

Standard Terms and Conditions of Starrag AG, CH-Rorschacherberg

1.0 Scope

- 1.1 We place orders exclusively on the basis of our Standard Terms and Conditions. Deviating terms and conditions shall not become contents of the contract even if we have not expressly rejected such terms. Even we take delivery of supplies or services without express rejection, this is under no circumstances to be taken as meaning that we accepted any terms of delivery of the supplier.
- 1.2 When submitting an offer, the supplier must declare his acceptance of our Standard Terms and Conditions. If no such express declaration is made, execution of the purchase order is in any case taken to constitute acceptance of our Standard Terms and Conditions.
- 1.3 These Standard Terms and Conditions apply also to all future contractual relationships with the supplier.

2.0 Conclusion of contracts

- 2.1 If the supplier submits an offer on the basis of an enquiry from us, then he is to adhere strictly to the contents of our enquiry and must make express reference to any deviations. Offers must quote the enquiry number.
- 2.2 Only written purchase orders (POs) are legally binding. POs placed verbally or by telephone do not become legally valid until subsequently confirmed by us in writing. POs shall therefore only be deemed binding at the earliest when submitted or confirmed in writing. The same applies to any verbal collateral agreements or amendments to the contract. Deliveries or services performed without a written order will not be recognised by us.
- 2.3 Orders, delivery calls and any changes or amendments to such orders or calls may also be communicated via remote data transmission or machine-readable data media, subject to a prior written agreement to this effect. In case of informal business, the order is deemed to constitute a commercial letter of confirmation.
- 2.4 If the supplier does not accept a purchase order in writing within 14 calendar days after receipt, then we are entitled to withdraw the PO.
- 2.5 The submission of offers from a supplier is to be performed within obligation and free of charge for us. No remuneration is paid for visits or for the elaboration of offers, projects, etc., unless remuneration has been expressly agreed or else a statutory entitlement applies.
- 2.6 The following documents shall become parts of the contract in the order as specified below:
 - The order letter;
 - These Standard Terms and Conditions;
 - The Technical Specifications as per order letter;
 - The General Specifications and Standards of the orderer.
- 2.7 The supplier is to maintain confidentiality concerning the conclusion of a contract and must not make reference to a business relationship with us in any advertising materials unless we have given written consent.
- 2.8 The parties to the contract undertake to treat all commercial or technical details which are not evident and which come to their knowledge through the business relationship as commercial secrets. Subsuppliers are to be required to give corresponding undertakings.
- 2.9 If either of the parties hereto recognises that information which is to be kept confidential has passed into the hands of an unauthorised third party or else a document to be kept confidential has been lost, it undertakes to inform the other party hereto immediately.
- 2.10 We are permitted to demand changes to the subject of an order also after conclusion of a contract, insofar as this is reasonable for the supplier. In case of a change to a contract, reasonable consideration is to be given to the effects for both parties, in particular with regard to delivery dates and to increased or decreased costs.

3.0 Prices, shipping, packing

- 3.1 The agreed prices are fixed prices and exclude subsequent additional claims of all kinds. If no prices are specified in the purchase order, then the current list prices of the supplier shall apply, subject to the usual deductions. The form of pricing does not affect the agreement regarding the place of fulfilment. If no special agreement was concluded, the price terms are understood to be CPT to the place of use (acc. to INCOTERMS 2010).
- 3.2 The costs for packing and transport to the delivery address or place of use specified by us, as well as the costs for customs formalities and duties, are included in the prices.
- 3.3 If a price is agreed on the terms "ex works", "ex warehouse" or the like, then transport is to be entrusted to the regular forwarder prescribed by us. All costs arising up to the point at which the delivery is handed over to the carrier, including loading and portage, are to be borne by the supplier.
- 3.4 Shipping is performed at the risk of the supplier. The risk of deterioration, including also that of accidental loss, thus remains with the supplier until delivery to the delivery address or place of use requested by us.
- 3.5 Notification of dispatch is to be given at the latest when the goods are shipped.
- 3.6 The shipping address and our PO number must always be specified in dispatch notes or delivery notes, consignment notes, addresses on parcels, invoices and all correspondence.

- 3.7 We will only accept the ordered quantities and numbers. Deliveries of greater or lesser quantities are only permissible if a prior agreement has been made to this effect with us.
- 3.8 The obligation of the supplier to take back any packing is governed by the statutory regulations. Goods are to be packed such that transport damage is avoided. Packing materials are only to be used to the extent necessary to achieve this purpose. Only environment-friendly packing materials are to be used. If, in exceptional cases, we are invoiced separately for packing, then we are entitled to return packing which is in good condition to the supplier carriage paid against remuneration amounting to 2/3 of the value to be derived from the invoice for this packing.

4.0 Invoicing and payment

- 4.1 Invoices are to be submitted in duplicate in proper form after performance of the delivery and are to be accompanied by all corresponding documents and data. Invoices not properly submitted shall only be deemed received by us from the time of correction. We reserve the right to refuse performance until a proper invoice is submitted. Decisive for the due payment are the actual quantities, weights or other units on which the delivery is based, and the agreed prices.
- 4.2 Where certificates of materials testing are agreed, these certificates constitute an integral part of the delivery and are to be sent to us together with the delivery. Otherwise, they must be received by us at the latest 5 calendar days after receipt of the invoice.
- 4.3 Unless agreed otherwise, payment is to be effected either within 14 calendar days with 3% discount, within 30 days with 2% discount or in 60 days net without deductions.
- 4.4 The term for payment commences from receipt of an invoice, but not before receipt of the goods or performance of the services, and if documentation and test certificates are to be included in the scope of supply, not before receipt by us in accordance with the contract.
- 4.5 The settling of an invoice does not constitute waiving of the entitlement to notify a defect in the invoiced goods. In case of faulty or incomplete delivery, we are entitled to retain a portion of the payment of corresponding value until proper performance.
- 4.6 In case of advance payments, the supplier is to provide reasonable security in the form of a bank guarantee as per our model.

5.0 Delivery dates, delivery delays, force majeure

- 5.1 The agreed delivery dates are binding; the supplier falls into default as soon as a fixed delivery date is exceeded, without being us required to issue a reminder. Decisive for observing of a delivery date or delivery period is the receipt of the goods at the delivery address or place of use specified by us. If acceptance is required, then the supplier falls into default without reminder if the delivery or service is not performed by the agreed date in such a form that acceptance cannot be refused.
- 5.2 If the supplier recognises that delivery is not possible by the agreed delivery date, whatever the reason, then he must inform us in writing without delay, specifying the reasons and the probable duration of the delay.
- 5.3 If the supplier fails to meet the agreed delivery date and falls into default, we are entitled to demand penalty amounting to 0.10% of the total order value per working day, but no more than 5% of the total order value. The penalty is to be offset against any claim for default damages.
- 5.4 In addition to the penalty, we are entitled to demand compensation for any damage arising from the delay in delivery. The forfeited penalty will be offset in this case.
- 5.5 In case of failure by the supplier to meet a deadline specified by us, we are entitled at our discretion either to demand compensation for damage in lieu of performance or to obtain replacement from a third party or to withdraw from the contract. Our entitlement to demand performance of the supplies/service shall be forfeited if we demand compensation in lieu of performance or declare to withdraw from the contract.
- 5.6 The supplier may only plead that necessary documentation was not provided by us if a written reminder to supply the documentation was issued to us and the documentation was not received within a reasonable period.
- 5.7 Force majeure and industrial actions release the parties to the contract from their obligations to perform for the duration of the disturbance and the extent of its effects. The parties to the contract are obliged, to the extent which is reasonable, to provide all necessary information without delay and to adapt their obligations in good faith to the changed circumstances.
- 5.8 We are released, in part or in full, from our obligation to take delivery of the ordered supplies/services and are entitled to withdraw from the contract to the extent to which - also from an economic point of view - the supplies/services are no longer usable by us due to the delay arising from the force majeure or industrial action.
- 5.9 If a delivery is effected earlier than agreed, then we reserve the right to return the goods at the expense of the supplier. If a premature delivery is not returned, then the goods are taken into storage with us at the expense and risk of the supplier until the delivery date. In case of premature delivery, we reserve the right not to effect payment until the agreed due date.
- 5.10 We accept partial deliveries only after a prior express agreement. In case of partial deliveries, the remaining quantities are to be specified.

6.0 Equipment provided by us

- 6.1 Any materials and equipment provided by us shall remain our property. The risk of perishing, loss or damage shall pass to the supplier upon receipt of the materials and equipment provided by us.
- 6.2 The supplier undertakes to inform us immediately in case of an impending attachment or any other impairment of our property by third parties and to mark the objects as being in our property as our property and to store them separately where necessary.

7.0 Models, tools, documents

- 7.1 The title to any models or tools manufactured by the supplier at our expense shall pass into our property after payment. The supplier undertakes to treat and store them carefully and to insure them at his own expense against perils, such as fire, water, theft, loss and other damage. The sale of parts manufactured using these models and tools is not permitted without our prior written permission.
- 7.2 All drawings, plans, diagrams and sketches handed over to the supplier for manufacturing of the ordered products shall remain our property. The supplier undertakes to treat such documents with care, not to make them available to any third parties, to make copies only to the extent necessary for the purposes of the purchase order concerned and to return all documents, including any copies made thereof, to us after performing the delivery.

8.0 Guarantee, warranty

- 8.1 The agreed specification is an integral part of the order and can only be changed by mutual agreement. The term "specification" is here understood to refer also to drawings or to any description of the scope of delivery which can be deemed binding.
- 8.2 The supplier guarantees that all supplies/services comply with the latest state of the art, the relevant legal stipulations and the regulations and guidelines of authorities, health and safety organisations and industrial associations.
- 8.3 If we advise the supplier of the intended application and relevant data of the product to be delivered, the supplier agrees to guarantee fitness of the product for the intended application.
- 8.4 If deviations from such provisions are necessary in an individual case, then the supplier must obtain our written approval. The warranty obligation to be given by the supplier shall not be limited in any way by this approval.
- 8.5 If the supplier holds reservations regarding the form of performance requested by us, then he must inform us accordingly in writing without delay.
- 8.6 Furthermore, the supplier guarantees that all supplies/services are free from rights of third parties and he has an unlimited right of disposal.
- 8.7 The supplier undertakes, within the framework of his economic and technical possibilities, to use environment-friendly products and methods for his supplies/services and to have such products and methods used for sub-supplies and auxiliary services. The supplier is liable for the environmental compatibility of the supplied products and packing materials, as well as for all consequential damage arising from violation of your statutory obligations with regard to disposal.
- 8.8 If requested by us, the supplier is to issue a certificate of inspection for the supplied goods.
- 8.9 The supplier agrees to hand over the relevant material safety data sheets with the delivery. He furthermore agrees to indemnify us against any recourse claims of third parties where he fails to deliver the safety data sheets to us or delivers them with undue delay or provides incorrect safety data sheets. The same also applies for any later amendments.
- 8.10 The supplier agrees to rectify any faults or defects in the supplies/services which are reported in the form of a complaint during the warranty period, including also the failure to achieve guaranteed data and the absence of warranted properties, immediately and free of charge, including all ancillary costs, by way of repair or replacement of the defective parts, or redelivery at our discretion.
- 8.11 After failure to meet a reasonable deadline for remedy or redelivery specified by us, we shall also have the statutory rights to withdraw from the contract or reduce the purchase price.
- 8.12 We reserve the right to assert claims for compensation in all cases. Any faults or defects, in particular those which are revealed during the processing will be rectified in urgent cases or for the purpose of mitigation at our works at the expense of the supplier; in such a case, the supplier agrees to reimburse our costs.
- 8.13 Any goods delivered not in accordance with the terms and conditions of the contract can at our choice either be returned or stored at the expense and risk of the supplier.
- 8.14 If the supplier culpably fails to meet his obligations arising from the liability for defects within a reasonable time specified by us, the required measures can either be taken by us at the expense and risk of the supplier or else we are entitled to have these measures taken by third parties. In urgent cases and in agreement with the supplier, we can also perform remedy ourselves or have remedy performed by a third party. Minor faults or defects can be rectified by ourselves without prior agreement within the framework of fulfilment of our obligation regarding mitigation, without this constituting any limitation of the obligations of the supplier with reference to his liability for defects. We can then also charge the appropriate expenses to the supplier. The same also applies if extraordinarily extensive damage is imminent.

- 8.15 The right to choose the form of remedy performance is always reserved by us, also in case of service contracts unless the supplier holds an entitlement to refuse remedy performance or we choose a right to remedy which is unreasonable for the supplier.
- 8.16 The warranty period shall be 36 months unless expressly agreed otherwise. It shall commence with the handing over of the delivery to us or the third party nominated by us at the specified place of receipt or use. In the case of fixtures, equipment and machinery, the period of warranty shall commence with the date of acceptance specified in our written declaration of acceptance. If the acceptance is delayed without negligence on the part of the supplier, then the warranty period begins at the latest 12 (twelve) months after the date on which the delivery was made available for acceptance. The warranty period for buildings and construction materials depends on the relevant legal regulations; for spare parts, it shall be 36 months after installation/commissioning and ends 48 months after delivery at the latest.
- 8.17 For any parts of the delivery which cannot remain in operation during the investigation and/or remedy of a defect, the warranty period is extended by the period of the interruption of operation.
- 8.18 The period of warranty for repaired or redelivered parts shall restart with the end of the remedy or - if an acceptance is agreed - with the acceptance. If appropriate the acceptance is to be applied for with us in writing.
- 8.19 If an official acceptance of the work or materials is prescribed, it shall be performed at the works of the supplier.
- 8.20 The supplier guarantees that equipment, machinery and installations are designed for a service life of at least 10 years and that spare parts will be available for this period after delivery of the equipment, machinery or installation.
- 8.21 In case of legal defects, the supplier agrees to indemnify us in respect of all claims which may be asserted by third parties, insofar as he is responsible for such claims.
- 8.22 Appropriate mounting and commissioning instructions, maintenance instructions, etc. for delivery items whose handling, processing and/or installation is not generally known are to be handed over to us also without any special request being made on our part, at the latest upon delivery of the items, with reference to the purchase order number. In case of failure to provide such instructions, the supplier shall also be liable for damage which arises due to improper handling, processing and/or installation.

9.0 Product liability

- 9.1 If a claim is asserted against us due to a violation of official safety regulations or on the basis of national or foreign product liability regulations or acts due to a defect in the product which is attributable to the goods supplied by the supplier, then we are entitled to demand reimbursement from the supplier for the damage suffered, insofar as this was caused by the products supplied by the supplier. This damage is deemed to include also the costs of precautionary product recalls.
- 9.2 Where a defect or fault occurs on a part supplied by the supplier, it is assumed that the fault or defect lies exclusively within the sphere of responsibility of the supplier.
- 9.3 The supplier agrees to mark the delivery items such that they are permanently recognisable as the products of the supplier.
- 9.4 The supplier is to implement quality assurance of a suitable kind and scope in accordance with the latest state of the art and is to demonstrate this implementation to us upon request. The supplier is to conclude a quality assurance agreement with us, insofar as we deem this to be necessary.
- 9.5 The supplier agrees to guarantee permanent quality assurance by way of appropriate checks and inspections during the manufacturing of the delivery items. The supplier agrees to elaborate a documentation about the inspections in accordance with DIN-ISO 9001 to 9004. We are entitled to ourselves verify performance of the checks and inspections at the site, where necessary also on the premises of sub-suppliers. Any expenditure which becomes necessary to rectify defects, and the transport risks, shall be borne by the supplier.
- 9.6 Furthermore, the supplier is to obtain insurance to an appropriate amount against all risks arising from product liability, including the risk of a necessary product recall, and is to present the policy to us for inspection upon request.

10.0 Industrial property rights

- 10.1 The supplier guarantees that all deliveries are free of industrial property rights held by third parties, and in particular that the delivery and use of the goods does not violate any patents, licences or other industrial property rights held by third parties.
- 10.2 The supplier agrees to indemnify us and our customers from any claims of third parties from an alleged violation of protected privileges and also agrees to bear all costs incurring for us in this connection.
- 10.3 We are entitled to obtain the permissions to use the appropriate supplies and services from the authorised person at the supplier's expense.

11.0 Accident prevention

- 11.1 If the supplier is to render the services on our premises, he agrees to ensure that his legal representatives or agents will observe all accident prevention rules and the relevant regulations of the trade associations.

- 11.2 The supplier is liable for any damage incurred by us, our employees or third parties as a result of insufficient instruction or failure to properly observe the protective regulations.

12.0 Liability

- 12.1 The supplier is liable in accordance with the statutory regulations for all forms of breach of contract, insofar as no other provisions are made in these Standard Terms and Conditions.
- 12.2 The supplier shall be liable within the framework of the statutory regulations for any damage (personal injuries, material damage and financial losses) which is incurred by us and / or our end customers by way of culpable action on the part of the supplier, his agents and/or employees. In case of doubt, the burden of proof that the supplier and his employees are not to be blamed for the circumstances resulting in the damage shall be borne exclusively by the supplier.
- 12.3 The supplier shall be liable for any damage resulting from failure to comply with the above-mentioned obligation. Furthermore, the supplier agrees to indemnify us immediately in respect of any claims of third parties resulting therefrom.
- 12.4 The risks resulting from the delivery, installation and commissioning are to be insured by the supplier for an amount of at least € 1.5 million for personal injuries, material damage and financial losses. This shall have no effect on the extent of liability.

13.0 Foreign business

- 13.1 If the supplier has his offices abroad, then the following provisions shall apply additionally:
- 13.2 The relationship between the supplier and us is governed exclusively by Swiss material law.
- 13.3 An offer is always only to be considered accepted after the offering party has received a corresponding declaration of acceptance or after the offering party has gained knowledge of an action on the part of the receiving party which can be considered an indication of consent.
- 13.4 If we assert the cancellation of the contract due to a delay in delivery, then we shall be entitled to effect a covering purchase within a period of 6 months. The difference in the price is to be borne by the supplier.
- 13.5 If the goods or services lack any of the features or properties defined in the specification, then this constitutes a fundamental breach of contract.
- 13.6 Goods are to be inspected within 4 weeks after handing-over at the place of use, but at the latest 8 weeks after handing-over at the place of fulfilment.
- 13.7 Defects must be notified within 4 weeks after the defect is discovered or else ought to have been discovered.
- 13.8 Also in case of minor breaches of the contract, we are entitled to request rework, repair or replacement delivery at our discretion, and, where appropriate after expiry of a stipulated period, compensation of damage, reduction of the purchase price or cancellation of the contract.
- 13.9 A statutory term of preclusion is not shortened by a contractual warranty period.
- 13.10 Insofar as a defect is notified in good time, we are entitled at any time within the warranty period or within the statutory period of preclusion to demand cancellation of the contract, reworking or a replacement delivery when the stipulated period is expired.
- 13.11 Insofar as we hold a claim against the supplier for compensatory damages, this claim is not limited.
- 13.12 Payments are considered effected in good time insofar as the order for bank transfer is issued before or on the last day of the period for payment.
- 13.13 Should any provision under Clause 13 contradict any of the remaining Standard Terms and Conditions, then the provision under Clause 13 is to prevail.

14.0 Final provisions

- 14.1 If any part of these General Purchasing Terms is shown to be legally ineffective, this shall not affect the effectiveness of the remaining provisions. Any ineffective or impracticable provisions shall be deemed replaced by valid or enforceable provisions which come economically as close as possible to the purpose and intention of the ineffective or impracticable provision. The same also applies for any gaps in the provisions.
- 14.2 The supplier is not entitled, except with our prior written consent, to subcontract the order or significant parts of the order to third parties.
- 14.3 Unless expressly agreed otherwise, the place of fulfilment for delivery obligations is the delivery address or place of use specified by us; for all other obligations of both parties the place of fulfilment is Meyrin.
- 14.4 The supplier is not entitled, except with our prior written consent, which may not be refused without good reason, to assign his claims against us.
- 14.5 If the supplier ceases his payments, a preliminary receiver in the insolvency proceedings is nominated, insolvency proceedings are opened against the assets of the supplier or protests are lodged against bills or cheques of the supplier, then we are entitled to withdraw from the contract fully or partially without this founding any claims against us.

- 14.6 For all disputes arising from the contractual relationship, insofar as the supplier is a registered trader, a legal entity under public law or a public trust, actions are to be filed at the court responsible for the head offices of us. We are also entitled to file actions at a court responsible for the head offices of the supplier.
- 14.7 The language for the contract shall be either German or French. Where the parties to the contract make use of any other additional language, the German or French wording is to prevail.
- 14.8 The legal relationship is governed by the Swiss material law, to the exclusion of the UN Sales Convention (CISG).

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