

## **TERMS AND CONDITIONS OF SALE**

These Standard Terms and Conditions of Sale (these "Terms and Conditions") govern the sale of Goods and/or Services by Borusan Vobarno Tubi S.p.A., a joint stock company incorporated in Italy ("Seller") to the Buyer pursuant to a quotation, sales agreement or purchase order (collectively referred to herein as the "Sales Agreement"). All references herein to "Buyer" refer to the purchaser of Goods and/or Services from Seller pursuant to the Sales Agreement, and any terms used and not defined herein shall be as defined in the Sales Agreement.

### **1. ENTIRE AGREEMENT AND APPLICATION**

These Terms and Conditions supersede all prior negotiations, representations, commitments and agreements between the parties with respect to the Sales Agreement and the sale of Goods and Services to Buyer. Seller shall not accept any additional or conflicting terms formulated by Buyer before or after the date of the Sales Agreement, unless expressly agreed to in writing by SELLER or its expressly authorised representative. These Terms and Conditions shall take precedence and prevail over any special terms in the Sales Agreement.

### **2. PRICE AND DELIVERY TERMS**

Quoted selling prices of the goods and/or services remain valid until the date indicated in the quotation. Once the sales agreement is prepared and signed, prices will not be subject to negotiation under normal circumstances, except in the following cases: (a) any increase or decrease in import taxes, antidumping duties or surcharges, (b) any safeguard application or tariffs or quotas imposed, (c) any increases in costs in the event of force majeure, which are payable by Seller and maturing after the date of signing the Sales Agreement.

The terms of delivery are as indicated in the sales agreement, and prices are intended to be quoted ex-works. Shipping dates are approximate, being subject to Seller's availability, late delivery of items from Buyer or any other party, interferences in Seller's work, events of Force Majeure, or any other reasons, it being understood that Seller shall use its best endeavour to deliver the goods within the agreed terms. In this case, Seller and Buyer shall agree a new delivery term.

Seller is entitled to make partial deliveries. All partial deliveries shall be invoiced separately and paid for as invoiced, without taking into account subsequent deliveries. Failure by Buyer to pay any instalment due shall constitute grounds for Seller to suspend further deliveries of Goods and/or Services purchased by Buyer. Any delay in partial deliveries shall not relieve Buyer of its obligation to accept and pay for the remaining partial deliveries.

Buyer shall be notified when the Goods are ready for Seller's shipping office or for collection by Buyer in accordance with the agreed delivery terms. Buyer shall have fifteen (15) calendar days to arrange shipment of the material and accept Seller's invoice. If Buyer fails to collect all Goods within fifteen (15) calendar days, Seller may elect to invoice Buyer. If Buyer fails to collect all Goods within thirty (30) calendar days of notice that the Goods are ready for collection, Seller may charge Buyer a storage fee of €10.00 per tonne per month, as well as any costs associated with the handling of the Goods, and Seller may elect to revise the selling price of the Goods. Seller shall invoice Buyer for such storage fees and Buyer agrees to pay storage charges.

#### **2.1 SHIPMENT OF GOODS**

Unless otherwise agreed in writing by Seller: (i) Shipments shall be made by carrier designated by Seller/Buyer in accordance with agreed Incoterms conditions; (ii) All deliveries of Goods shall be made in accordance with the 2020

Incoterms conditions set out in the Sales Agreement, whereby all risks of loss and/or damage to the Goods supplied shall be transferred by Seller to Buyer upon delivery to Buyer or its designated carrier. Although the cargo insurance contract entails the Seller's liability according to the agreed Incoterms conditions, the Buyer is responsible for the insurance contract after "delivery", for the remaining time in transit until final destination. Title to the Goods shall pass from Seller to Buyer upon payment by Buyer of the full purchase price of the Goods; (iii) At the Seller's warehouse, all loading operations shall be carried out by appointment; (iv) It is the responsibility of Buyer or its representative to call +39 0365 592 1 to schedule the appointment, preferably 48 hours in advance; (v) Carriers arriving without an appointment shall be placed at the end of the schedule and overtime charges may be applied; (vi) Buyer shall be responsible for all matters relating to the shipment, handling and transport, including securing Goods carried for protection against accidents which may occur during shipment; (vii) Buyer shall cover all risks associated with the above operations, including third-party liability insurance.

#### **2.2 ORDER CHANGES**

If Buyer wishes to make changes to the Goods and/or Services covered by the original Sales Agreement, Buyer shall submit a written change order ("Change Order") to Seller. Change Orders submitted within 2 months prior to the delivery date agreed in the original Sales Agreement shall only be accepted if they do not involve changes in Seller's raw materials procurement/production schedules. Seller shall submit to Buyer a new revised quotation based on the changes requested, including design, dimensions and specifications, Seller's work progress under the original Sales Agreement and Seller's current workload, and shall submit to Buyer an updated Sales Agreement indicating the cost associated with the Change Order. These Change Orders and updated Sales Agreements must be signed by Seller. Buyer shall accept the revised Sales Agreement and return it to Seller before Seller is required to execute the revised Sales Agreement. The revised Sales Agreement may entail a variation in the price, delivery dates or other terms of the original Sales Agreement. All terms of the original Sales Agreement shall remain in effect unless otherwise specified in the revised Sales Agreement. Any such updated and jointly executed Sales Agreement cancels and supersedes the original Sales Agreement.

### **3. TRANSFER OF TITLE AND RISK OF LOSS AND DAMAGE**

Title to the Goods shall pass to Buyer only upon full payment by Buyer for the Goods and/or Services.

The risk of loss of and damage to the Goods shall pass from Seller to Buyer upon their delivery to Buyer in accordance with Incoterms 2020. Seller shall not be liable for any loss, damage or injury during delivery of the Goods and/or Services to Buyer beyond the point of delivery.

### **4. CANCELLATIONS AND RETURNS**

Buyer may not cancel or modify any order or Sales Agreement, in whole or in part, after the signing of the Sales Agreement without Seller's prior written consent, which Seller reserves the right to grant or withhold at its sole discretion, upon an adjustment of price and/or other terms and the reimbursement by Buyer to Seller of any costs and damages incurred in connection with the order and its cancellations/returns. Except as provided for in Article 8 of these Terms and Conditions, conforming Goods cannot be returned to Seller, unless expressly agreed in writing by Seller or any authorized representative of Seller, subject to acceptance or rejection by Seller to be given at its sole discretion.

### **5. PAYMENT**

#### **BORUSAN VOBARNO TUBI S.P.A.**

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Payment is due from Buyer to Seller in accordance with the provisions set forth in the Sales Agreement. Payment by Buyer to Seller is not and shall not be subject to any condition, including payment by a third party, and Buyer shall not be entitled to set off, withhold or block any amounts owed to Seller. Failure to pay invoices issued by Seller in relation to the Sales Agreement entered into with Buyer shall entail the accrual of default interest pursuant to Legislative Decree 231/2002 as well as to Directives 2000/35/EC and 2011/7/EU "on combatting late payment in commercial transactions" with effect from the date on which payment is due, up until actual settlement. If the credit is collected through court or in any case through the intervention of a solicitor, Buyer shall pay for all legal expenses and procedural costs and fees incurred for the forced credit recovery. If Seller determines that Buyer's financial position is weakening, or if Buyer fails to comply with the provisions hereof or fails to make payments in accordance with the terms of this Sales Agreement entered into between Buyer and Seller, Seller may elect to suspend performance or, without waiving any other rights it may have, terminate the Sales Agreement. In addition, at Seller's request, Buyer shall prepare such funding statements and other contractual instruments and agreements as Seller may reasonably require as a guarantee of payment for the Goods and/or Materials until receipt of full payment from Buyer.

If Buyer fails to make payment in full for Goods within the time period set forth in these Terms and Conditions or within the time period expressly agreed upon in writing by Seller and Buyer, such failure to pay on time shall constitute a material breach of the Sales Agreement by Buyer, thereby enabling Seller to suspend production, shipment or delivery under these Terms and Conditions of Sales. In such an event, Seller shall also be entitled to claim any additional expenses as may arise in connection with the return and resale of the Goods, including, but not limited to customary commercial charges, transportation, insurance, and attorneys' fees and expenses.

## 6. BUYER'S SOLVENCY GUARANTEE

All orders and deliveries are subject to Seller's full satisfaction of Buyer's creditworthiness. At Seller's request, Buyer shall, at any time, prepare appropriate documentation as a guarantee of payment for the Goods and/or Services. Seller reserves the right to refuse any order or to continue to carry out any order under the Sales Agreement if it considers that Buyer has not provided sufficient creditworthiness guarantees. In such a case, Seller and Buyer agree to act in good faith and use their best endeavours to provide Seller with the requested guarantee, even if in addition to existing guarantees.

## 7. TAXES AND DUTIES

The quoted sales price of the Goods and/or Services does not include any applicable federal, state or local taxes, value added taxes, withholding taxes, import and export taxes or duties, customs duties and tariffs or any other taxes and duties (collectively referred to as "Taxes"). All such Taxes shall be Buyer's sole responsibility, and Buyer agrees that such Taxes will be added to the quoted sales price and paid either to Seller or directly to the tax authority, provided that Buyer shall provide Seller with evidence that such Taxes have been paid in full.

## 8. WARRANTY

Seller warrants that: i) the Goods comply with any specifications agreed with Buyer; ii) at the time of delivery, Seller has title to the Goods; iii) the goods are free and clear of any liens and encumbrances. In any event, Buyer shall promptly inspect the Goods and/or Services upon receipt thereof within a commercially reasonable time not to exceed seven (7) calendar days after receipt of the Goods and/or Services. Buyer's use or enjoyment of Goods or resale thereof shall be

deemed an acceptance of the Goods as conforming to the Sales Agreement unless Buyer provides Seller with written notice of rejection of or non-conformance with such Goods prior to or concurrent with Buyer's use thereof and in accordance with Clause 10 of these Terms and Conditions. Inspection or non-inspection of the Goods and/or Services by Buyer shall not delay payment owed to Seller.

In the event of justified and timely formal notice of defects in accordance with Article 10 of these Terms and Conditions, Seller shall, at its sole discretion, reserve the right to repair or replace the defective Goods with material compliant with those ordered by Buyer, within ninety days of receipt of formal notice. If Seller determines that replacement or repair is not effective, Seller's liability under this Warranty shall be limited to a reduction of the Selling Price. Terms and Conditions may not be waived, however.

Buyer shall remain the only one liable for damage incurred as a result of normal and unavoidable wear and tear, mishandling, negligent handling, excessive use or the use of improper operating materials and unsuitable installation conditions.

Seller's Warranty does not extend to Goods and/or Services purchased from third-party suppliers through Seller. Such Goods and/or Services provided by third-party suppliers are covered only by the respective supplier's warranties, if any.

If Buyer resells the Goods and/or Services to third parties (including outsourced Goods and/or Services, which have been performed under the Sales Agreement), Articles 8 to 13 of these Conditions shall be incorporated into the resale agreement. Seller disclaims and excludes any and all warranties, including implied warranties of merchantability and fitness for a particular purpose and any warranties which may otherwise arise in negotiations between Buyer and Seller or from any trade practice. Any technical advice given by Seller in connection with the use of the goods sold under these Terms and Conditions of Sale is for information purposes only, and Seller makes no representations or warranties and assumes no obligation or liability for any such advice.

## 9. SELLER LIMITED LIABILITY

**Seller's liability, regardless of cause, shall be limited to the replacement or repair or a reduction of the selling price of Goods and Services, it being understood that Seller shall not be liable for any direct or indirect damages suffered or to be suffered by Buyer or any third party for any reason or cause whatsoever.**

**Buyer shall include the above warranty requirements in any contract it enters into with another party for the resale or installation of Goods purchased from Seller and shall indemnify Seller against any third-party claims.**

**Notwithstanding any other provision of these Conditions, the overall aggregate liability of Seller and Seller's officers, directors, partners, employees and subcontractors to Buyer and anyone claiming by or through Buyer, arising out of and/or in connection with the Sale of Goods and/or Services or the Sales Agreement, shall not exceed the invoice amount of the defective Goods and/or Services.**

## 10. CLAIMS

Claims for non-conforming Goods and/or Services shall be submitted by Buyer to Seller in writing within ten (10) calendar days of Buyer's receipt of such Goods and/or Services. Buyer shall demonstrate the non-conformity of Goods and/or Services purchased, and Seller shall have the right to request samples, perform a joint inspection, or prepare an independent technical inspection report. Failure of Buyer to notify Seller within ten (10) calendar days shall constitute Buyer's tacit acceptance of said Goods and/or Services and waive any right to refuse or revoke acceptance of said Goods and/or Services. If damage or defect is believed to have occurred during transportation, Buyer shall promptly take the necessary steps, including but not limited to, immediately reporting the damage to the carrier,

informing Seller and/or Cargo Insurance Company in accordance with the agreed Incoterms, participating in joint inspections, taking the most appropriate precautions to contain the damage, etc.

#### 11. MODIFICATION TO GOODS

Buyer shall not modify, repair or alter the Goods and/or Services except at its own risk, and no claim for modification, repair or alteration shall be permitted. Any modifications to the Goods and/or Services without Seller's written consent shall invalidate all of Seller's warranties, including, without limitation, the Warranty set forth in Article 8 above.

#### 12. COMPENSATION

Buyer shall protect, defend, indemnify and hold Seller and its affiliates harmless of any loss, claim, damage or expense (including reasonable attorneys' fees) incurred, whether directly or indirectly, by Seller or any of its affiliates, including those arising out of or relating to bodily injury, death or property damage, due to (i) failure on the part of Buyer or any of its affiliates to comply with the specifications, instructions, warnings or recommendations relating to the Goods and/or Services provided by Seller or any of its affiliates; (ii) failure on the part of Buyer or its affiliates to comply with all applicable legal requirements relating to the Goods and/or Services; (iii) misuse, modification or misapplication of Goods and/or Services by Buyer or its affiliates; (iv) the installation of the Goods and/or Services by Buyer or any third party; (v) the right of entry to and exit from Seller's property to facilitate delivery and transportation of the Goods and/or Services to Buyer; (vi) the transportation and delivery, including loading and unloading, of the Goods and/or Services to Buyer; (vii) any breach of the Sales Agreement by Buyer; (viii) any fraudulent misrepresentation on the part of Buyer or its affiliates.

#### 13. LIMITATIONS

Unless otherwise specified in these Terms and Conditions, Buyer and Seller agree that any legal action arising out of the application and/or interpretation of these Terms and Conditions or the sale of the Goods and/or Services must be exercised within one year of the date on which the contractual goods were delivered to Buyer or the date on which the event occurred, whichever occurs earlier.

#### 14. GOVERNING LAW, JURISDICTION

These Terms and Conditions and the Sales Agreement entered into between Buyer and Seller for the provision of Goods and/or Services have been made in Italy and exported to all countries in the world and shall, for the purposes of their validity, interpretation, effectiveness and in all other respects, be governed by Italian law with the express exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

The Court of Brescia has sole jurisdiction over any dispute or claim arising out of these Terms and Conditions and the Sales Agreement between Seller and Buyer, including disputes relating to their validity, breach, termination or invalidity.

#### 15. FORCE MAJEURE

In the event Seller's performance hereunder is delayed or made impossible or commercially unfeasible due to causes beyond Seller's reasonable control, Seller shall have reasonable additional time to perform its obligations under the Sales Agreement, depending on the circumstances of the case. If the Force Majeure event persists for more than sixty (60) consecutive calendar days, either Seller or Buyer shall be entitled to terminate the Sales Agreement upon written notice to the other party.

#### 16. WAIVER

Seller's failure to exercise or delay in exercising its rights under these Terms and Conditions shall not imply waiver of any of Seller's rights. Any waiver by Seller with respect to any breach or default on the part of the Buyer of any of the provisions of these Conditions or the Sales Agreement shall not be deemed a waiver with respect to any subsequent breach or default. All rights and remedies provided for in these Terms and Conditions of Sale shall not exclude the application of specific statutory provisions unless expressly excluded herein.

#### 17. ASSIGNMENT

Buyer may not assign or transfer its rights or obligations under these Terms and Conditions (whether voluntarily, involuntarily, under law, the transfer of a majority or controlling interest, sale of shares or otherwise) without Seller's prior written consent. These Terms and Conditions of Sale shall be binding on Buyer and its successors and assigns. Seller may assign, subcontract all or part of its rights and obligations to its affiliates or third parties without Buyer's consent.

#### 18. PATENT RIGHTS, COPYRIGHTS AND TRADEMARKS

Seller retains the legal property rights and copyrights to all offers, sales agreements, plans, drawings and other documents; third parties are only permitted access to these documents with Seller's express consent. Drawings and other documents pertaining to Seller and transmitted jointing with offer and sales agreement shall be returned to Seller upon Seller's request.

#### 19. VOIDNESS OR UNFORCEABILITY OF SPECIFIC CLAUSES

If any provision of these Terms and Conditions is unlawful, void or unenforceable for any reason whatsoever, it shall not invalidate the remaining provisions of these Terms and Conditions and the remaining Clauses and Sections shall remain in full force and effect.

#### 20. EXCLUSION OF THIRD-PARTY RIGHTS

These Terms and Conditions of Sale are effective solely for the benefit of the contracting parties hereto, their authorised successors and assigns. Nothing expressed or referred to in these Terms and Conditions shall be construed to confer upon anyone any legal right, remedy or claim under or pursuant thereto.

#### 21. CONFIDENTIALITY

Any samples, drawings, models, specifications, proposals or other information provided by Seller are intended for Buyer's confidential use, and shall remain the property of Seller, and shall not be used or disclosed by Buyer without Seller's prior written consent. The sale of Goods and/or Services shall in no way entitle Buyer to use any of Seller's intellectual property.

#### 22 AMENDMENTS AND CHANGES

These Terms and Conditions may not be amended, supplemented, modified, replaced or otherwise varied without the prior written consent of both Buyer and Seller.

Place and date

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Buyer

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**BORUSAN VOBARNO TUBI S.P.A.**

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### 23 RESTRICTIVE COVENANTS

Pursuant to and for the purposes of arts. 1341 and 1342 of the Italian Civil Code, after having taken due note of and acknowledged them, Buyer hereby approves and expressly accepts the following clauses, and agrees to return to Seller these Terms and Conditions of Sale duly stamped and signed:

- 1) Entire agreement and application
- 2) Price and delivery term
- 3) Transfer of title and risk of loss and damage
- 4) Cancellations and returns
- 5) Payment
- 6) Buyer's solvency guarantee
- 8) Warranty
- 9) Seller limited liability
- 10) Claims
- 11) Modification to goods
- 13) Limitations
- 14) Governing law, jurisdiction
- 15) Force Majeure
- 16) Waiver
- 22) Amendments and changes

Place and date

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Buyer

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