

General terms and conditions of the Stela Laxhuber GmbH with respect to assembly

Application of the general terms and conditions

The following conditions apply for the assembly to be carried out by the supplier in addition to the general sales and delivery conditions.

I. Cost of assembly

Assembly work will be invoiced separately if not otherwise agreed. Assembly costs comprise especially:

1. Assembly work will be invoiced separately if not otherwise agreed. The assembly costs comprise especially the travel costs, daily capture of the working hours for the assembly personnel in accordance with the supplier's applicable billing rates, including surcharges for overtime (additional 25%) night work (additional 50%) Sundays and holidays (additional 100%). Regular working hours are Monday to Friday from 7:30 until 16:30.
2. Preparation, travel and wait times are regarded and invoiced as working hours. Should installation or commissioning be delayed through no fault of the supplier, the customer will bear all costs for the wait time and any additionally necessary travel. Agreed flat-rates for assembly do not include surcharges for overtime or work at night and on Sundays and holidays which become necessary. These can be invoiced in addition. The assembly work carried out in connection with the installation of the system are considered to be complete with the trial start-up.
3. The cost of assembly is subject to the applicable value added tax (VAT).
4. Withholding or offsetting against the supplier's claims is only permissible if the withholding or offsetting is undisputed or legally binding.

The customer may only exercise a right of retention for claims against the contractor for claims deriving from the same contractual relationship.

II. Obligation of the customer to provide assistance

The following conditions apply for all assemblies and repairs carried out by the supplier:

1. The customer must in good time and at his expense take on and order:
 - a. Supply the number of skilled and un-skilled workers (masons, carpenters, plumbers and other skilled labour, handyman) required for the assembly and for the required time during which the workers are subject to direction from the site supervisor. The supplier assumes absolutely no liability for the work carried out by the skilled and un-skilled workers made available.
 - b. All earth, construction, foundation and scaffolding work, the necessary demolition and fretwork as well as carpentry work. Included are all the necessary construction materials as well as provision of cranes and scaffolding. All of the electrical connections and supply lines are to be carried out in accordance with the supplier's instructions.
 - c. The equipment necessary for assembly and commissioning, such as lifting trucks, bottled gas, bottled oxygen and otherwise necessary supplies and materials.
 - d. Heating, lighting, power including the necessary connections to the construction site.
 - e. Sufficiently large and lockable rooms for the storage of machine parts, materials and tools. Furthermore social and washing facilities for the mechanics.
 - f. Insurance coverage against theft and damage of every kind for materials and tools.
2. Before the start of assembly, access routes and installation sites must be cleared and all other preparation work completed, the foundation must be bonded and dry. Parts to be delivered must be on-site and ready, and the technical assistance provided by the customer must ensure that assembly can be begun immediately and without delay after the arrival of the assembly personnel until assembly is complete allowing the customer to accept it.
3. If the assembly or commissioning on the building site is delayed through no fault of the supplier, the customer will bear all costs for wait time and repeated travel to the site.
4. The costs for additional and special work requested by the customer, which must be confirmed in writing by the supplier, will be borne by the customer.
5. The cost for skilled and un-skilled labour provided by the builder/customer, including social security contributions (medical insurance, employer's liability insurance association etc.) will be paid by the builder/customer.
6. The supplier's mechanics are not authorised to enter into commitments on behalf of the supplier especially with regard to guarantees.

III. Acceptance

1. The customer is required to accept the assembly as complete as soon as the supplier has provided notification that the assembly has been completed and the delivery item tested as contractually agreed. Should the assembly turn out to be defective or not completed in accordance with the contract, the supplier remains liable to perform as contractually agreed in accordance with items V and VI. This does not apply if performance involves disproportio-

nately high costs to the supplier or if failure to perform is attributable to circumstances for which the customer is at fault. The customer cannot refuse to accept the assembly as complete because of an insignificant defect, if the supplier has expressly acknowledged the obligation to correct the defect.

2. If the acceptance is delayed through no fault of the supplier, the acceptance is regarded as having been made two weeks after notification was provided by the contractor that the assembly was completed.
3. The supplier's liability with regard to recognisable defects expires insofar as the customer has not reserved the right to exercise a claim for a particular defect.

IV. Claims for defects

1. Once the customer has accepted the assembly as completed, the supplier bears liability for defects in the assembly under exclusion of all other customer claims such that he is only required to correct the defects. The customer must notify the supplier immediately in writing of all defects.
2. Only in urgent cases when operating safety is at risk and to prevent disproportionately great damage, of which the supplier must be informed immediately, or if the supplier – excluding exceptions allowed by law – has failed to meet a deadline to correct defects, does the customer have the right within the framework of the law to correct the defect himself or have it corrected by a third party and to demand repayment from the supplier for the necessary costs of the correction.
3. Of the immediate costs arising from the correction of the defect, the supplier bears – insofar as the complaint was justified – the cost of the replacement part including shipment. He also bears the costs for disassembly and reassembly as well as the costs for the provision of the necessary mechanics and assistants including travel expenses insofar as this does not disproportionately burden the supplier.
4. Additional claims are determined exclusively in accordance with section VI.2 of these conditions.

V. Contractor's liability, exclusion of liability

1. Should parts of the delivery item be damaged through fault of the supplier, then the supplier may at his discretion either repair or replace these at his expense.
2. For damages not to the delivery item itself, the contractor bears liability – for whatever reason – only
 - a. if intentional,
 - b. in the event of gross negligence on the part of the owner/management or executives,
 - c. for culpable injury to life, limb or health,
 - d. for maliciously concealed defects,
 - e. within the framework of a guarantee commitment,
 - f. insofar as in accordance with laws governing product liability for personal and property damage, liability can be claimed on privately used property.

In the event of culpable violation of significant contractual obligations, the supplier also bears liability for gross negligence of non-executive employees and for simple negligence, in the latter case limited to contract typical, reasonably predictable damages.

Liability of the supplier for production losses and lost profit of the customer is expressly precluded. All further claims are precluded.

VI. Expiration

All customer claims – for whatever legal justification – expire in 12 months. For damage claims in accordance with section VI. 2 a–d and f, the legal statute of limitations applies. Should the supplier carry out assembly works on a building and cause a defect as a result, the legal statute of limitations applies likewise.

VII. Compensation by the customer

Should during assembly work outside or the supplier's premises, due to no fault of the supplier, his equipment or tools be damaged on the assembly site or be lost, due to no fault of his, the customer must make compensation. No account is made for damages deriving from normal wear.

VIII. Miscellaneous

1. For all legal relationships between the supplier and customer, only that law applies which governs the legal relationships between domestic parties among themselves in accordance with the law in the Federal Republic of Germany.
2. The court of jurisdiction is the responsible court in the supplier's main place of business. The supplier is however entitled to bring suit in the customer's main place of business.
3. All agreements between the supplier and customer must be made in writing. Any changes and/or supplementary agreements made before or after the conclusion of contract must also be made in writing.
4. 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.