

General Conditions of Sale and Delivery for Stela Laxhuber GmbH



1. Applicability of the General Conditions of Sale and Delivery

Quotations from the supplier, order acceptance and all deliveries shall be made exclusively on the basis of the following "General Conditions of Sale and Delivery". This document represents an explicit rejection of the buyer's terms and conditions of purchase, which shall not be binding on the supplier even if not rejected a second time in the course of concluding a contract. Other documents or provisions shall only apply where the supplier expressly agrees in writing that the buyer's terms and conditions are valid. The following General Conditions of Sale and Delivery apply subject to different agreements between supplier and buyer.

2. Quotations and conclusion of contract

- a) Quotations from the supplier are subject to change and to written confirmation by the supplier, unless a different course of action has been explicitly agreed in writing. Acceptance of contracts concluded by travelling sales staff or representatives is reserved, and is likewise subject to written confirmation from the supplier. The definitive document in determining the scope of the delivery and the conclusion of the contract is the written order confirmation from the supplier. Documents which form part of a quotation, such as images, drawings, weight information and detailed descriptions are not binding, and are only intended to provide an approximate description and definition of the delivery item. The same applies for performance and consumption data. Such data does not represent a guarantee of the characteristics or service life of the delivery item. The supplier reserves the right to change the weights and dimensions of the delivery item up until the point of delivery.
- b) The buyer has the responsibility for obtaining, at their own cost, planning permission (if necessary) or any other official authorisations which may be necessary. On request from the supplier, the buyer must be able to provide written proof that such authorisations have been obtained.
- c) The supplier reserves ownership and copyrights on all images, drawings, quotations and other documents such as brochures and catalogues. Any use which is not covered by the underlying contract, as well as the provision of this information to third parties, requires express written permission from the supplier.

3. Prices and payments

- a) Prices are quoted ex-works, without packaging and not for repeat orders. Packaging will be invoiced separately. Framework contracts are not affected by these provisions; corresponding conditions must be agreed upon separately.
- b) Prices are based on the production costs at the time when written confirmation was received from the supplier. Should these production costs increase before the time of delivery due to increases in tax, costs for raw materials, supplies, energy, carriage or wages, the supplier is entitled to adjust the agreed price accordingly. Such a price increase may not be used by the buyer as a reason to withdraw from the agreement.
- c) If the agreed delivery period is more than four months after the contract is signed or if the delivery only occurs more than four months after the conclusion of the contract for reasons which are the responsibility of the buyer, the supplier is entitled to invoice the actual costs incurred in performing the delivery.
- d) On receipt of the invoice, the agreed price for delivery plus the statutory value-added tax is due, irrespective of any other agreement made. Payments may not be made to travelling sales staff or representatives from the supplier unless they have a written collection authorisation. Costs for packaging, shipping and installation are due immediately upon receipt of the invoice. If several bills are outstanding, payments will first be offset against older claims. If costs and interest have already been incurred, payment will first be allocated to costs, then to interest, and finally to the principal debt, again starting with the oldest invoice.
- e) Set-off against counterclaims is only permitted for undisputed, legally established or accepted claims. The buyer is only entitled to exercise a right of retention with undisputed, legally established or accepted counterclaims as well as with those based upon the same contractual relationship.

4. Default

- a) If payment deadlines are not met or the term is extended retroactively, the statutory interest rate will be charged.
- b) If the buyer fails to honour a cheque or bill, or if the supplier becomes aware of a considerable deterioration in the circumstances of the buyer which is likely to endanger a claim for payment, the entirety of the outstanding debt shall be due, even if some bills have a later due date. If the entire remainder of the debt is not paid immediately, the buyer forfeits the right to use the delivery item. The supplier is entitled to either take back the delivery item without any relinquishment of their financial claims until these are satisfied or to withdraw from the contract. If such circumstances come to light after the contract is signed but before the delivery is made, the supplier may refuse to provide the agreed services and demand that payment be made concurrent with delivery, even if other conditions and terms of payment have been agreed. Alternatively, the supplier may demand that a deposit be paid.
- c) If the buyer still fails to discharge their payment obligations after receipt of a written warning stating a reasonable grace period for payment, the supplier is entitled to reclaim possession of the delivery item or to withdraw from the contract. In cases where a part-payment agreement is made, under the applicable legal requirements, the supplier may withdraw from the contract if the buyer defaults on payment.
- d) If the supplier withdraws from the contract, they are still entitled to claim damages in place of payment or expenses incurred in vain, provided the supplier first allows the buyer a reasonable payment period to no avail. Insofar as the supplier demands damages in place of payment, they are entitled to charge a lump-sum of 25% of the agreed purchase price without deduction. The supplier remains at liberty to demonstrate and assert a claim for a higher level of damages, while the buyer is also free to prove that there was no such damage or that the cost to the supplier was considerably less than the lump-sum requested. This also applies if the buyer is in default on payment, as well as on receipt of the goods or in the case of another duty to cooperate.
- e) If the buyer withdraws from the contract after delivery of the goods, in addition to the return of the goods, the supplier has an entitlement to compensation for granting the buyer the right of use. This entitlement is independent of claims for damages and reimbursement of futile expenditures.
- f) All above provisions also apply in cases where the end customer is supplied directly by the supplier at the behest of the buyer.

5. Delivery time

The agreed delivery period begins on the day the order confirmation is sent and is applies as having been adhered to if the goods have left the factory by the end of the delivery period. The delivery period shall be extended by a reasonable period in the case of labour disputes, particularly strikes and lock-outs, and if any unforeseen hindrances should occur, such as disruptions to business, raw materials shortages, traffic congestion, etc., which are beyond the control of the supplier. This shall only apply if such hindrances have a considerable, demonstrable influence on the completion or delivery of the delivery item. This is also applicable if such circumstances occur at the upstream supplier or subcontractor. The supplier is not responsible if the above circumstances occur during an existing delay, either. The supplier's adherence to the delivery period is dependent on the buyer's fulfilment of contractual obligations. Storage costs shall be charged in the amount normally paid for warehouse rent at the supplier's site. The delivery period shall not begin if the documents, authorisations and approvals to be provided or procured by the buyer have not been received or any agreed deposit has not been paid. If the delivery period is changed at the request of the buyer, they are obligated to compensate the supplier for any storage costs incurred.

6. Shipping

Irrespective of any other arrangement, all shipments shall be made according to the supplier's best judgement at the cost of the buyer. The supplier reserves the right to the choice of method of dispatch, and no claims against the supplier may be derived from this choice.

7. Shipments sent abroad

Shipments which are sent to foreign countries may also be subject to General Conditions of Sale for Export and other special arrangements. Moreover, incoterms 2000 apply as agreed, and the supplier is entitled to resort to these.

8. Transfer of risk and acceptance

On handover of the goods, the risk passes from the carrier to the buyer, regardless of whether the carrier was contracted by the supplier or the buyer, and even in the case of partial deliveries or if the supplier has provided other services, irrespective of any other arrangements. If there is a delay in shipment - which according to the choice of the supplier may occur by rail or by a haulage company - based on circumstances for which the buyer is responsible, the risk shall be transferred to the buyer from the day that the goods are ready for dispatch; the supplier is, however, obligated to purchase whatever kind of insurance that the buyer may demand, at the cost of the latter. Any costs incurred in storing the goods must be borne by the buyer. Delivered items must be accepted by the buyer notwithstanding the rights stated under point 9, even if they have minor defects. Partial deliveries are permitted.

9. Warranty

If the delivery contains defective items, the supplier has the choice to either repair them or replace them through the delivery of new goods which are free of defects. The replaced parts become the property of the supplier. In cases where a repair is carried out, the supplier is obligated to bear all expenses involved in performing the repair - in particular those for transport, travel, labour and parts - provided that these costs are not increased by the delivery items being moved to another location than that provided for in the contract. If this supplementary service is not provided, the buyer is entitled to withdraw from the contract or to demand a reduction in price, as they see fit. No warranty claims will be entertained for damage occurring as a result of improper installation, care, normal wear and tear or replacement materials, provided that responsibility for these cannot be traced back to the supplier. The supplier also assumes no responsibility for modifications or repair work carried out in an improper manner by the buyer or by a third party without prior approval from the supplier.

10. Statutory limitation

Warranty claims are subject to the statute of limitations after a period of one year from delivery of the goods. However, the legally-prescribed limit applies in accordance with the law on claims for material defects on buildings and property for buildings (Gesetz für Sachmängelansprüche bei Bauwerken und Sachen für Bauwerke), which defines the right of recourse of the buyer according to § 478, 479 BGB (German Civil Code) or specifies longer limits for building defects. This statutory limitation also applies to cases involving injury to health, life or limb, wilful or grossly negligent breach of duty by the supplier and any attempt to fraudulently conceal the defect.

11. Joint liability

Other claims for payment or reimbursement of expenses from the buyer, on whatever legal basis - particularly those due to breach of duties arising from the contractual relationship or from tortious acts regarding the requirements defined under point 9 - are excluded. This does not apply in situations where the supplier's liability is mandatory by law, e.g. according to the German Product Liability Act (Produkthaftungsgesetz), in cases of wilful intent, gross negligence, due to injury to health, life or limb, or due to the breach of key contractual duties. Claims for damages due to the breach of key contractual duties are, however, limited to foreseeable damages which might typically occur under this type of contract, provided that there is no liability due to wilful intent, gross negligence or injury to health, life or limb.

12. Liability for loss of production and loss of profit

Any liability of the supplier for loss of production and loss of profit of the buyer is expressly excluded.

13. Retention of proprietary rights

- a) The supplier retains ownership of the goods until all contractual payments have been received. The buyer is obligated to treat said goods with care. In particular, they should also insure them for their replacement value against fire, water and theft. The buyer must perform any required maintenance and inspection work at their own cost, both promptly and carefully.
- b) The buyer must notify the supplier of any attachments, confiscations or other access by third parties, in writing and without delay, in order to enable the supplier to exercise their rights arising from the retention of property rights. In case of contravention, the buyer is liable for any loss incurred by the supplier.
- c) The buyer is entitled to resell the goods in the ordinary course of business. However, the buyer must cede in advance all claims in the amount of the gross purchase price of the claim of the supplier, to which they are entitled for resale of the goods. This takes place regardless whether the goods are resold with or without further processing. The customer remains authorised to collect on the claims even after assignment. This has no effect on the capacity of the supplier to disclose the assignment of claim and to recover the claims themselves. This will not occur as long as the buyer meets their payment obligations, does not default on payments, and no petition has been issued to initiate composition and insolvency proceedings. In such a situation, the manufacturer is obligated to provide the supplier with all required information on these customers, to provide the appropriate documents, and to enable the supplier to disclose the assignment of claim.
- d) Processing or alteration of the goods by the buyer is always carried out on behalf of the supplier. If the goods are converted using other items which are not provided by the supplier, co-ownership of the new object is calculated in relation to the value of the supplier's claim to that of the other processed items at the time of processing. The retention of proprietary rights continues to apply in full for an object produced as a result of further processing. The buyer is authorised to resell the goods subject to retention of proprietary rights in the course of their business. The customer shall cede their claims from resale of the said goods to the seller in advance, irrespective of whether the goods are resold in a processed or unprocessed state.
- e) If the supplied goods are combined inseparably with other objects not provided by the supplier, ownership of the new object is again calculated in relation to the value of the purchased goods to that of the other combined objects at the time the work was performed. If the combination is made in such a way that the object belonging to the buyer could be considered as the main object, the buyer shall transfer co-ownership to the supplier on a pro-rata basis and the buyer shall keep the supplier's solely-owned or co-owned object safe.
- f) If the supplied goods or items or objects produced from them are resold by the buyer or fitted, directly or in modified form, onto the property of a third party, such that they become an integral part of the property of the third party, the claims of the buyer against the purchaser or the third party which supersede these objects are transferred to the supplier as a security for their claims, without the need for a separate declaration of assignment.
- g) Provided that the recoverable value of the securities exceeds the claims to be secured by more than 10%, the supplier shall release securities owing to them on demand from the buyer. The choice of which securities to release shall be made by the supplier.

14. Miscellaneous

- a) The contract remains binding in its remaining parts, even if individual provisions are legally ineffective. The ineffective provision shall be replaced by one that comes as close as possible to the economic intent of the original.
- b) The supplier's place of business is agreed as the place of fulfilment and court of jurisdiction, provided that the buyer is a merchant as defined under law, however the supplier is also at liberty to initiate legal proceedings in the buyer's place of business. All agreements between the supplier and buyer must be recorded in writing. Any changes and/or supplementary agreements added before or after the conclusion of contract must also be submitted in the written form. In this respect, the written form is also necessary for the rescission of this written-form clause.
- c) Legal relations existing in connection with this contract shall be governed by German substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).