

Terms and Conditions of Purchase of STARK Spannsysteme GmbH A 6830 Rankweil

General Terms and Conditions for the Purchase of Products, Production Materials and Spare Parts

– As of August 2022 –

I. Application of the Terms and Conditions

1. The present Terms and Conditions of Purchase exclusively apply for all orders of and with STARK Spannsysteme GmbH, 6830 Rankweil (hereinafter the “Buyer”) and all agreements with the Supplier. The Buyer does not recognise any terms and conditions laid down by the Supplier that conflict with or differ from these Terms and Conditions of Purchase, unless it explicitly agrees in writing to their application. No response from us to notification of different terms and conditions laid down by the Supplier does not constitute acceptance of these terms and conditions. No response from us to conflicting order confirmations should not be considered approval either. If the Buyer has concluded a framework agreement with the Supplier, the terms and conditions of that agreement take priority. They are merely supplemented by these Terms and Conditions of Purchase.
2. The Buyer’s Terms and Conditions of Purchase also apply for all future transactions with the Supplier, even if they are not explicitly agreed again. Performance of the order constitutes acceptance of these Terms and Conditions.

II. Order and order confirmation

1. Supply agreements (order and acceptance) and call-off orders, as well as amendments and additions to these, must be made in writing. Call-off orders can also be made by data transmission.
2. The Buyer can cancel the order if the Supplier does not accept it in writing (order confirmation) within three weeks of receipt. If the order confirmation differs from the order, the Buyer is only bound to it if it agrees to the deviation in writing.

3. The acceptance of supplies or services and payments does not constitute agreement.
4. Passing orders on to third parties without the Buyer’s written consent is not permitted and gives the Buyer the right to withdraw from the contract, partly or entirely, and to claim damages. Upon approval by the Buyer, the third party is considered the Supplier’s agent.
5. The Buyer can ask the Supplier to make changes to the design and manufacture of the items supplied within reasonable limits. In such cases, appropriate mutual agreements must be reached on the consequences, particularly in respect of extra costs, cost reductions and delivery dates.
6. The technical documents, drawings, articles and geometrics attached to orders as well as the factory specifications and other information provided by the Buyer are an integral part of orders.
7. All tools, models, prototypes, drawings and other documents that the Buyer provides to the Supplier remain the Buyer’s property and cannot be disclosed to third parties without the Buyer’s consent.

III. Payments

1. Unless otherwise agreed in writing, payments are made within 14 days with a 3% discount or within 30 days net.
2. Payment is made by bank transfer.
3. The payment period begins as soon as the delivery or service is provided and a correctly issued invoice is received.
4. Deducting discounts is also permitted when the Buyer offsets or withholds payments of a reasonable amount due to defects; in this case, the 14-day payment period in accordance with no. 1 begins when the defects have been fully remedied.

- Without the Buyer's prior written consent, which cannot be refused unreasonably, the Supplier is not entitled to reassign its claims against the Buyer or have them collected by a third party. In the case of extended retention of title, consent is already deemed to have been given. The Supplier can only offset undisputed or legally established claims or assert rights of retention against or in relation to the Buyer's claims.

IV. Non-disclosure

- The contracting parties are obliged to treat all undisclosed commercial and technical information that they obtain in the course of business relations as trade secrets.
- Drawings, models, templates, prototypes and similar items cannot be provided or otherwise disclosed to unauthorised third parties. Copying such items is only permitted in line with business requirements and copyright regulations.
- It is agreed between the Buyer and the Supplier that all of the Buyer's information, drawings, procedural expertise, materials, etc. provided during the cooperation is entrusted within the meaning of Section 12 UWG (Gesetz gegen den unlauteren Wettbewerb [Protection Against Unfair Competition Act]) and may only be used for the purpose of cooperation. The Supplier is obliged to treat these documents and this information as confidential and, based also on the fundamental content of them, to not disclose them to third parties, unless the Buyer has given explicit written consent for them to be disclosed.

Marketing on one's own account or transferring knowledge to third parties is only permitted with the Buyer's consent. Violations are punishable and will result in damages claims.

- The Supplier shall place all employees who have access to the information under obligation to keep this knowledge confidential and to neither use it themselves nor disclose it to third parties. This obligation is imposed on employees not just for the duration of their employment but also after their employment has ended.

Sub-contractors must be placed under obligation accordingly.

V. Provisions, retention of title

- Material provisions remain the property of the Buyer and must be stored, labelled and managed separately, free of charge. They may only be used for the Buyer's orders.

- In the event of a value decrease or loss, the Supplier must pay damages. A list of the materials must be provided to the Buyer on request.
- Any material provided by the Buyer to the Supplier for processing in accordance with a contract remains the property of the Buyer. If the goods subject to retention of title are processed together with items that do not belong to the Buyer, the Buyer acquires joint ownership of the new object in proportion to the value of the Buyer's objects relative to the other items processed at the time of processing. If the purchase item is inseparably combined with other items that do not belong to the Supplier, the Buyer obtains joint ownership of the new object in proportion to the value of the purchase item relative to the other items combined at the time of combination. If they are combined in such a way that the Buyer's item is considered the main item, it is deemed agreed that the Buyer will grant the Supplier joint ownership proportionately.

VI. Delivery dates and periods, transfer of risk

- Unless otherwise agreed in writing, delivery is made "carriage paid". In principle, the risk of accidental loss and accidental damage of the goods is transferred upon delivery of the goods. In the case of delivery with installation or assembly and in the case of services, risk is only transferred to the Buyer upon acceptance.
- The Supplier is obliged to immediately inform the Buyer in writing of the reasons for and the anticipated duration of the delay if circumstances arise under which the Supplier cannot fulfil its contractual obligations, partly or entirely, or cannot do so on time, or if the Supplier becomes aware of such circumstances. If the Supplier fails to give such notification, it cannot use the delay as a defence in relations with the Buyer.

VII. Force majeure

- Events of force majeure that prevent contractual obligations from being fulfilled exempt the contracting parties from the obligations concerned for the duration of the disruption. This also applies if these events occur at a time at which the contracting party concerned is in default.

The contracting party concerned is obliged to give the other contracting party comprehensive information, particularly on the na-

ture and anticipated duration of the disruption, as quickly as reasonably possible. The contracting parties shall endeavour to adapt their obligations to changing circumstances in good faith. Should the event of force majeure last for longer than five working days, the respective other contracting party is entitled to withdraw or partly withdraw from the contract. Any partial supplies/services already performed are not affected by the withdrawal, unless the recipient no longer has a commercial interest in the partial supplies/services due to non-performance of the remaining supplies/services.

2. In particular, force majeure includes war, industrial action related to suppliers' companies, natural disasters, legal and official regulations and other circumstances that the contracting parties cannot avoid and which cannot be directly prevented from occurring by any reasonable technical and economic means.

VIII. Quality & Sustainability

1. In addition to our high-quality standards, environmental protection in particular is an integral part of our company's quality policy. STARK Spannsysteme GmbH therefore operates a DIN EN ISO 9001-compliant quality management system and a DIN EN ISO 14001-compliant environmental management system.
2. The Supplier must carry out its deliveries in accordance with generally accepted technical standards, the applicable legal and official regulations and requirements, including the requirements of employers' liability insurance associations, and generally accepted technical safety and occupational health standards, the Supplier's company regulations and requirements and the agreed technical data.

In accordance with the Machine Safety Act (Maschinensicherheitsverordnung), machinery and technical equipment must be supplied with operating manual and an EC manufacturer's declaration/declaration of conformity. The Supplier must make deliveries with CE marking where possible. If the mark of conformity is not issued, proof of compliance with the aforementioned regulations must be provided at the Buyer's request.

Changes to the items supplied are subject to prior written approval by the Buyer.

The Supplier must regularly inspect the quality of the items supplied. The contracting parties will mutually inform each other of ways of improving quality.

3. If the Supplier and the Buyer do not reach a definite agreement on the nature and scope of the inspections or the means and methods of inspection used, the Buyer is willing, at the Supplier's request, to discuss the inspections with it within the bounds of its understanding, experience and capabilities in order to determine the necessary standard of inspection technology. On request, the Buyer will also inform the Supplier of its applicable safety regulations.

The Buyer does not accept any liability towards the Supplier for whether the information provided in accordance with no. 2 above is complete. The result of such a discussion is then only considered an agreement on the nature and scope of the inspections and the means and methods of inspection if this is explicitly agreed between the Supplier and the Buyer.

4. In the event of the supply of materials, objects and substances that are hazardous substances in accordance with the Hazardous Substances Act (Gefahrstoffverordnung) and of materials, objects and substances that may pose a danger to human life and the environment due to their nature, properties and condition and that require special treatment in terms of packaging, transport, storage, handling and disposal in accordance with rules and regulations, the Supplier is obliged to provide a corresponding safety data sheet in accordance with Section 14 of the Hazardous Substances Act and an accident procedure leaflet to the Buyer together with the quotation. The same applies for information regarding legal marketing restrictions. In the event of changes to materials and objects, the Supplier is obliged to provide amended data and fact sheets. The Supplier is prohibited from using carcinogenic substances. Before supplying hazardous substances, the Supplier must check for possible substitutes.
5. The Supplier's products must conform to the relevant statutory regulations of the European Union and the Republic of Austria, e.g. the REACH Regulation (Regulation EC No 1907/2006), the Waste Electrical and Electronic Equipment Ordinance (EAGVO) and the 2012 Amendment to the Waste Electrical and Electronic Equipment Ordinance transposing into national law Directive 2002/96/EC (WEEE). The Supplier shall immediately inform the Buyer of relevant changes to the goods caused by statutory regulations, in particular through the REACH Regulation,

their delivery capacity, possible uses or quality, and agree suitable measures with us on a case by case basis. The same shall apply as soon as and insofar as the Supplier recognises that such changes will occur.

6. Products and substances such as packaging materials that the manufacturer/distributor is legally required to take back after use must be taken back by the Supplier free of charge. The Supplier must set up corresponding return systems.
7. We maintain a DIN EN ISO 14001-compliant environmental management system to ensure both the sustainable environmental compatibility of our products and processes as well as the behaviour of our employees.
8. We encourage our suppliers and service providers to actively support us in achieving these goals within the scope of their operations. When procuring goods and services, environmental compatibility and the energy efficiency of products and services are therefore important purchasing criteria alongside price and cost-effectiveness. We reserve the right to verify this with our contractors by agreement in the course of quality audits.
9. The Supplier undertakes to comply with the respective statutory regulations on the treatment of employees, environmental protection and occupational health and safety and to work to reduce adverse effects on people and the environment in its operations. In addition to economic aspects, the energy efficiency of the products, facilities and services offered is a decisive factor in the awarding of our contracts.

IX. Defect inspection and warranty

1. The Supplier guarantees that its supplies and services are of the agreed quantity and quality, have the guaranteed properties and meet generally accepted technical standards.
2. The Buyer is obliged to check the goods for any deviations in respect of quality or quantity within a reasonable period of time; notification of defects is considered to be given on time provided that it is received by the Supplier within five working days, calculated from when the goods are received. For defects in goods, work and supplies that, in spite of careful inspection, are not immediately apparent or that only become apparent or noticeable when the goods supplied are used, notification of defects is considered to be given on time if it is received by the Supplier within five working days of discovery of the defect.

3. The Buyer is entitled to the full statutory warranty claims; regardless of this, it has the right to request, as it chooses, that the Supplier remedies the defects or supplies a replacement. In this case, the Supplier is obliged to bear all the costs necessary for the purpose of remedying the defects or supplying a replacement.
4. The Buyer is entitled to claim back tool costs that it has paid if the Supplier is unable to provide proof of faultless delivery on multiple occasions.
5. If the Supplier does not comply with a request to sort out, repair or make an additional delivery immediately (on the following working day), the Buyer can withdraw from the contract in respect of this and send the goods back at the Supplier's risk.

In urgent cases, the Buyer can carry out repairs itself or have them carried out by a third party. The Supplier bears any costs incurred as a result of this.

6. If the same goods are repeatedly supplied with defects, the Buyer also has a right of withdrawal for the deliveries that have not been made following a written warning upon repeated defective delivery.
7. The Supplier guarantees that it has full ownership of all the items contained in individual orders and that there are no conflicting third-party rights (such as rights of lien, other creditor's claims from the assignment of receivables or other loan collateral, sales of receivables, purchase subject to retention of title, etc.). The Supplier accepts liability for defects of title regardless of whether it is at fault.
8. On first request, the Supplier shall indemnify the Buyer against all third-party claims made on the grounds of defects or product damage in its deliveries that it was in part responsible for. The Contractor guarantees that it has adequate product liability insurance.
9. The warranty expires 24 months after delivery to the Buyer. If the statutory warranty period is longer, this applies.

For parts of a delivery that undergo maintenance or repair during the warranty period, the limitation period restarts at the point at which the Supplier fully satisfies the Buyer's claims to a legal remedy.

10. Unless otherwise stipulated above, the warranty corresponds to legal regulations.

X. Liability

1. The Buyer's right to claim damages is not affected by enforcing the aforementioned warranty claims. The Supplier is obliged to pay compensation for losses incurred as a result of breach of contract or a defect, including lost profits.
2. Unless another liability provision is laid down elsewhere in these Terms and Conditions, the Supplier is obliged to pay compensation as follows for losses that the Buyer incurs as a direct or indirect result of a faulty delivery, due to a violation of official safety regulations or for any other legal reason attributed to the Supplier.
 - a) If, on the grounds of its liability towards third parties regardless of whether it is at fault, a claim is made against the Buyer in accordance with non-mandatory law, the Supplier shall advocate for the Buyer insofar as it would also be held directly liable and indemnify the Buyer in this regard.

The principles of Section 1304 et seqq. ABGB (Allgemeines Bürgerliches Gesetzbuch [General Civil Code]) apply for the settlement of losses between the Buyer and the Supplier. This also applies in the event that a claim is made against the Supplier directly.

- b) In the event that the Buyer takes the appropriate, necessary measures to prevent damage, particularly a product recall, the Supplier is obliged to reimburse the costs of these measures in this respect or to indemnify the Buyer for these on request if it is responsible for the occurrence of circumstances due to which the measures had to be taken.

The Buyer shall inform the Supplier of the nature and scope of the measures to be taken (without this constituting a legal duty to do so) where it is possible and practical to do so and give it an opportunity to comment.

XI. Property rights

1. The Supplier guarantees that there are no third-party rights preventing proper use of the items supplied and, in particular, that no third-party property rights will be infringed. This applies for both the Supplier's home country and every other country.

If a claim is nevertheless made against the Buyer on the grounds of a possible infringement of third-party rights, e.g. copyrights, patent rights and other property rights, the Supplier shall indemnify it against this and any performance due in connection with this.

2. The above provisions do not apply if the Supplier has manufactured the goods supplied on the basis of documents, prototypes, models or similar specifications produced by the Buyer and did not know or was not required to know that property rights would be infringed as a result. However, the Supplier is obliged in such cases to review the matter of property right infringement using its technical and industry knowledge and to inform us of any concerns.
3. In the event that property rights are infringed, the Buyer also has the right to obtain the necessary licences for delivery, commissioning, use, etc. at the Supplier's cost, unless the costs are excessive.

XII. Assignment and offsetting

1. The assignment of receivables and claims from this contract by the Supplier is subject to prior written approval by the Buyer.
2. The Supplier can only offset an undisputed or legally established claim against a claim from a transaction conducted with it to which these Terms and Conditions of Purchase apply.

XIII. General provisions

1. 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.
2. 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.
3. Austrian law applies exclusively; the provisions of the UN Sale of Goods Convention do not apply.

4. If the Supplier is a merchant, a legal entity under public law or a special fund under public law or if it does not have a general domestic place of jurisdiction, the location of the Buyer's registered office is agreed as the exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship.