

General Conditions of Sale of STAROFIT Klose GmbH & Co. KG (Edition Mai 2022)

I. Application / Offers

1. These General Conditions of Sale (Conditions) of STAROFIT Klose GmbH & Co. KG shall apply to all present and future contracts with commercial buyers, with public legal entities as well as public trusts in regard to deliveries and other services, including contracts relating to the supply and manufacture of non fungible goods. The Buyer's purchase conditions shall not be binding even if we do not expressly object to them again after their receipt.
2. Our offers are subject to change. Oral agreements, promises, assurances and guaranties made or given by our sales staff before or at conclusion of the contract shall not be binding unless confirmed by us in text form. We shall, however, have the option to accept a purchase order by commencing performance without prior order confirmation.
3. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

II. Prices

1. Unless otherwise agreed to, the quoted prices are ex works or ex warehouse plus freight, statutory VAT and import duties. The merchandise will be invoiced "gross for net".
2. Should our external expenses (duties, taxes or other third-party charges) included in the agreed price change or newly incur later than 4 weeks after the conclusion of the contract, we shall be authorised to modify the price accordingly with regard to the goods not yet delivered to the Buyer as of the beginning of each calendar month concerned.
3. In the event that the modified price surpasses the originally agreed price by more than 15%, the Buyer may, within one week after receipt of our price modification notice, withdraw from the contract with respect to the goods affected by the price modification.

III. Payment and Set-off

1. Payment shall be made without cash discounts immediately so that we can dispose of the sum on the due date. Any payment transfer costs shall be borne by the Buyer.
2. Should the Buyer default in payment, he will be liable to pay interest at 9 %-points above the basic interest rate, unless higher rates have been agreed upon. Additionally, we charge a default allowance of EUR 40.00. We reserve the right to claim additional damages resulting from late payment.
3. Should, after the conclusion of the contract, it become evident that payment is jeopardized by the Buyer's lack in financial means, or should the Buyer be in default with a considerable portion of the amount due or should other circumstances arise pointing at a material deterioration in the Buyer's financial position after the conclusion of the contract, we shall be entitled to exercise the rights arising from sec. 321 BGB (German Civil Code) and to make due any and all of our accounts receivable resulting from the same legal relationship. This also applies in case the performance of our contractual obligation is not yet due. A lack in financial means shall also be deemed to exist if the Buyer is at least three weeks in arrears with a substantial amount (from 10% of the receivables due), as well as a substantial down-grading of the limit existing for him with our trade credit insurer.
4. Any agreed upon cash discount always relates to the invoiced value excluding freight and will only be granted if and in so far as the Buyer has completely paid all payables due at the time of the discount. Unless otherwise agreed to discount periods shall begin with the date of the invoice.
5. The Buyer may retain or set off any counterclaims only in so far as his claims derive from the same contractual relationship (claims for defects and claims for completion costs) or are undisputed or have become legally binding.

IV. Delivery and Delivery Times

1. Our commitment to deliver is subject to our correct, timely and contractual self-delivery, including any documents relating to the import and surveillance of the goods, unless we are responsible for the deficient, late, or non-contractual self-delivery. In particular, we are entitled to withdraw from the contract insofar as we have concluded a covering purchase, but are not supplied by our supplier for reasons for which we are not responsible, e.g. in case of insolvency of our supplier.
2. Any confirmation as to delivery times shall only be approximate. Delivery times shall commence with the date of our order confirmation and are subject to the timely clarification of any details of the order as well as of the fulfillment of any of the Buyer's obligations, e.g. to produce official certifications, to provide letters of credit and payment guarantees or to pay agreed installments.
3. Any agreed delivery time shall be considered to be met if and in so far the goods have left the works or our warehouse at such time or date. If and in so far the goods fail to be dispatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for dispatch.
4. Within events of force majeure we shall be entitled to postpone deliveries for the period of the impediment and for a reasonable time necessary for adaptation. The same shall apply to such events which arise during prevailing delays. Force majeure shall include measures affecting currency, trade policy and other governmental acts, strikes, lockouts, operating shutdowns not caused by us (for example fire, machinery and rolls breakdown, deficiency in raw material or energy), pandemic or flood disaster and their related impact, obstruction of traffic routes, delay in customs/import clearance, as well as any other circumstance which, not due to our fault, either substantially jeopardizes our deliveries and services or makes them impossible for us to fulfill, no difference whether such circumstances will affect us or our supplier(s). Should, in consequence of the aforementioned circumstances, the performance of the contract become unreasonable to fulfill to one of the contractual parties (e.g. if the performance of the contract is deferred by more than 3 months), such party may then declare withdrawal from the contract.

V. Retention of title

1. All goods delivered to the Buyer shall remain our property (Reserved Property) until all of the Buyer's accounts resulting from the business relationship with him, in particular any account balances have been settled (current account reservation). This condition shall apply to any future as well as any conditional claims. The current account reservation is not applicable in prepayment or delivery vs. payment cases. In these cases, the goods remain our property until the purchase price for these goods has been paid in full. The Buyer shall take any measures necessary to secure our property - or to procure equivalent security rights in the country of his place of business and in any different country of destination - and he shall provide related evidence whenever requested by us. Non-compliance with such obligation constitutes a fundamental breach of contract.
2. If and in so far as admissible by the laws of the country where the goods are located, the following supplementary provisions apply:
 - a. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of sec. 950 BGB (German Civil Code) without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause V/1 of these Conditions. If the Buyer manufactures, combines or mixes the Reserved Property with other goods we shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such combining or mixing, our ownership expires, the Buyer herewith transfers to us any rights which the Buyer will have in the new stock or goods in proportion to the invoiced price of the Reserved Property, and he will keep them in safe custody free of charge. Such transfer is hereby accepted. Our co-ownership rights shall be regarded as Reserved Property within the meaning of para. 1 above.

- b. The Buyer may resell the Reserved Property only within the normal course of his business in accordance with his normal business terms and provided he is not in default of payment and provided also that any rights resulting from such resale will be transferred to us in accordance with clauses V/2/c through V/2/e of these Conditions. The Buyer shall not be entitled to dispose of the Reserved Property in any other way.
- c. The Buyer hereby assigns to us any claims resulting from the resale of the Reserved Property. Such assignment is hereby accepted. Such claims shall serve as our security to the same extent as the Reserved Property itself. If the Reserved Property is resold by the Buyer together with other goods not purchased from us, then any receivables resulting from such resale shall be assigned to us in the ratio of the invoiced value of the other goods sold by the Buyer. In the case of resale of goods in which we have co-ownership rights according to clause V/2/a above, the assignment shall be limited to the part which corresponds to our co-ownership rights.
- d. The Buyer shall be entitled to collect any receivables resulting from the resale of the Reserved Property. This right shall expire if withdrawn by us, at the latest if the Buyer defaults in payment; fails to honour a bill of exchange; or files for bankruptcy. We shall exert our right of revocation only if and in so far as it becomes evident after the conclusion of the contract that payment resulting from this contract or from other contracts is jeopardized by the lack of Buyer's ability to pay. The Buyer shall - upon our request - immediately inform his customers of such assignment and to forward to us any information and documents necessary for collection.
- e. The Buyer shall immediately inform us of any seizure or any other attachment of the Reserved Property by a third party. He shall bear any costs necessary to suspend such seizure or attachment or removal of the Reserved Property, if and in so far as such costs are not borne by a third party.
- f. Should the Buyer default in payment or should he fail to honour a draft and after expiry of a reasonable period of grace we shall be entitled to take back the Reserved Property and to enter, for this purpose, the Buyer's premises and to resell the Reserved Property best possible by crediting the proceeds to the purchase price. The same shall apply should, after the conclusion of the contract, it become evident that payment resulting from this contract or from other contracts is jeopardised by the Buyer's lack of ability to pay. If we take back the Reserved Property, this shall not be regarded as withdrawal from the contract. The provisions of the German Insolvency Code shall remain unaffected.
- g. Should the total invoiced value of our collateral exceed the amount of the secured receivables including additional claims for interest, costs etc. by more than 50 %, we shall - upon the Buyer's request - release pro tanto collateral at our discretion.

VI. Weight

Steel bars, non-ferrous metals and alloys are sold by weight. Such weight shall be determined on our or our suppliers' scales and shall be evidenced by the presentation of the pertinent weight check. We may also determine the weight of the goods without weighing on the basis of their lengths ("theoretical weight") using accepted statistical methods in order to establish their dimensions, and we may add a 2 ½ pct surplus to compensate for any rolling and thickness tolerances ("commercial weight").

VII. Test certificates / Inspection

1. Any supply of Test Certificates acc. to EN 10204 is subject to prior written agreement. We are entitled to hand over such document as a copy. In case the price for such documents has not been agreed within the contract, we will calculate it on the basis of our price list resp. the issuer's (manufacturer) price list.
2. Where testing and inspection of the goods have been agreed upon, the goods must be inspected in the mill or in our warehouse immediately after the Buyer has been informed that the goods are ready for dispatch. The Buyer shall bear the inspection costs.
3. Should, through no fault of ours, the inspection of the goods fail or be delayed or be incomplete, we shall be authorised to dispatch the goods without prior inspection or to store them at the Buyer's expense and risk and to invoice the goods to him.

VIII. Dispatch, Passing of Risk, Packaging, Partial Delivery

1. We shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and the carrier.
2. The Buyer shall immediately request delivery of those goods notified to him as ready for dispatch. Otherwise we are entitled, upon due reminder, to ship such goods at the Buyer's cost and risk or to store them at our discretion and to invoice them to the Buyer.
3. Can, by reasons not attributable to us, the goods not be shipped or will it become substantially difficult to ship the goods via the designated route or to the designated place within the designated time, we reserve the right to ship them via a different route or to a different place. Any additional costs will be borne by the Buyer. In such cases we will ask the Buyer for his prior comments.
4. In all transactions, including freight prepaid and freight-free deliveries, the risk of loss or damage to the goods shall pass to the Buyer at the time where we hand them over to the forwarding agent or to the carrier, at the latest with their departure from our warehouse. We will buy insurance only if requested to by the Buyer and at his cost. The Buyer shall unload the goods at his cost.
5. The goods will be delivered unpacked and not be protected against rust. Where so agreed, we will deliver the goods packed. Unless otherwise agreed, bright steel products such as precision tubes will be dispatched oiled and bundled with wire only. Besides, we shall see for packing as well as for protection and transport means on the basis of our experience and at the Buyer's cost. We will take back such devices only at our warehouse. We will not bear any Buyer's costs for their retransport or disposal.
6. We shall be entitled to make partial deliveries at reasonable quantities. We may also exceed or reduce the agreed quantities as appropriate. Where quantities are indicated as "circa", we may exceed or fall below the agreed quantity up to 10 %.

IX. Callable and Continuous Deliveries

1. Where the contract provides for continuous deliveries, the Buyer shall divide the quantities and grades of the goods into approximately equal monthly shipments. Otherwise we shall be entitled to specify them at our own fair and just discretion.
2. Where the single calls for delivery exceed the total contractual quantity, we shall be entitled, yet not committed, to deliver the surplus quantity and invoice it at the prices applicable at the time of the call or the delivery.
3. Unless otherwise agreed, callable deliveries shall be completed in full within 365 days from conclusion of the contract. Upon expiry of this period, we may store the uncalled goods at the Buyer's cost and risk.

X. Warranty Provisions

1. Any properties of the goods, in particular their grade, size and classification shall be determined in accordance with the agreed and, if not agreed, with the DIN and EN standards effective at the time the contract is concluded, or in absence of such standards, in accordance with trade practice and usage. Any reference made to such standards and similar rules, to inspection documents according to EN 10204 and similar certificates as well as to grade, classification, size, measure and usability of the goods shall not constitute any warranties or guarantees. The same shall apply to declarations of conformity and similar markings such as CE and GS.
2. We shall not assume liability for the suitability of the goods for the use stipulated in the contract, unless expressly confirmed in text form.
3. Insofar as the goods have the agreed quality in accordance with section X.1 above or are suitable for the use assumed under the contract and confirmed by us in accordance with section X.2, the Buyer is not entitled to invoke the goods may not be suitable for normal use or have a quality which is usual for goods of this type and which the Buyer expected. In this respect, our liability is excluded in accordance with section XI of these Conditions.

- 4. As to the Buyer's obligations to examine the goods and to notify us of any defects, the applicable statutory provisions shall apply, subject to the following conditions:
 - The Buyer shall examine the goods immediately after delivery with regard to the properties relevant for the use of the goods and shall notify us in text form of any defects of the goods immediately thereafter. In case the Buyer intends to install the goods into another object or attach the goods to another object, the properties relevant for the installation or the attachment include the inner properties of the goods. The Buyer's obligation to examine the goods exists even in cases where an inspection certificate or any other material certificate is provided. Defects which, even upon most careful inspection, cannot be discovered immediately after delivery must be notified to us in text form immediately after their discovery.
 - In case the Buyer, in the event of an installation of the goods into another object or attachment of the goods to another object, fails to inspect the properties of the goods relevant for the designated end use at least at random prior to installation resp. attachment (e.g. by function tests or a trial installation), this represents a particularly grave disregard of the care required in the ordinary course of business (gross negligence) in relation to us. In such a case, the Buyer may assert any rights in relation to these properties only if the defect had been deliberately concealed or in case of a guarantee for the respective quality of the goods.
5. If and in so far the Buyer's claim for defects is justified and has been made in time, we may, upon our discretion, remedy the defect or deliver non-defective goods ("substitution"). Should the substitution fail or be declined, the Buyer may, make use of his statutory rights. In cases where the defect is only minor and/or where the goods have already been resold, processed or transformed, he may only reduce the purchase price.
6. In case the Buyer has installed the goods, in accordance with the goods' type and designated use, into another object or attached the goods to another object, he may claim reimbursement of his necessary costs for the dismantling of the defective goods and the installation or attachment of goods free from defects ("dismantling and installation costs") only in accordance with the following provisions:
- Necessary dismantling and installation costs are only those, which directly result from the dismantling resp. removal of the defective goods and the installation resp. attachment of identical goods, have accrued on the basis of competitive market prices and have been proven by the Buyer by appropriate documents in text form.
 - Additional costs of the Buyer for consequential damages such as e.g. loss of profit, down time costs or additional costs for cover purchases are no dismantling and installation costs and therefore not recoverable under Sect. 439 para. 3 of the German Civil Code. The same applies for sorting costs and for supplementary costs resulting from the fact that the sold and delivered goods are at a place other than the agreed place of delivery.
 - The Buyer is not entitled to request advance payments for dismantling and installations cost or other expenses required for the remedy of the defective delivery.
7. In case, on an individual basis, the costs incurred by the Buyer for the remedy of the defective delivery are disproportionate, namely with regard to the purchase price of the goods being free from defects and under consideration of the importance of the infringement of the contract, we are entitled to refuse the reimbursement of such costs. Disproportionate costs are especially given in case the costs requested by the Buyer, in particular dismantling and installation costs, exceed 150 % of the purchase price of the goods invoiced by us or 200 % of the value of the defective goods.
8. If and in so far the goods are subject to contractually agreed testing and inspection by the Buyer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection. Has the Buyer, by his own negligence, not learned of the defect, then he may claim only such defects which we have knowingly not disclosed to him or which are subject to a guarantee.
9. If the Buyer fails to immediately give to us the opportunity to inspect the defect, especially if he fails - upon our request - to immediately make the goods or samples hereof available to us, he will lose all of his warranty rights.
10. No warranty shall be given to goods sold as declassified material with regard to such defects either specified in the contract or to those normally to be expected. Goods classified as "Ila-Ware" ("secondaries") are subject to our liability in accordance with section XI of these Conditions.
11. In accordance with Section XI of these Conditions, additional claims are not acceptable. This applies in particular to claims for
- damages which did not occur to the goods themselves (consequential damages),
 - costs of the Buyer related to the self-remedy of defects without the legal requirements being fulfilled and
 - dismantling and installation costs, in case due to a transformation undertaken by the buyer before the installation of the goods into another object or before attachment of the goods to another object, the installed or attached goods provide substantially different features than the original goods delivered by us or have been transformed to new products.

XI. Restriction of Liability and Limitation Periods

1. Our liability for breach of contractual or extra-contractual obligations, in particular for non-performed or deferred deliveries, for breach of duties prior to the contract as well as for tortuous acts - including our responsibility for our managerial staff and any other person employed in performing our obligations - shall be restricted to damages caused by our wrongful intent or by our gross negligence and, in case of gross negligence, shall in no case exceed the foreseeable losses and damages characteristic for the type of contract in question.
2. The aforesaid restriction shall not apply to such cases where we breach our fundamental contractual obligations and where such a breach of contract will endanger the contractual purpose; it shall neither pertain to damages to life, to the body or to health caused by our fault nor to any cases where we have guaranteed certain characteristics of the goods. Nor shall such clause affect our statutory liability laid down in the German Product Liability Act (Produkthaftungsgesetz). Our contractual obligations shall be considered to be fundamental if they are required to safeguard the due performance of the contract and on which Buyer typically may rely on. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.
3. Should we default on a delivery or performance, the Buyer shall be entitled to damages due to this delay; in case of slight negligence, however, the claim of the Buyer is restricted to maximum 10 % of the agreed purchase price for the performance in default. The rights of the Buyer for damages instead of performance in accordance with the present sec. XI.1 and XI.2 remain unaffected by the aforesaid.
4. Unless otherwise agreed, any contractual claims which the Buyer is entitled to in connection with the delivery of the goods shall fall under the statute of limitations within a period of one year after the goods have been delivered to the Buyer. This shall not apply insofar as Section 438 para. 1 No. 2, Section 478, 479 or Section 634 lit a) para. 1 No. 2 of the German Civil Code (BGB) require longer limitation periods, in cases of injuries to life, body and health, breaches of contract caused by our wrongful intent or by our gross negligence or in cases where a defect is fraudulently concealed.

XII. Place of Performance / Jurisdiction / Applicable Law / Version

1. The place of performance for our deliveries shall be the supplying work in case of ex-work deliveries, in all other cases it shall be our warehouse. The place of jurisdiction shall be Bremen or - at our discretion - the Buyer's seat.
2. All legal relationships between us and the Buyer shall be governed by the laws of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
3. In cases of doubt, the German version of these Conditions shall apply.