

# General Terms and Conditions of Sale and Delivery – Germany

## 1. General Provisions

- 1.1. These General Terms and Conditions of Sale and Delivery (“GTCs”) apply to all deliveries of machinery, accessories, spare parts and services (hereinafter referred to as the “Delivery”) by Starrag companies with registered offices in Germany (hereinafter “Starrag”). Any terms and conditions of the customer that conflict with these GTCs are only valid if explicitly acknowledged in writing by Starrag. A contract is formed – in the absence of any specific agreement – upon written order confirmation by Starrag.
- 1.2. Electronic signatures using technologies or platforms for electronic signatures that comply with applicable laws and regulations governing electronic signatures have the same legal effect as handwritten signatures and are binding for the parties involved.

## 2. Scope of Deliveries and Services

- 2.1. The scope of the Delivery is conclusively listed in the order confirmation and its annexes. Partial deliveries are permissible, provided they are reasonable for the customer.
- 2.2. The adherence to technical specifications or other details from catalogues, printed materials, parts lists, drawings, sketches, etc. is only guaranteed to the extent that such specifications are explicitly designated in the contract as assured characteristics pertaining to specific data, dimensions or details. In cases of general reference to documents or drawings, only the function of the Delivery is guaranteed.
- 2.3. Starrag reserves the right to make changes that lead to improvements, provided such changes do not result in a price increase.

## 3. Applicable Regulations and Safety Devices in the Destination Country

- 3.1. The customer must inform Starrag, no later than at the time of placing the order, of the standards and regulations applicable to the execution of the contract, the customer’s specific business operations and the health and safety of personnel.
- 3.2. Unless otherwise agreed under Clause 3.1, the Deliveries must comply with the standards and regulations at Starrag’s registered office. Additional or different safety devices will only be supplied as expressly agreed.

## 4. Prices

- 4.1. Unless otherwise agreed, all prices are net ex-works (Incoterms 2020), excluding packaging and without any deductions. Prices are subject to the applicable statutory value-added tax.
- 4.2. All ancillary costs, such as freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for notarisation, shall be borne by the customer. The customer also bears all taxes, fees, duties, customs charges and the associated administrative costs arising from or in connection with the contract or its execution.

## 5. Terms of Payment

- 5.1. Payments must be made by the customer at Starrag’s registered office according to the agreed payment terms, without any deduction of discounts, fees, taxes, duties or similar charges.

Unless otherwise agreed, payment is due as specified in the offer issued by Starrag. Payment is considered made once the funds have been credited to Starrag’s account in the agreed currency.

- 5.2. Payment deadlines must be met even if (i) transport, delivery, assembly, commissioning or acceptance of the Delivery is delayed or prevented due to reasons not attributable to Starrag, (ii) minor parts are missing, or (iii) rework is required that does not prevent the use of the Delivery.
- 5.3. If a payment instalment or the contractually agreed security is not provided in accordance with the contract, Starrag is entitled to either uphold the contract or – after unsuccessful reminder – withdraw from it and claim damages in both cases.

If the customer is in arrears with further payments or if circumstances arising after the contract’s conclusion give Starrag reasonable grounds to fear that payments will not be made in full or on time, Starrag is entitled, without limiting its statutory rights, to withhold further performance of the contract and retain the ready-to-ship Delivery until new payment and delivery terms are agreed upon and Starrag has received adequate security. If no such agreement is reached within a reasonable period or adequate security is not provided, Starrag is entitled to withdraw from the contract and claim damages.

- 5.4. If the customer fails to comply with the agreed payment terms, it shall, without requiring a reminder, pay default interest from the agreed due date, either at the statutory rate or at a minimum of 0.25 per cent per week. The right to claim further damages remains reserved.
- 5.5. If the customer unjustifiably withdraws from the contract, Starrag is entitled to (i) retain any partial payments already received as compensation for expenses incurred and (ii) claim further damages to the extent that these expenses exceed the partial payments already received.
- 5.6. The customer may only withhold payments or offset them against counterclaims from other legal relationships if such counterclaims are undisputed or have been legally established.

## 6. Retention of Title

- 6.1. Starrag retains ownership of all Deliveries sold and supplied to the customer until full payment has been made, regardless of whether the items are in the customer's possession or acquired later, including all spare parts, components and proceeds from the sale or other disposal of the Deliveries. An application to open insolvency proceedings entitles Starrag to withdraw from the contract and demand the immediate return of the delivered goods.
- 6.2. The customer must cooperate in all measures necessary to protect Starrag's ownership. In particular, upon conclusion of the contract, the customer authorises Starrag, at the customer's expense, to enter the retention of title in public registers, books or similar, and to fulfil all related formalities, in accordance with the relevant national laws.
- 6.3. During the retention of title, the customer must maintain the Delivery at its own expense and insure it for Starrag's benefit against theft, breakage, fire, water damage and other risks.
- 6.4. The customer must also take all measures to ensure that Starrag's ownership is neither impaired nor revoked. The customer may only dispose of the Delivery with Starrag's prior written consent, whether by sale, pledge or transfer as security. In cases of seizure, confiscation or other disposals by third parties, the customer must inform Starrag immediately.

## **7. Delivery Times and Delays in Delivery**

- 7.1. The delivery time is determined by the agreements between the contractual parties. Starrag's compliance with delivery deadlines is subject to the following conditions: (i) all official formalities (such as import, export, transit and payment permits) are completed, (ii) the due advance payments have been made, (iii) any agreed securities have been provided, (iv) the customer has fulfilled all other obligations due before delivery (particularly the provision of the delivery location according to Starrag's instructions) and (v) the essential technical points are clarified. The delivery deadline is deemed met if Starrag has notified the customer of readiness for dispatch by this time. This applies even if acceptance and approval of the delivery are required.
- 7.2. The delivery deadline will be reasonably extended:
  - a) if the information required by Starrag to fulfil the contract is not provided in time or if the customer subsequently amends it, causing a delay in delivery;
  - b) if obstacles arise that Starrag cannot avert despite exercising due care, irrespective of whether they occur at Starrag, the customer or a third party. Such obstacles include epidemics, mobilisation, war, civil war, terrorist acts, unrest, political upheavals, revolutions, sabotage, accidents, labour disputes, actions or omissions by authorities or state or supranational bodies, embargoes, unforeseeable transport difficulties, fire, explosion and natural disasters;
  - c) if the customer or a third party engaged by the customer is delayed in acceptance, in performing tasks or in fulfilling contractual obligations, particularly if the customer fails to comply with the payment terms.
- 7.3. If delivery is delayed due to circumstances attributable to the customer, the customer shall bear the costs incurred by Starrag as a result of the delay.
- 7.4. The customer is entitled to claim a fixed delay compensation as an exclusive remedy if it can prove that the delay was caused by Starrag's fault and that damage resulted from it. If the customer can be accommodated by the delivery of substitute material, it is not entitled to delay compensation.

The fixed delay compensation amounts to a maximum of 0.25 per cent of the contract price of the delayed portion of the delivery for each full week of delay, but not exceeding 5 per cent in total. No compensation is payable for the first two weeks of the delay.

After reaching the maximum compensation amount, the customer must set a reasonable grace period for Starrag in writing. If this grace period, for reasons attributable to Starrag, is not met, the customer has the right to reject the delayed portion of the delivery. If a partial delivery is economically unreasonable for the customer, it is entitled to withdraw from the contract and request a refund of payments made, subject to returning the delivered items. The customer must declare, upon request, within a reasonable period, whether it intends to exercise its right of withdrawal.

- 7.5. Further claims arising from delay in delivery shall be determined exclusively in accordance with clause 12.1 of these GTCs.

## **8. Transfer of Risk**

- 8.1. Unless otherwise agreed, the risk passes to the customer upon handover of the delivery to the carrier, freight forwarder or shipper, or at the latest when it leaves the manufacturer's premises, even if partial deliveries are made or Starrag has undertaken other services, such as shipping costs, delivery or installation.
- 8.2. If shipment is delayed at the request of the customer or due to reasons not attributable to Starrag, the risk passes to the customer at the originally scheduled dispatch time. From this point, the items will be stored and insured at the customer's expense and risk.

## **9. Shipping, Transport and Insurance**

- 9.1. Any special requests regarding shipping, transport and insurance must be communicated to Starrag in a timely manner. Unless otherwise agreed, transport is at the customer's expense and risk.
- 9.2. Complaints regarding shipping or transport must be addressed to the final carrier immediately upon receipt of the delivery or the shipping documents.
- 9.3. Unless otherwise agreed, the customer is responsible for arranging insurance against all types of damage.

## 10. Inspection and Acceptance of Delivery

- 10.1. Starrag will inspect the delivery prior to dispatch if customary. If the customer requires additional inspections, these must be specifically agreed upon and paid for by the customer.
- 10.2. The customer must inspect the delivery immediately upon receipt and notify Starrag in writing of any defects without delay. If the customer fails to do so, the delivery is deemed accepted.
- 10.3. If defects are reported to Starrag as per Clause 10.2, Starrag must rectify them within a reasonable period, and the customer must allow Starrag the opportunity to do so. Upon rectification, an acceptance inspection may be carried out at the request of the customer or Starrag.
- 10.4. The performance of an acceptance inspection and the associated conditions require a specific agreement, subject to Clause 10.3.
- 10.5. The customer has no rights or claims for defects of any kind in the delivery other than those expressly stated in Clauses 11 (Warranty, Liability for Defects) and 12 (Liability).

## 11. Warranty

### 11.1. Warranty Period

The warranty period is as stated in the order confirmation or, in the absence of such a statement, 12 months. Unless otherwise agreed, it commences upon acceptance of the delivery (i.e. upon the successful acceptance test for machinery) or, if Starrag is not responsible for a delay, upon commencement of use or no later than 90 days after the item has left the factory. The warranty period for replaced or repaired parts is six months from the replacement, repair or acceptance, but at least until the expiry of the original warranty period for the machine. In all cases, the warranty for repaired or replaced parts ends at the latest after 18 months.

The warranty lapses prematurely if the customer or a third party makes modifications or repairs, or if the customer has caused the damage, or if the customer fails to promptly take appropriate measures to mitigate damage in the event of a defect and does not allow Starrag the opportunity to rectify the defect.

### 11.2. Liability for Material, Design and Manufacturing Defects

Starrag undertakes, upon the customer's written request, to promptly repair or replace, at its discretion, any parts of the delivery that demonstrably become defective or unusable due to poor materials, faulty design or deficient workmanship before the expiry of the warranty period. Replaced parts become Starrag's property unless explicitly waived. Subsequent fulfilment (*Nacherfüllung*) is subject to proportionality.

### 11.3. Liability for Explicit Guarantees

Explicit guarantees are only those expressly and specifically designated as such in the order confirmation or specifications. An explicit guarantee is valid for no longer than the warranty period. Beyond this, Starrag provides no further guarantees or warranties, whether explicit or implied, concerning the delivery, particularly regarding: (i) any warranty of merchantability or fitness for a particular purpose, (ii) any warranty concerning quality, workmanship, accuracy, tolerances or compliance with electrical, hydraulic, pneumatic or other safety regulations required by governmental or quasi-governmental authorities, or (iii) any warranty related to efficiency, productivity or performance of the delivery.

If the guaranteed properties are not met or are only partially met, the customer is initially entitled to rectification by Starrag. For this purpose, the customer must allow Starrag the necessary time and opportunity.

If the rectification fails in whole or in part, the customer may claim the compensation agreed for such cases or, if no such compensation is agreed, demand an appropriate reduction in price. However, if the defects are so substantial that they cannot be remedied within a reasonable period and the delivery cannot be used or can only be used with significant impairment for its intended purpose, the customer is entitled to refuse acceptance of the defective part or, if partial acceptance is economically unreasonable and this is promptly communicated, withdraw from the contract. In this case, Starrag is only liable for reimbursing the amounts paid for the parts affected by the withdrawal.

### 11.4. Exclusions of Warranty

Excluded from Starrag's warranty and liability are defects not demonstrably caused by Starrag's fault, such as:

- Unsuitable or improper use
- Incorrect assembly or commissioning by the customer or third parties
- Non-compliance with maintenance instructions
- Organisational downtime
- Operational errors
- Normal wear and tear or natural deterioration
- Improper or negligent handling
- Use of unsuitable operating materials

- Replacement materials
- Defective construction work
- Unsuitable building ground
- Chemical, electrochemical or electrical influences

For deliveries and services from subcontractors requested by the customer, Starrag provides warranty and liability for defects only to the extent that these are covered by the subcontractors' warranty and liability obligations.

#### 11.5. Exclusivity of Warranty Claims

The customer's rights and claims for defects are exclusively governed by Clauses 11.1 to 11.4. If the customer reports a defect and it transpires that the defect is not attributable to Starrag, the customer must reimburse Starrag for the work performed and any other expenses and costs incurred.

### 12. Liability

12.1. Starrag shall only be liable for damage not caused to the delivery itself – regardless of the legal grounds – in the event of

- intent and gross negligence
- culpable injury to life, limb or health
- defects which it has fraudulently concealed or the absence of which it has guaranteed
- defects in the delivery item, insofar as liability exists under the Product Liability Act for personal injury or property damage to privately used items.

12.2. In the event of culpable breach of material contractual obligations, Starrag shall also be liable for slight negligence, but limited to reasonably foreseeable damage typical of the contract. Further claims such as loss of production, loss of use, loss of orders, recall costs, loss of profit and other direct or indirect damages are excluded.

### 13. Data Protection; Declaration of Consent

The customer consents to Starrag being authorised to process the customer's personal data in compliance with the applicable data protection regulations for fulfilling the contract. Furthermore, the customer expressly agrees that Starrag may transmit such data to third parties, domestically or abroad, for the purpose of executing and maintaining business relationships between the parties.

### 14. Software

Where Starrag's deliveries include software, and unless otherwise agreed, the customer is granted a non-exclusive right to use the software in conjunction with the delivered item. The customer is not permitted to copy the software (except for archiving, error analysis or replacing defective data carriers), modify it or grant sublicences. In particular, the customer may not modify, decompile, decrypt or reverse-engineer the software without Starrag's prior written consent. Violations may result in Starrag revoking the usage rights. For third-party software, the licence terms of the licensor apply, and both the licensor and Starrag may assert claims in the event of violations.

### 15. Export Control

The customer acknowledges that the delivery may be subject to legal regulations and export control requirements and may not be sold, leased, transferred or used for purposes other than those agreed upon without export or re-export approval from the competent authority. The customer agrees to comply with these regulations, including not exporting, re-exporting or transferring the delivery or software directly or indirectly to any country, person, company, organisation or entity subject to restrictions or prohibitions, including sanctions or embargoes administered by the relevant governmental authority. The customer is aware that these regulations may change and that the latest version applies to the contract.

### 16. Confidentiality

All drawings, designs, specifications, manuals, programs and prices provided to the customer by Starrag remain Starrag's confidential and proprietary property. The customer must treat all such information as strictly confidential, except where publicly accessible, and may not disclose it to third parties. Starrag retains the copyright to all materials provided at all times.

### 17. Intellectual Property

Unless explicitly agreed otherwise, the customer acknowledges that no commissioned works or creations are being contracted under this agreement, that the customer does not contribute to the design of the delivery and that neither party acquires ownership rights to the other party's intellectual property, proprietary technology or inventions developed in connection with the delivery. Any licence granted to the customer for Starrag's intellectual property or proprietary technology is limited to the use of the delivery sold under the respective contract.

**18. General Indemnification of Starrag**

If actions or omissions by the customer or parties engaged by the customer to fulfil its obligations result in personal injury or property damage to third parties, and claims are made against Starrag, its employees, agents, representatives, affiliates or legal successors, the customer agrees to indemnify and hold them harmless.

**19. Applicable Law and Jurisdiction**

All legal relationships between the customer and Starrag are exclusively governed by the law of the Federal Republic of Germany applicable to the legal relationships between domestic parties, excluding the UN Convention on Contracts for the International Sale of Goods. The place of jurisdiction for all claims and proceedings arising from or in connection with this contract is the court responsible at Starrag's registered office. Starrag is, however, entitled to sue the customer at the latter's place of business.