

## Starrag's terms and conditions for the supply of machine tools

### 1. General

- 1.1 A contract regarding supplies of machine tools, parts and connected services (the "**Equipment**") to be supplied by Swiss Starrag companies or its affiliates ("**Starrag**") shall be deemed to have been entered into upon receipt of the Starrag's written confirmation stating acceptance of an order. Quotations which do not stipulate an acceptance period shall not be binding.
- 1.2 These terms and conditions (the "**TCs**") shall be binding, if declared applicable in the quotation or in the order confirmation. Any conditions stipulated by the customer which are in contradiction to these TCs shall only be valid, if expressly acknowledged by Starrag in writing. Electronic signatures, by utilizing electronic signature technology or platforms that comply with applicable laws and regulations governing electronic signatures, shall have the same legal effect as handwritten signatures and shall be binding upon the involved parties.

### 2. Scope of supplies and services

- 2.1 The Equipment is exhaustively specified in the order confirmation and in appendices thereto. Starrag shall be entitled to make any changes which lead to improvements provided such changes do not result in a price increase.

### 3. Regulations in force in the country of destination and safety devices

- 3.1 The customer shall, at the latest when placing the order, draw Starrag's attention to the standards and regulations applicable to the execution of the contract, to the relevant customer's business operation as well as to the health and safety of personnel.
- 3.2 Unless otherwise agreed in accordance with Clause 3.1, the Equipment shall comply with the regulations and standards at Starrag's place of business. Additional or other safety devices shall be supplied to the extent as having been expressly agreed upon.

### 4. Prices

- 4.1 Unless otherwise agreed, all prices shall be deemed to be net ex works (Incoterms 2020), excluding packing, without any deductions whatsoever. The prices are exclusive of the value-added tax which has to be paid on top at the statutory rate valid at the time.
- 4.2 Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like as well as the related administrative costs which are levied out of or in connection with the contract or its fulfilment. If such costs, taxes etc. are charged to Starrag or to persons employed or appointed by Starrag to perform any of his obligations, they shall be refunded by the customer upon presentation of the receipts.

### 5. Terms of payment

- 5.1 Payments shall be made by the customer at the Starrag's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.
- 5.2 Unless otherwise agreed, the price shall be paid as stated in the quotation issued by Starrag. Payment shall be deemed to be effected when the cash in the agreed currency has been made freely available to Starrag at the Starrag's domicile. If payment by bills of exchange or Letter of Credit is agreed, the customer shall pay the cost of discounting such bills, bill of exchange taxes and collection charges and the cost of issuing, notifying and confirming the Letter of Credit.
- 5.3 The dates of payment shall also be observed (i) if transport, delivery, installation, commissioning or taking over of the Equipment is delayed or prevented due to reasons beyond Starrag's control, or (ii) if unimportant parts are missing, or if post-delivery work is to be carried out which does not prevent the Equipment from being used.
- 5.4 If a payment installment or the contractually agreed securities is not provided in accordance with the terms of the contract, Starrag shall be entitled to adhere to or to terminate the contract, and shall in both cases be entitled to claim damages.
- If the customer, for any reason whatsoever, is in delay with a further payment, or if Starrag is seriously concerned that it will not receive payments in total or in due time because of circumstances having taken place since entering into the contract, Starrag, without being limited in his rights provided for by law, shall be entitled to refuse further performance of the contract and to retain the Equipment ready for dispatch until new terms of payment and delivery will have been agreed and until Starrag will have received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or if Starrag does not receive adequate securities, Starrag shall be entitled to terminate the contract and to claim damages.
- 5.5 If the customer does not adhere to the agreed terms of payment, he shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the customer's domicile, but not less than 0.25 per cent per week. The right to claim further damages is reserved.
- 5.6 If the Customer cancels a contract without justification, Starrag is entitled (i) to keep the already received payment installments as a deemed consideration for the expenses incurred by Starrag and (ii) to claim further damages in case such expenses have exceeded the already received payment installments.

### 6. Retention of title

- 6.1 Until Starrag has not received the full payment for the Equipment, Starrag retains title in all of the Equipment sold and delivered by it to the customer, whether presently in the possession of the customer or hereafter acquired, and all replacement parts and components thereof, together with any and all proceeds of sale or other disposition of the property, including, but not limited to, cash, accounts, contract rights. If a petition in insolvency is filed, Starrag will be entitled to withdraw from the contract and demand immediate return of the delivered Equipment.
- 6.2 The customer shall cooperate in any measures necessary for the protection of Starrag's title. In particular, upon entering into the contract he authorizes Starrag to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with the relevant national laws, and to fulfil all corresponding formalities, at the customer's expense.
- 6.3 During the period of the reservation of title, the customer shall, at his own cost, maintain the Equipment and insure them for the benefit of Starrag against theft, breakdown, fire, water and other risks. He shall further take all measures to ensure that the Starrag's title is in no way compromised or rescinded.

## 7. Delivery time

- 7.1 Starrag shall exert its best efforts to cause the Equipment to be shipped and delivered in accordance with the terms and provisions of the contract. However, all dates stated by Starrag are approximate dates only, and are estimated in good faith to the best of Starrag's ability, commensurate with foreseeable scheduling and subject to availability of product and transit. In general compliance with delivery times by Starrag is conditional upon the following: (i) all official formalities (such as, but not limited to, import, export, transit and payment permits) have been completed, (ii) payments due with the order have been made, (iii) any agreed securities have been given, (iv) the customer has fulfilled all its other obligations due before delivery (including, but not limited to prepare the delivery site in accordance with Starrag's instructions), (v) the main technical points have been settled. The delivery time shall be deemed to be observed if by that time Starrag has sent a notice to the customer informing him that the Equipment is ready for dispatch. This also applies in case that acceptance and approval of the Equipment are necessary.
- 7.2 The delivery time shall be reasonably extended:
- a) if the information required by Starrag for the performance of the contract is not received in time, or if the customer subsequently changes it thereby causing a delay in the delivery of the Equipment;
  - b) if hindrances occur which Starrag cannot prevent despite exercising the required care, regardless of whether they affect Starrag, the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilisation, war, civil war, acts of terrorism, riots, political unrest, revolutions, sabotage, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products for reasons beyond Starrag's control, the need to scrap important work pieces, actions or omissions by any authorities or state or supranational bodies, embargoes, unforeseeable transport problems, fire, explosion, natural catastrophes;
  - c) if the customer or a third party is behind schedule with acceptance or work he has to execute, or with the performance of his contractual obligations, in particular if the customer fails to observe the terms of payment.
- 7.3 If delivery is delayed due to circumstances for which the customer is liable, the costs incurred by Starrag as a result of such delay will be payable by the customer.
- 7.4 The customer shall, as a sole remedy, be entitled to claim liquidated damages for delayed delivery insofar as it can be proven that the delay has been caused through the fault of Starrag and that the customer has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter is not entitled to any damages for delay. Liquidated damages for delayed delivery shall not exceed 0.25 per cent for every full week's delay and shall in no case whatsoever altogether exceed 5 per cent of the contract price of the part of the Equipment in delay. No damages at all shall be due for the first two weeks of delay.
- After reaching the maximum liquidated damages for delayed delivery, the customer shall grant Starrag a reasonable extension of time in writing. If such an extension is not observed for reasons within Starrag's control, the customer shall have the right to reject the delayed part of the Equipment. If a partial acceptance is economically not justified on the part of the customer, he shall be entitled to terminate the contract and to claim refund of the money already paid against return of the deliveries supplied.
- 7.5 Any delay of the Equipment's delivery does not entitle the customer to any rights and claims other than those expressly stipulated in this Clause 7. This limitation does, however, not apply to unlawful intent or gross negligence on the part of Starrag, but does apply to persons employed or appointed by Starrag to perform any of his obligations.

## 8. Packing

- 8.1 Packing shall be charged for separately by Starrag and shall not be returnable. However, if it is declared as the supplier's property, it shall be returned by the customer, carriage paid, to the place of dispatch.

## 9. Passing of benefit and risk

- 9.1 Unless otherwise agreed in the contract, the benefit and the risk of the Equipment shall pass to the customer by the date of its leaving the Starrag's works at the latest.

9.2 If dispatch is delayed at the request of the customer or due to reasons beyond Starrag's control, the risk of the Equipment shall pass to the customer at the originally foreseen time of dispatch. From this moment on, the Equipment shall be stored and insured on the account and at the risk of the customer.

## 10. Forwarding, transport and insurance

10.1 Starrag shall be notified in good time of any special requirements regarding shipment, transport and insurance. Unless otherwise agreed in the contract, the transportation shall be at the customer's expense and risk.

10.2 Objections regarding shipment or transport shall be immediately submitted by the customer to the last carrier upon receipt of the Equipment or of the shipping documents.

10.3 Unless otherwise agreed in the contract, the customer shall be responsible for taking out insurance against damage of any kind.

## 11. Inspection and acceptance of the Equipment

11.1 As far as being normal practice, Starrag shall inspect the Equipment before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.

11.2 The customer shall inspect the Equipment within a reasonable period of time and shall immediately notify Starrag in writing of any deficiencies. If the customer fails to do so, the Equipment shall be deemed to have been accepted.

11.3 If Starrag has been notified of deficiencies in accordance with Clause 11.2, it shall remedy them as soon as possible, and the customer shall give Starrag the possibility to do so. After remedy of such deficiencies, an acceptance test in accordance with Clause 11.4 will be carried out at the request of the customer or Starrag.

11.4 Subject to Clause 11.3, the execution of an acceptance test as well as the stipulation of the conditions related thereto require a special agreement. In the absence of such an agreement the following shall apply:

- Starrag shall advise the customer of the execution of the acceptance test in good time so that the customer or his representative can attend.
- An acceptance report shall be prepared which shall be signed by both the customer and Starrag or by their representatives. Such report shall either state that the taking-over has taken place, or that it has taken place under reservations, or that the customer has refused it. In the last two cases, the deficiencies shall be listed individually in the report.
- In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the Equipment, the customer shall not be entitled to refuse acceptance of the Equipment and refuse to sign the acceptance report. Starrag shall remedy such deficiencies without delay.
- In case of significant deviations from the contract or serious deficiencies, the customer shall give Starrag the possibility to remedy these within a reasonable time. Thereafter, a further acceptance test shall take place.
- If during this test significant deviations from the contract or serious deficiencies appear again, the customer shall be entitled to claim either a price reduction or an indemnity or other compensation from Starrag, provided this has been agreed beforehand. If, however, the deviations and deficiencies which appear during the test are of such significance that they cannot be remedied within a reasonable time and provided the Equipment cannot be used for their specified purpose, or such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial taking-over is economically not justified, to terminate the contract. In this case, Starrag can only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.

11.5 Acceptance shall also be deemed completed

- if the customer does not participate in the acceptance test despite being requested in advance to do so;
- if the acceptance test cannot be carried out on the date provided for due to reasons beyond Starrag's control;
- if the customer refuses the acceptance without being entitled to do so;
- if the customer refuses to sign the acceptance report prepared in accordance with Clause 11.4;
- as soon as the customer uses the Equipment.

11.6 Deficiencies of any kind in the Equipment shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 11.4 and 12 (warranty, liability for defects).

## 12. Warranty, liability for defects

12.1 Unless otherwise stated in the respective contract, the warranty period is as stated in the quotation starting at the earlier of the acceptance or, unless delivery is delayed by Starrag, within 60 days after delivery. For replaced or repaired parts the warranty period starts anew and lasts 6 months from the replacement or completion of the repair or acceptance, but not longer than the expiry of a period double the guarantee period applicable to the repaired machine.

The warranty expires prematurely if the customer or a third party undertakes modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and fails to give Starrag the possibility to remedy the defect.

12.2 Upon the written request of the customer, Starrag may choose to repair or replace as quickly as possible any parts of the Equipment which, before the expiry of the warranty period, are proven to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become the Starrag's property if it does not explicitly waive this. Under restriction of proportionality, Starrag shall bear the costs of remedying the defective parts provided that they do not exceed the customary costs of transport, personnel, travelling, accommodation, dismantling and reassembly of the defective parts.

### 12.3 Liability for express warranties

Express warranties are only those which have been expressly specified as such in writing in the order confirmation or in the specifications. Except for that, Starrag makes no other representations or warranties, whether expressly nor implicitly, with respect to the Equipment, including, but not limited to, (i) any warranty of merchantability or any warranty of fitness for a particular purpose, (ii) any warranty regarding quality, finish, accuracy, tolerance, compliance with electrical, hydraulic, pneumatic or other safety codes required by any governmental or quasi-governmental body, or (iii) any warranty regarding efficiency, productivity or performance of any Equipment.

An express warranty is valid until the expiry of the warranty period at the latest. If an acceptance test has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant characteristics.

If the express warranties are not or only partially achieved, the customer may first of all require Starrag to carry out the improvements by granting Starrag access as well as the reasonably required time.

If these improvements fail completely or in part, the customer may claim compensation as agreed beforehand for such case, or, if such an agreement has not been made, a reasonable reduction of price. If, however, the defects are of such significance that they cannot be remedied within a reasonable time and provided that the Equipment cannot be used for their specified purpose, or if such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for him and he communicates this immediately, to terminate the contract. In this case Starrag can only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.

12.4 All deficiencies which cannot be proven to have their origin in bad material, faulty design or poor workmanship are excluded from the Starrag's warranty and liability for defects. This includes, but is not limited to, those resulting from

- Improper use
- Incorrect assembly or commissioning by the customer or third parties
- Non-compliance with maintenance instructions (incl. failure to regularly perform maintenance levels 1 and 2)
- Organizational downtime
- Deficiencies in service
- Normal wear and tear
- Improper or careless handling and failure to observe the operating instructions
- Use of unsuitable material or equipment
- Substitute materials
- Poor construction work
- Unsuitable building ground
- Chemical, electrochemical or electrical influences

For supplies and services of subcontractors requested by the customer, Starrag assumes the warranty and liability for defects, only to the extent this is covered by the subcontractors' warranty and liability obligations.

12.5 With respect to any defective material, design or workmanship as well as to any failure to fulfil express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses **Erreur ! Source du renvoi introuvable.** to **Erreur ! Source du renvoi introuvable.**

12.6 If the customer reports a defect and no defect is found for which Starrag is liable, the customer is responsible for compensating Starrag for the work undertaken and other expenses and costs.

## 13. Non-performance, bad performance and their consequences

13.1 In all cases of bad performance or non-performance not expressly covered by these TCs, in particular (i) if Starrag, without valid reasons, starts the execution of the Equipment's delivery so late that punctual completion is unlikely to be foreseen, or (ii) if execution contrary to the terms of the contract can be clearly foreseen due to Starrag's fault, or (iii) if the Equipment has been executed contrary to the terms of the contract due to Starrag's fault, then the customer shall be entitled to grant a reasonable additional period for the delivery of the Equipment affected thereby by simultaneously warning to terminate the contract in case of non-compliance. If such additional period lapses due to Starrag's fault, the customer shall be entitled to terminate the contract with respect to the part of the Equipment executed, or certain to be executed, contrary to the terms of the contract, and to claim a refund of the payments already made for such Equipment.

13.2 In such case, Clause 22 shall apply with regard to any claims for damages on the part of the customer and with regard to the exclusion of any further liability, and any claim for damages shall be limited to 10 per cent of the contract price for the part of the Equipment affected by the termination.

#### **14. Termination of the contract by Starrag**

- 14.1 The contract shall be adapted appropriately, if unforeseen events beyond Starrag's control considerably change the economic effect or the content of the Equipment or considerably affect the activities of Starrag, or if performance subsequently becomes impossible. If such an adaptation is economically not justifiable, Starrag shall be entitled to terminate the contract or the parts affected thereby.
- 14.2 If Starrag wishes to terminate the contract it shall – after having recognised the consequences of an above mentioned event – immediately inform the customer; this applies even if an extension of the delivery time has been agreed beforehand. In case of termination of the contract, Starrag shall be entitled to payment of this part of the Equipment which has already been delivered. Claims for damages on the part of the customer because of such termination are excluded.

#### **15. Export control**

- 15.1 The customer recognises that the Equipment may be subject to Swiss and/or foreign legal provisions and regulations on export control and are not allowed to be sold, leased or otherwise transferred or used for a purpose other than the agreed without an export or reexport permit of the competent authority. The customer undertakes to comply with such provisions and regulations. This includes, that he will not directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, any Equipment or software to any country, individual, corporation, organization, or entity to which such export, re-export, or transmission is restricted or prohibited, including any country, individual, corporation, organization, or entity under sanctions or embargoes administered by the Swiss Government, the European Union, or any other applicable government authority. He is aware that these may change and that they apply to the contract in the current valid wording.

#### **16. Confidentiality**

- 16.1 All drawings, designs, specifications, manuals, programs and prices furnished to the customer by Starrag shall remain the confidential and proprietary property of Starrag. All such information, except as may be found in the public domain, shall be held in strict confidence by the customer and shall not be disclosed by customer to any third parties. Copyright in all material made available by Starrag shall remain in Starrag at all times.
- 16.2 Unless otherwise agreed, brochures and catalogues are not binding. Data in technical documents are only binding, if they have been expressly stipulated as such.

#### **17. Safety Precautions**

- 17.1 The customer shall require its employees to use all safety devices, guards and proper safe operating procedures as set forth in manuals and instruction sheets furnished by Starrag. The customer shall not remove or modify any such device, guard or sign. It is the customer's responsibility to provide all the means that may be necessary to effectively protect all employees from serious bodily injury which otherwise may result from the method of particular use, operation, set-up or service of the Equipment. If the customer fails to comply with provisions of this Clause or the applicable standards or regulations aforementioned, the customer shall indemnify Starrag from and against any and all claims, losses or damages arising from such failure. It is the responsibility of customer to comply with all local laws, regulations and codes.

#### **18. Data protection**

- 18.1 Starrag is entitled to process the personal data of the customer in order to perform the contract. Furthermore, the customer consents in particular to Starrag transmitting such data to third parties in Switzerland and abroad for the purpose of performing and maintaining the business relationships between the parties.

#### **19. Software**

- 19.1 If the Equipment delivered by Starrag includes software, the customer is granted a non-exclusive right of use of the software together with the delivery item, unless otherwise agreed. The customer is not entitled to copy (except for archival purposes, troubleshooting or to replace faulty data carriers), to edit or to sub-license the software. In particular, the customer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of Starrag. In case of infringement, Starrag may withdraw the right of use. For third-party software, the conditions of use of the licensor apply, and the licensor, as well as Starrag, may also assert a claim in the event of infringement.

#### **20. Intellectual property**

- 20.1 Unless otherwise explicitly stated, the customer acknowledges that no custom works or "works for hire" are contracted for under the contract, that customer is not contributing to the design of any Equipment, and that neither party shall obtain any ownership rights in the other party's intellectual property or in any proprietary technology or invention developed or related to the Equipment. Any customer license in Starrag's intellectual property or proprietary technology is limited to customer's use of the Equipment sold pursuant to the respective contract.

#### **21. Raw materials, goods, means of transport and other critical components**

- 21.1 The customer hereby acknowledges that worldwide significant shortages of electronic components (including but not limited to semiconductors) as well as market fluctuations in the availability and costs of other raw materials, goods, transportation and other critical components and/or elements exist for an unpredictable period which may affect the normal course of business and the delivery of the Equipment in a way and at a time beyond Starrag's control (hereinafter "Excusable Event").

21.2 Unless otherwise explicitly agreed, if an Excusable Event occurs after the date of Starrag's quotation or order confirmation or during the term of the contract in such a way that the cost of Starrag's performance increases or Starrag's performance obligations become materially impaired, temporarily or permanently prevented or delayed, Starrag shall be relieved of all affected obligations and the customer and Starrag shall negotiate in good faith for a reasonable adjustment of Starrag's obligations with respect to:

- reasonable extensions of the original delivery date;
- reasonable price adjustments to compensate Starrag for proven increases in components, raw materials, raw materials and/or transportation costs;

Any agreed liquidated damages, actual damages, or penalties payable by Starrag shall not apply to delays caused directly or indirectly by the Excusable Event. The customer cannot invoke such a delay as a reason for the cancellation/termination of the contract, unless the contracting parties have agreed otherwise. In the event of a prolonged Excusable Event, Starrag retains the right to terminate any affected contract for good cause in writing.

In the event of termination/cancellation of a contract caused directly or indirectly by the Excusable Event, each party waives any claims against the other party, whether for direct damages and/or lost profits and/or or indirect damage and/or incidental damage, contractual penalties and/or liquidated damages.

## **22. Limitation on liability**

22.1 All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these TCs. In the event that claims of the customer in relation to or in connection with the contract or the breach thereof should exist, the total amount of such claims is restricted to the price paid by the customer for the part of the Equipment in connection with which the claim arose. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for the costs of remedying defects in the Equipment. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, recall costs, loss of profit and other direct or indirect or consequential damage. Liability is also excluded for compensation claims from third parties against the customer for infringements of intellectual property rights.

22.2 This exclusion of further liability on Starrag's part does not apply to unlawful intent or gross negligence on the part of Starrag, but does apply to persons employed or appointed by Starrag to perform any of his obligations.

22.3 This exclusion of liability does not apply as far as it is contrary to compulsory law.

## **23. General indemnification**

23.1 If personal injury or damage to the property of third parties occurs through actions or omissions of the customer or of persons employed or appointed by him to perform any of his obligations, and if a claim is made against Starrag, its employees, agents, representatives, affiliates, successors or assigns, then the customer shall indemnify them and keep them harmless.

## **24. Jurisdiction and applicable law**

24.1 All legal relations between the customer and Starrag are governed by Swiss laws by excluding the United Nations Convention of 11th April 1980 on contracts for the International Sale of Goods. Any action or other legal proceedings arising out of or in connection with this Contract shall be brought exclusively in the competent court at the registered address of Starrag. Starrag shall, however, also be entitled to sue the customer at the latter's registered address.