g. CO's culpable breach, deliveries for purposes of eliminating defects, etc.), including such packaging as is specified.
- 14.4 Where shipments are not accepted for reasons for which the CO does not bear responsibility or where shipments are stored by agreement of the parties/upon request of the CL pursuant to sec. 7.6 hereof, the warehousing receipt, record of passage of title, etc. shall be deemed the equivalent of shipping papers triggering payment. With respect to payment options, see sec. 7 "Performance".
- 14.5 Returns of goods shall be at the CO's risk and cost.

### **PART DESCRIPTIONS, SHIPPING DOCUMENTATION:**

- 14.6 Due to reasons of technical processing, the Documentation must in each case clearly reference, in the shipping terms, the complete and correct order number, contract item and identification number as well as the description of the goods, which are required *inter alia* to facilitate clear categorisation with respect to the correct customs tariff per the specifications.
- 14.7 Part descriptions must be identical in all Documentation components. In particular, the part description must absolutely be worded the same in the drawings, parts lists, packing lists and shipping papers. The CO shall forward in a timely fashion prior to its delivery thereof the parts lists, packing lists and shipping papers in suitable electronic form to the CL.
- 14.8 The CO shall place the consignment notes and packing lists in a clearly visible and easily accessible location.

### **DOCUMENTATION OF ORIGIN:**

- 14.9 The CO shall enclose with the goods to be shipped in international transit, each valid proof of preferential status (movement certificate, certificate of preferential or originating status, certificate of origin and similar) free of charge required in Austria to facilitate preferential customs clearance.
- 14.10 In particular, the certificate of origin must contain the following details:
- Name of exporter and recipient
  - Order number of CL
  - Precise description of the goods
  - Number of packages
  - Package number
  - Gross and net weights, dimensions
  - No values may be given for the goods
- 14.11 The CO shall enclose the Documentation of origin with the shipment/with the shipment documents.
- 14.12 The CO must provide a certificate of origin certified by the competent Chamber of Commerce/upon request of the CL, by the Consulate.
- 14.13 The CO shall bear the costs of any and all duties, fees and additional costs arising as a result of a failure to furnish such documents or as a result of incorrect statements therein.

14.14 Unless otherwise agreed, the CL shall regard the CO's country as the country of origin.

**DOCUMENTATION OF ORIGIN FOR SHIPMENTS FROM THE EU/FROM AUSTRIA:**

14.15 The CO hereby undertakes to append a valid supplier's declaration to the transport documents on its shipments and to forward a commercial invoice (in duplicate) to the CL.

14.16 The certificate of origin may also be provided by way of a valid long-term declaration (Council Regulation (EU) 1207/2001 of 11 June 2001, as amended by Council Regulation (EU) No. 1616/2006 of 24 October 2006).

14.17 Where the issuance of this declaration is not possible, this must be noted in the CO's invoice, indicating the country of origin for the item in question.

14.18 The CO shall bear any and all costs and duties where the promised declarations or the country of origin are incorrect.

**ORIGIN DOCUMENTATION FOR SHIPMENTS FROM COUNTRIES WITH WHICH AN EU PREFERENTIAL AGREEMENT EXISTS:**

14.19 The CO hereby undertakes to append a valid movement certificate to the transport documents on its shipments and to forward a commercial invoice (in duplicate) to the CL. The certificate of origin may be supplied by way of a valid invoice declaration if the preferential agreement in question so provides.

14.20 Where it is not possible to issue a movement certificate or to provide an invoice declaration, this must be noted in the invoice, indicating the country of origin.

14.21 The CO shall bear any and all costs and duties where the promised certificate of origin or the country of origin are incorrect.

**ORIGIN DOCUMENTATION FOR SHIPMENTS FROM DEVELOPING COUNTRIES INCLUDED WITHIN THE GENERALISED SYSTEM OF PREFERENCES (GSP):**

14.22 The CO hereby undertakes to enclose with the goods to be shipped a preferential status certificate of origin free of charge, required in the country of the goods' destination for the purposes of preferential customs clearance.

14.23 Upon request of the CL, the certificate of origin issued by the competent authorities shall also be certified by the Consulate.

14.24 Any and all duties, taxes, fees and additional costs resulting from incorrect origin documentation or the failure to provide origin documentation shall, in their entirety, be for the account of the CO.

14.25 Unless otherwise agreed, the country of origin shall be the country in which the CO has its registered office.

14.26 The provisions in this sec. 14 shall apply *mutatis mutandis* for services rendered by the CO.

## 15. Transferability

- 15.1 Subject to the provisions set forth in sec. 5.5 hereof, transfer, assignment or delegation by the CO of any obligation and/or of any right whatsoever arising out of this Order to third parties (except for sub-contracting of goods and/or services pursuant to the list of suppliers approved in writing by the CL prior to awarding the contract) may only be undertaken following the CL's express written consent.

## 16. Technology transfer, export licences, import licences

- 16.1 The CO shall procure any necessary export licences for undertaking exports to Austria at its own cost and expense.
- 16.2 The CO hereby warrants that as of the time of the Order, the CO's complete provision of the goods and/or services is assured and, in particular, there are no regulatory or other restrictions whatsoever constituting an obstacle to its provision of the goods and/or services; in the event of a breach hereof, the CO shall bear liability in damages to the CL for any and all losses, without any limitations on the CO's liability whatsoever.

## 17. Third-party rights, confidentiality, advertising

### **INTELLECTUAL PROPERTY RIGHTS, PATENTS, LIENS, OTHER RIGHTS OF THIRD PARTIES:**

- 17.1 The CO hereby warrants that its erection and assembly, manufacturing and/or provision of the goods and/or services and the operation/the use of the same and of all associated technological processes/know-how etc. shall not, in any manner, infringe third-party rights (such as trade marks, utility models, patents, territorial restrictions etc.) or any existing boycott clauses, blacklists, embargos, etc.
- 17.2 In the event of infringements in this respect, the CO hereby undertakes to indemnify the CL and hold it harmless against claims of third parties, without limitation, and warrants to the CL that it shall be able to make unlimited use of the subject-matter of its Order.

### **CONFIDENTIALITY, ADVERTISING:**

- 17.3 The CO may not either publish, disclose to third parties, reproduce or use for advertising purposes the contents/subject-goods under the present Order/of the present transaction, nor any of the information received from the CL, including comments of the CL's employees, without the written consent of the CL's Corporate Communications Department. In particular, the CO hereby undertakes to use all information, of whatever kind, received from the CL exclusively for purposes of performing the transaction underlying the Order and not to use it either itself or jointly with third parties for purposes extraneous to the underlying Order/to the underlying transaction. Use of the CL's and of its subsidiary's logos shall likewise require the express written consent of the CL's Corporation Communications Department.
- 17.4 Labelling/signs of external companies on devices and equipment of the CL or of its subsidiaries, such as on plant equipment, as well as generally anywhere on the premises of the voestalpine works shall require the CL's written consent.
- 17.5 Prior to making photographs and/or carrying out video or film recordings at the works, the CO must obtain an additional express and written authorisation for photography/for film from the CL's Corporate Communications Department. The foregoing shall likewise apply to recordings required by law to be prepared for purposes of documentation.
- 17.6 The CO shall impose a corresponding duty of confidentiality on individuals from the sphere of the CO who gain knowledge of the CL's information and documents.

## 18. *Force majeure*

- 18.1 The parties shall be deemed relieved of the duty of timely performance of the contract in whole or in part where they are prevented from doing so due to events of *force majeure*.
- 18.2 Events of *force majeure* shall be deemed exclusively to encompass: War, civil unrest, forces of nature, fire, union-approved strikes.
- 18.3 However, where the CO has been impeded by an event of *force majeure*, it may only rely on the existence of circumstances of *force majeure* where it provides to the CL immediately, but no later than 5 calendar days from the date the event occurred, a statement indicating the beginning and anticipated end of the impediment, confirmed by the competent government authorities/by the chamber of commerce of the country of the supplier (by recorded delivery) with respect to the cause of the *force majeure* event, the anticipated impact thereof and the duration of the delay.
- 18.4 In cases of *force majeure*, the parties shall undertake their best efforts to eliminate/to reduce difficulties and foreseeable losses and shall each inform the other party thereof on an ongoing basis.
- 18.5 Deadlines or periods which are incapable of being met as a result of the impacts of the *force majeure* event shall be deemed extended by a period equal to the duration of the effects of the *force majeure* event or, where applicable, by such period as the parties stipulate by mutual agreement, and the provisions in sec. 7 (Performance, delivery date, Final Acceptance) shall, in turn, apply with respect thereto. In all further and other respects, the CO's other contractual obligations shall in all cases remain unaffected in their entirety.
- 18.6 Where an event of *force majeure* lasts for longer than four weeks, the CO and the CL shall negotiate together to seek a contractual agreement on the impacts thereof on the performance of their contract.
- 18.7 Where an event of *force majeure* lasts for longer than six months and it is not possible for the parties to reach a mutual agreement with respect thereto, then each party shall have the right to rescind the contract in whole or in part.

## 19. Deployment of personnel to site, instruction, training

- 19.1 The CO hereby undertakes to deploy sufficient numbers of appropriately qualified personnel to the work site upon request of the CL, upon the terms and conditions stipulated for the deployment of personnel and upon such prices as have been agreed.
- 19.2 Where the CO personnel is to perform supervision of erection/assembly and Commissioning at the work site and where the CL demands instruction/training at the work site, the CO shall ensure that these are provided during its period of supervisory work, without any additional costs to the CL.
- 19.3 The CL shall in each case notify the CO in a timely fashion with regard to details as to deployment of personnel and instruction, taking account of the project-specific needs, and/or these details are covered in the terms and conditions of personnel deployment.

## 20. Construction coordination law

### [*Bauarbeitenkoordinationsgesetz*](BAUKG)

To the extent the CO bears obligations under the BAUKG for construction sites, which may also arise in connection with purchases of plant components, the following *inter alia* shall apply:

- 20.1 In the event that obligations under the BAUKG are assigned to the CO, then, in addition to the unit prices/fees for construction work, the CO shall, where the prerequisites thereto are met, prepare the necessary documentation (SIGE plan, documents for later works)/shall modify the same and provide price calculations therefor. The CO shall likewise designate (and furnish evidence of) the planning and/or construction site coordinators. This evidence shall be deemed to have been furnished by execution of the confirmation of the Order. The advance notice shall be provided by the relevant project manager of the CL.

- 20.2 CO shall bear exclusive responsibility for undertaking coordination under the BAUKG as between the construction site coordinator and the CO's sub-contractors.
- 20.3 The CO shall make the scaffolding, lifts and any other facilities provided by it to the other companies engaged at the construction site in accordance with the SIGE plan and the adaptations thereto, without demanding any separate compensation therefor. At least one week prior to the intended dismantling of scaffolding, the CO shall obtain the consent of the competent construction supervisor/construction site coordinator.
- 20.4 The CO shall bear sole responsibility for ensuring compliance with the statutory safety regulations under the Austrian Protection of Employees Act. The work stations and routes of transport must be kept clean on an ongoing basis without demanding any separate compensation therefor, the CO shall remove waste and packaging material and dispose of it in accordance with the waste management laws and regulations applicable in each case. All contaminations resulting from the CO's own works must be eliminated, otherwise the CL shall do so at the cost and expense of the CO. In the event that it is not possible to determine who generated contamination and/or damage to property, the costs incurred for remediating the contamination or damage to property shall be charged *pro rata* to the COs involved in the construction project.

## 21. Jurisdiction and venue, choice of law

- 21.1 The CO and the CL shall attempt to resolve all problems arising in connection with the performance of the Order/performance of the contract amicably through negotiations. However, if the parties should not succeed in amicably settling their differences of opinion within 30 days from the date of a demand to initiate negotiations, they shall conduct mediation proceedings in accordance with the Austrian Civil Law Mediation Act. This agreement shall not be deemed to prevent either party from pursuing judicial proceedings, including, in particular, proceedings for injunctive relief. In the event of judicial proceedings, the provisions in secs. 21.2 to 21.4 set forth below shall apply with respect to jurisdiction and venue and choice of law.
- 21.2 For orders placed with COs having their registered office within the territory of the European Union: All disputes which may arise and are not capable of being resolved by mutual agreement shall be governed by Austrian substantive law, but excepting any application of its choice of law rules (Austrian Private International Law Act, Rome Convention of 1980) and of the UN Convention on the International Sale of Goods of 1980, as from time to time amended. Jurisdiction and venue shall lie with the ordinary courts of Linz, Austria.
- 21.3 For Orders placed with COs whose registered offices are located outside the European Union: All disputes which may arise and which cannot be resolved by mutual agreement of the parties, shall be governed by Austrian substantive law, excepting any application of its choice of law rules (Austrian International Public Law Act, Rome Convention of 1980) and of the UN Convention on the International Sale of Goods of 1980, as from time to time amended. At the option of the CL, jurisdiction and venue shall lie with the ordinary courts of Linz, Austria, or with the courts with subject-matter jurisdiction thereof at the registered office of the CO.
- 21.4 The CO shall confirm in writing the existence of this jurisdictional clause at any time upon request of the CL.

## 22. Severability clause

- 22.1 If individual provisions of these GCT should be invalid, ineffective, illegal or incapable of enforcement, this shall have no influence on the validity of the remaining provisions hereof.
- 22.2 In such case, the CO and the CL shall replace the invalid, ineffective, illegal or impracticable provision by such provision as comes closest to the commercial intention of that provision in a legally permissible manner.

# Annex 1: Supplemental Terms for Additional Purchases of Software and Software Services

## 1. General provisions

### 1.1 DELIVERY OF SOURCE CODE FOR APPLICATION / MODEL SOFTWARE

The CO shall provide to the CL the complete source code, including documentation, for the entire application software/model software, on data storage media in a machine-readable format accessible by the CL.

Delivery of the source code must take place no later than at the end of 6 months of the project term, and, without delay upon the CL's first demand during the project and prior to the Final Acceptance testing, as well as after any modifications are made in connection with improvements undertaken during the Final Acceptance procedures, the warranty period or maintenance work. The foregoing shall also apply with respect to all libraries, models, tools, macros and the like used by the CO, and with respect to individually tailored software modifications. Programming tools used by the CO and program libraries not available freely on the market shall be supplied along with the source code. The CL shall be at liberty to make unrestricted use of the source code throughout its corporate group.

However, the CO shall in any case provide an itemisation and instructions as to how the data storage media may be read on the CL's system and how the subject-software must be installed together with the source code, which shall be readable without the use of any auxiliaries.

### 1.2 SOFTWARE UPGRADE PRIOR TO PERFORMANCE TEST

Prior to the availability test (i.e. at least one month beforehand) and approx. three months prior to Final Acceptance, the CO shall, in consultation with the CL, carry out a software upgrade to all systems/components in question to bring them up to the most current version in each case of all of the components involved (operating systems, databases, development tools, etc.).

## 2. Intellectual property rights

### 2.1 STANDARD SOFTWARE (OPERATING SYSTEMS, DRIVERS, ETC.)

With respect to the use of the standard software (operating systems, drivers, etc.), the sub-supplier's terms and conditions shall apply. In any event, this use must include installation on an alternative system as well as the necessary copies for back-up and archiving purposes. Any licence agreements which may need to be entered into already at the time of acquiring the software shall be issued in the name of the CL (following consultation with the CL). It should be noted that 'model software' does not refer to standard software.

### 2.2 APPLICATION/MODEL SOFTWARE INCLUDING SOURCE CODES AND DOCUMENTATION; INDIVIDUAL SOFTWARE;

The CL is granted the right to use the application/model software (including source code and documentation) on all of its current and future systems as well as generally, to the extent necessary, on an alternative system within the scope of system stability as absolutely necessary, and, in addition, to create the necessary copies of purposes of back-ups and archiving. 'Use to the extent necessary' shall also be deemed to include provision thereof to third parties in connection with computer centre operations/ASP operations.

Systems that are operated by and/or for companies that, at the time of their use thereof, belong to the same corporate group as the CL shall be deemed to form a part of the CL's systems for purposes of this section.

In the event that the CO is commissioned for this purpose, the CO shall provide to the CL the right to make extensions and modifications to the information supplied to the CL, including software, source codes, documentation, etc., which shall include downstream use of information which has been subject to extensions/modifications in this way.

The CO shall impose an obligation on its employees, sub-suppliers and/or all other third parties involved in rendering the services, and shall document the same, such that it ensures that the rights to which the CL is entitled under these contractual provisions (including, in particular, the rights under these Supplemental Terms for the Additional Purchase of Software and Software Services) are adhered to and enforced.

When carrying out software contracts for third parties, the CO shall not copy/process the work product created by it in performance of its agreement with the CL either in whole or in part.

The CL shall be deemed to acquire ownership and the exclusive and unlimited rights of use to all documents, files and back-up volumes (of any type whatsoever) pertaining to components of individual software, as of the time of their creation, without this constituting any Final Acceptance thereof. In the event of composition with creditors/insolvency proceedings initiated against the CO/in the event of proceedings which are the equivalent thereof as to their effects, the CL shall have a right of separation and recovery of assets [*Aussonderungsrecht*] to the referenced documents, files and back-up volumes.

In the event of proceedings for the composition of creditors/insolvency proceedings initiated against the CO/of proceeding which are the equivalent thereof as to their effects, all rights to which the CO is entitled with respect to the subject software components shall pass exclusively and without limitation to the CL, wherever the CL has not already acquired more extensive rights thereto.

All rights to the elaborations created by the CL shall remain exclusively with the CL. Such elaborations shall be treated as the CL's trade and business secrets.

### **3 MISCELLANEOUS**

Unless otherwise provided in these Supplemental Terms, all of the terms of the "General Commercial Terms for the Purchase of Plant, Plant Components and Other Goods and/or Services, voestalpine GmbH – version of September 2009" shall remain valid and in force in their entirety.