

General Conditions for sales and delivery of STAROFIT Klose GmbH & Co. KG (Edition February 2013)

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 shall not be binding unless confirmed by us in writing, this demand being met also in cases of telefax and e-mail transmission. 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, 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 8 %-points above the basic interest rate, unless higher rates have been agreed upon. We reserve the right to claim additional damages resulting from late payment.
3. Should, after the conclusion of the contract, it become recognizable that our pecuniary claim 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 refuse any agreed advance deliveries and to make due any and all of our accounts receivable resulting from the same legal relationship.
4. Any agreed upon cash discount always relates to the invoiced value excluding freight, packing and inspection costs 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 and timely self-delivery, including any documents relating to the import and surveillance of the goods, unless we are responsible for the deficient or late self-delivery.
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), 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, such party may then declare the contract avoided

V. Retention of title

1. Title to the goods is retained by us until the purchase price of the goods is fully paid. The Purchaser 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. Grades, Sizes and Weight

1. Grades, sizes and classification of the goods shall be determined in accordance with the agreed standards or, in absence of such an agreement, with the standards effective at the time of the conclusion of the contract, or in absence of such standards with trade practice and usage. Any reference to such standards and to similar rules, to works certificates and to similar inspection documents as well as reference to grades, classification, sizes, weights or usage of the goods shall not be regarded as a description, a warranty of fitness for a special purpose nor as a guarantee. The same shall pertain to declarations of conformity and to any related marks such as CE and GS.

2. 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. Testing and Inspection

1. 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 his personal inspection costs, whereas the costs of inspection will be invoiced to him.

2. 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 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. As regards the inspection of the goods and the notification of any defects, the statutory provisions shall apply with the provision that the Buyer's obligation to inspect the goods upon their delivery shall extend to any test certificates according to or in compliance with DIN EN 10204. The Buyer shall immediately, at the latest seven days after delivery, notify us in writing of any defects of the goods. Defects which, even upon careful inspection, cannot be discovered within this period shall be notified to us in writing immediately upon their discovery, at the latest before the elapse of any agreed or statutory warranty period. In such cases the Buyer shall immediately suspend any processing or manufacturing of the goods.
2. 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.
3. We shall bear any expenditure related to the cure in so far as these expenses are reasonable and not disproportionate in relation to the goods purchase price. We may refuse to bear these expenditures in so far as they exceed the goods purchase price by more than 150%. We shall bear any further expenditures such as for the mantling and dismantling of the defective goods only in accordance with the provisions of sec. XI of the present conditions. We will not compensate for any expenditures in connection with the delivery of the goods to any other place than the place of performance, unless such delivery corresponds to the contractual use of the goods.
4. 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.
5. 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.
6. 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 covenant XI of these Conditions.

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, or 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 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 Product Liability Act (Produkthaftungsgesetz) of 15/12/89. 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. 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 limitation shall also apply to such goods which, according to their normal purpose of use, have been used for constructional works related to real estate property and which have caused damage within this construction unless this purpose of use has been agreed upon in writing. This restriction shall not apply to our liability resulting from breaches of contract caused by our wrongful intent or by our gross negligence; neither to damages to life, to the body and to health caused by our fault.

XII. Place of Performance / Jurisdiction / Applicable Law

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.