

I. Conclusion of Contract

1. All sales made by SPIR STAR® AG (referred to hereinafter as “we” or “the seller”) shall be subject to the following Terms & Conditions of sale, delivery and payment. We herewith explicitly object to any other terms and conditions. The following Terms & Conditions become valid at the moment of acceptance of delivery. Any agreements varying from these Terms and Conditions, whether made by phone, email or verbally as well as in electronic form will not be binding, unless confirmed in writing and signed by an officer or other authorized representative of the seller.
2. All offers, order confirmations, deliveries and services of the seller are strictly based on these Terms and Conditions only and shall also be valid for any future business relations, even if they have not specifically been re-agreed on.
3. No orders of the buyer shall be deemed accepted unless confirmed in writing by the seller.
4. Any brochure, catalogue, flyer or advertisement-based information regarding weight, dimensions, price, services etc.; as well as any illustrated matter and price lists are of informational purpose only and may not be binding unless specifically referred to by contract.

II. Pricing and Payment

1. All prices are stated in Euro unless otherwise agreed in writing, plus statutory VAT, packing, freight charges and other shipping expenses. Any risk of currency fluctuations is with the buyer.
2. The seller reserves the right to deliver on a cash-on-delivery (C.O.D.) basis.
3. In the event that the time between conclusion of contract and actual delivery exceeds four (4) months, the seller reserves the right to charge the price valid at time of delivery, should any changes in price concerning production and procurement costs or other similar cost be incurred during that period of time.
4. All invoiced amounts are to be paid in full within 30 days of invoice date.
5. If the buyer, who is a fully qualified merchant under the German Commercial Code, is in default of payment, the seller reserves the right to charge statutory interest on the amount past due, unless the buyer has incurred an even bigger loss of interest. In that case the seller reserves the right to claim further damages caused through default of payment. The customer is not entitled to exert a right of retention or exercise the right of set-off unless acknowledged and undisputed claims exist for which no further legal recourse is possible.
6. Payment is considered complete upon receipt of the respective amount by the seller.
7. The seller is not obliged to make any further deliveries under any contract with the buyer, until full payment of all due amounts, including interest, have been received. The seller shall be entitled to immediately request all receivables for deliveries made to date, despite any other due date agreements that may exist, should the buyer be in default of payment.

III. Delivery

1. Specified dates and deadlines are non-binding and approximate, unless expressly agreed otherwise in writing. Call-off orders or blanket orders require separate delivery agreements.
2. Expedited deliveries and resulting additional costs shall be the responsibility of the buyer.
3. The seller reserves property- and copyrights, as well as other industrial property rights regarding any products, illustrated matters, drawings and other documentation provided by the seller. The latter must not be made available to third parties and have to be returned immediately, should the order not be placed.
4. Unforeseen delays in delivery due to force majeure, strike, operational interruption in the seller's plant or that of an upstream supplier, transport difficulties etc. shall entitle the seller to either extend the delivery period by the time it takes to remove the temporary obstruction plus a reasonable start-up time or, optionally, to withdraw from the contract, provided it is not yet completed. The same applies if official permits or permits from third parties necessary for the implementation of trade approvals and deliveries, as well as documentation from the buyer or third parties commissioned by the buyer are not received by the seller in good time.

5. In these cases the buyer shall only be entitled to withdraw from the contract if the stipulated delivery period plus the duration of the event of force majeure plus a reasonable grace period have been exceeded. The right to an early withdrawal may only be granted if the seller gives written notice that he cannot fulfil delivery or respectively can no longer fulfil it. The above mentioned limitations do not apply to firm transactions.
6. If the seller is in delay with a delivery for which a date of delivery has been agreed upon in writing, the buyer shall be entitled to withdraw from the contract after having set a grace period of at least 14 days, unless a deadline is exceptionally expendable.
7. If the buyer does not accept delivery – without legal reason – within the period contractually agreed on, he shall still be responsible for payment as if delivery was accepted.
8. If the buyer for any reason fails to accept delivery, the seller may withdraw the contract referring to the non-accepted part of the delivery item by means of simple written notice and request compensation from the buyer for any loss caused by non-fulfilment of contract.
9. Goods manufactured upon special request or specification by the buyer must always be accepted and paid for by the buyer

IV. Shipping

1. Place of fulfilment shall be the seller's premises.
2. The delivery of goods will be by Inco term free carrier (FCA) Rimbach. The buyer shall bear the packing as well shipping costs. Underlying incoterms as well as derogations incoterms are confirmed on all documents (quote, order confirmation, delivery note and invoice).
3. If the seller ships the goods upon the buyer's request to a location other than the place of fulfillment, the risk shall pass to the buyer as soon as the goods are transferred to the forwarding agent, the carrier, or any person or dispatching authority charged with the shipment (section 447 German Civil Code [BGB]).
4. If delivery is delayed due to circumstances beyond the seller's control, the risk shall pass to the buyer the day the delivery is ready for shipment.

V. Warranty

Liability for defects:

The Seller shall be liable for the products being free from material defects. The Seller's products shall be deemed free from defects when they have the quality agreed upon the passing of the risk. This shall also apply in the event of minor defects. The Buyer shall be obliged to thoroughly inspect the products for defects and to inform the Seller in writing without delay should the Buyer detect any defects.

1. The liability under the product liability law of the Federal Republic of Germany shall be effective without restrictions. This shall also apply in the case of the absence of properties that as an exception have explicitly been guaranteed (section 443 German Civil Code [BGB]) if the guarantee was intended to protect the buyer against damages that did not originate in the delivery itself.
2. The statutory period of limitation of warranty claims (particularly section 438 paragraph 1 no. 3 BGB) is limited to one (1) year. Cases of wilful deception are excluded. The beginning of the period of limitation is governed by the law.
3. The buyer is obliged to examine the delivered goods immediately upon receipt for their proper condition. Any defects shall be reported to the seller immediately, or no later than twelve (12) working days after receipt of delivery by means of a written document indicating the designated defects. If the buyer fails to report such defects, he shall lose any right to claim warranty for obvious defects. This shall also apply to samples sent.
4. The buyer is responsible to determine whether the goods ordered from the seller are suitable for the users intended purpose. The non-suitable goods shall only be determined as defective if the seller has confirmed the suitability to the buyer in writing.
5. Hidden defects must be reported in the same way within three (3) days after discovery and no later than one (1) year after passing of risk.
6. On receipt of such notification the seller shall remedy the defect as soon as possible. For this purpose the buyer shall return the defective parts to the seller for repair or replacement. In such an event the seller's obligation of guarantee regarding the defective part shall be deemed fulfilled when he delivers the duly repaired part or a replacement to the buyer.

- 7. Hoses are wear parts. It is the buyer's duty to prove the defectiveness of the purchased item and to produce evidence that the defect was not caused by wear and tear or mishandling.
- 8. The seller's obligation under warranty shall apply only to defects arising during proper use. No warranty shall be granted for any damages resulting from the following: Unsuitable or improper use, incorrect placing in service by the customer or third parties, natural wear and tear, faulty or negligent handling, improper media and replacement materials as well as chemical, electrical and similar influences, provided they were not caused through the seller's negligence.
- 9. The warranty/liability for defects shall be excluded, if the buyer has processed or sold the goods after discovery of the defect or after discovery should have taken place, unless the buyer can prove that processing or sale was necessary to prevent even greater damage.
- 10. The buyer's right to claim damages for indicated defects shall lapse in all cases within six (6) months from the time of complaint, but not before the expiration of warranty.
- 11. Partial defects of the goods shall not entitle to rejection of the entire delivery. Any defects which might arise shall not entitle the buyer to withhold payment to the seller.
- 12. The seller's obligation under the warranty shall be restricted, at his choice, to repair or replace. After reaching an understanding with the seller, the buyer shall allow the seller the time and opportunity required to perform all improvements and replacements deemed reasonably necessary. Should the Seller fail to rectify the defects in a second attempt, the Buyer, at its option, shall have the right to reduce the price or withdraw from the contract. Apart from that, seller's liability for any resulting consequences shall be excluded with the exception of damages to life, body and/or health.
- 13. If goods are manufactured according to the buyer's specifications (drawings, etc.), the warranty shall only cover the production being carried out in accordance with the specifications provided by the buyer.
- 14. The seller shall not be liable or assume responsibility for any assemblies or installations carried out by third parties commissioned by the buyer, or by the buyer himself. The liability/responsibility shall be borne by the party directly involved with the assembly or installation.

VI. Retention of Title

- 1. The seller retains title to the delivered goods until full payment of all outstanding balances has been received and any negative balance of buyer's current account has been settled. If the goods are resold, the buyer shall hereby assign to the seller his future accounts receivable from the subsequent buyer of the goods up to the amount of the seller's claims under this contract. The buyer shall remain responsible to collect the assigned accounts receivable within the normal course of business unless the seller revokes this authorization. The seller shall be entitled at any time to such revocation and disclosure of assignment.
- 2. The buyer is entitled to continue processing or selling the reserved goods in the normal course of business. If the buyer processes the seller's goods, the seller becomes the manufacturer within the meaning of section 950 German Civil Code. If the value of the manufactured goods is considerably higher compared to the previous value of the seller's goods, the seller jointly becomes the manufacturer together with the buyer. In this case the seller's ownership of the manufactured goods shall be limited to the portion corresponding to the value of the seller's processed goods. The buyer's claims from the resale of the reserved goods shall be assigned to the seller (including security rights), regardless of whether the reserved goods be processed or not, and whether they will be sold to one or more buyers.
- 3. Samples and drawings shall remain the property of the seller, even if the buyer takes over all or part of the designated cost.

VII. Set-off, Retention, Limitation of Liability

- 1. Claims for damages against the seller, his employees and/or representing agents that are due to slight negligence and do not involve compensation for injury to life, body, and/or health shall be excluded as far as legally possible. It is irrelevant whether or not the damages arise from breach of contract or breach of secondary contractual obligations (e.g. section 280 or section 241 paragraph 2 German Civil Code), from tort or from the liability of the producer (because of design, manufacturing, and information errors as well as errors in product monitoring [e.g. section 823 German Civil Code]). The duty of replacement under the product liability act is not excluded.

2. In the case of a culpable violation of essential contractual obligations (cardinal duties) liability shall also be assumed for the negligence by an organ or manager, limited, however, to the contract-typical, reasonably foreseeable damage. This limitation does not apply in case of injury to life, body and/or health.
3. In cases of permissible limitation of liability for non-gross negligence, the value of the contract-typical, reasonably foreseeable damage amounts to not more than 5% of the contractual value. This limitation shall not apply in case of injury to life, body and/or health.
4. The liability under the product liability law of the Federal Republic of Germany is unlimited.
5. The unlimited liability also applies in the absence of properties that as an exception have been guaranteed if the guarantee was explicitly intended to protect the buyer against damages that did not occur to the delivery item itself.

VIII. Governing Law and Dispute Resolution

1. Place of fulfilment is Rimbach-Mitlechtern. Place of jurisdiction is the regional court in Darmstadt if the buyer is a merchant or a legal entity under public law or a special fund regulated by public law.
2. The contractual relationship between the parties shall be subject to and governed by the law of the Federal Republic of Germany excluding the UN sales convention (CISG).
3. Should a provision be or become invalid, all other provisions shall remain unaffected. In such cases the parties shall be obligated to cooperate in the creation of provisions that will achieve economical results as similar as possible to the invalid provisions in a legally effective way.