

# General Terms and Conditions of Delivery of STARK Spannsysteme GmbH A 6830 Rankweil

**The present Terms and Conditions of Sale and Delivery apply with exclusive effect to our quotations, deliveries, other services and payments to our account. Any differing Terms and Conditions of Purchase pertaining to the Purchaser are only binding on us if they are expressly confirmed in writing by us.**

– As of April 2019 –

## I. Quotations

All our quotations are subject to confirmation and without obligation. Documents belonging to our quotations contain only approximative details. Construction modifications are subject to change.

We reserve all rights of ownership and copyrights to proposed constructions, drawings and all other documents. They may neither be disclosed to third parties, nor be used for any other purposes.

## II. Conclusion of contact/acceptance of order

The contract of sale is concluded either by delivering the ordered item or by sending our express written order confirmation. Any undertakings or supplementary agreements made by our representatives, or amendments or modifications of any kind made orally, by telephone or by fax are only binding on us if we confirm them in writing.

## III. Prices

Prices apply ex works. We reserve the right to make price changes resulting from general price and wage increases in our industry or in the industry of our sales partners. Prices do not include surcharges for material cost increases. Performance is

therefore subject to the prices valid on the date of delivery. Minimum order value €50.00 per order. This includes a minimum quantity surcharge of €10.00.

## IV. Terms of payment

Invoices are due for payment net within 14 days of the date of the invoice. Should payment not be received by the due date, we are entitled to charge interest amounting to a minimum of 5% above the discount rate of the Austrian National Bank for the period from the due date up to receipt of payment. Moreover, all expenses incurred in connection with reminders and collection of the outstanding receivables must be paid in the same manner as the primary debt. Withholding payments or offsetting them against any of the Purchaser's counter-claims that are disputed by us is not permitted.

We are entitled to offset receivables payable to us by the Purchaser at any time. Agreements regarding partial payments are only valid as long as the Purchaser makes payment promptly. In the event of non-compliance, we are entitled to demand immediate payment irrespective of the maturity of any bill of exchange. Should the Purchaser fail to meet its payment obligation or should bankruptcy or settlement proceedings be commenced in relation to its assets, the outstanding debt will become payable in full, including when there are bills of exchange with a later maturity date.

Should this outstanding debt not be paid immediately, we are entitled to demand the surrender of the purchase item, thus excluding any right of retention.

## V. Retention of title

We retain the right of ownership of the goods supplied until the purchase price is paid in full, including all ancillary claims. We are entitled to assert this right of ownership at our discretion

through collection and to seek satisfaction by resale to third parties. We are entitled to utilize any resulting revenue to settle all other claims against the Purchaser, for example, those arising from the current account; in the absence of a statement to the contrary, seizure of the purchase item does not constitute withdrawal from the contract.

In the case of access by third parties to the goods subject to retention of title, the Purchaser shall refer to our ownership and notify us immediately. Pledges or assignment as security are not permitted.

Professional vendors are entitled to resell the goods. However, in the event of delay in payment, the Purchaser hereby waives the claims from the resale that it has against the buyer and grants us authorisation for collection. Similarly, the Purchaser assigns to us all other claims to the goods subject to retention of title to which it is entitled on any legal grounds whatsoever (compensation, enrichment, reimbursement of expenses, indemnity, insurance contract, etc.) and we accept this assignment. Should the goods subject to retention of title be processed, ownership of the product is passed over to us. In the event that a new item is produced through processing or combination with other items which are the property of third parties, we are entitled to joint ownership. In such a case, we have the choice of purchasing the complete item by paying remuneration for the third-party share or relinquishing the item to the other party against compensation for its share. In such a case, ownership is only passed over to the other party following receipt of compensation by us. The right to the defence of expiry of our right of choice is waived.

## **VI. Despatch**

Despatch is ex works. All freight costs are borne by the Purchaser. Risk passes to the Purchaser as soon as the deliverable is handed over to the freight forwarder.

## **VII. Delivery dates**

The quoted delivery dates are always regarded as an approximate delivery time. The delivery date only applies after receipt of the final commercial and technical details required to perform the order. Should the delivery date fail to be met, we are entitled to request an extension of delivery of a minimum of two weeks.

In all cases in which delivery or performance is not possible or is not possible on time for reasons for which we are not responsible (an accident, force majeure, difficulties in procuring raw materials, delay in deliveries by sub-suppliers, operational disruptions, strikes, lock-outs, supply restrictions, etc.), the delivery extension that we are entitled to will be prolonged for a reasonable time, but for at least two months. In such cases, however, we are entitled to withdraw from the contract.

## **VIII. Warranty**

The recipient shall inspect the goods immediately. Defects in goods must be reported immediately on receipt. Hidden defects must be reported immediately on becoming aware of them. For all purchase items, we only grant a warranty when and to the extent that this is recognised by our sub-suppliers based on their warranty assurances. However, all warranty claims are rendered invalid by unauthorized intervention in the purchase items or in case of failure to observe operating or maintenance instructions. Ordinary negligence is excluded from the warranty.

The Purchaser confirms its knowledge of all the relevant regulations concerning use of the purchase item and is obliged to take all appropriate measures to comply with these regulations during use. Returns of up to a value of EUR 75.00 (excluding VAT) are not refundable. When making returns, it is imperative that our delivery note or invoice number is quoted to allow us to issue a credit note rapidly.

Special-purpose items, items ordered separately (not kept in stock) or items built to specification are not taken back.

It is not possible to cancel all or part of an order. If, in exceptional cases, the Seller agrees to the revocation of a contract, the Purchaser must note that it is obliged to pay a cancellation fee in the sum of the expenses incurred, but of a minimum of 10% of the contract value.

## **IX. Compensation**

The Buyer expressly waives the right to claim damages of any kind, but in particular due to defects, non-performance, delay in delivery or consequential damage caused by defects, except in cases of intent.

Should we acknowledge a claim for damages, however, this claim only relates to our own product, not to any consequential damages.

## **X. Returns**

Returns may only be sent with our consent, carriage paid and with no cash on delivery. Should we accept the return of goods which were ordered mistakenly or under other circumstances for which we bear no responsibility, we will deduct handling costs from the credit note issued or, for returns such as these of goods of up to a value of EUR 75.00 (excluding VAT), no credit note will be issued. When making returns, it is imperative that our delivery note or invoice number is quoted to allow us to issue a credit note rapidly.

Special-purpose items, items ordered separately (not kept in stock) or items built to specification are not taken back.

It is not possible to cancel all or part of an order. If, in exceptional cases, the Seller agrees to the revocation of a contract, the Purchaser must note that it is obliged to pay a cancellation fee in the sum of the expenses incurred, but of a minimum of 10% of the contract value.

## **XI. Place of performance and place of jurisdiction**

The place of performance for deliveries is the location of the delivering place of business or the manufacturing plant; the place of performance for payments in all cases is Rankweil.

The court with jurisdiction *ratione materiae* for Rankweil is agreed as the place of jurisdiction for all disputes arising from this contract. This contract is governed by Austrian law.

## **XII. Consumer protection**

These General Terms and Conditions of Sale and Delivery, subject to their admissibility pursuant to the provisions of the Consumer Protection Act, apply to Purchasers who are defined as consumers under the Consumer Protection Act, whereby it is explicitly stipulated that the invalidity of any part of these provisions will not affect the validity of the remaining provisions.

## **XIII. Changes**

All dimensions stated in marketing documents (e.g. catalogues, homepage, etc.) are theoretical values and may not be identical in the manufactured product. We also reserve the right to change all dimensions, tolerances, strengths, weights and the design of our products at any time to match the state of the art and to modify technical and design-related details.

## **XIV. Machine design**

Machine designs that we produce for clients are based on our expertise. We expressly assume no liability for this.

## **XV. General provisions**

If a contracting party ceases payment or if an application for insolvency in relation to its assets or for judicial or out-of-court debt settlement proceedings is made, the other contracting party has the right to withdraw from the unfulfilled part of the contract.

Should a provision laid down in these Terms and Conditions and the other agreements reached be or become invalid, the validity of the rest of the contract is not affected. The contracting parties are obliged to replace the invalid provision with a provision that corresponds to it as closely as possible in terms of the commercial outcome.