

TERMS OF SERVICE

STAHLBAU LÜTTEWITZ GMBH | LESCHEN 29 | 04720 DÖBELN | GERMANY

valid from May 1st, 2020

I. Scope

The following terms and conditions apply to all contracts concluded between us, the company Stahlbau Lüttewitz GmbH (location: Leschen 29, 04720 Döbeln) and our customers or clients for the delivery of goods and the provision of services, information and advice. They also apply to all follow-up business, regardless of whether the individual follow-up business explicitly refers to these conditions again. Deviating terms and conditions do not become part of the contract unless we expressly recognise them in writing. The performance of deliveries and services does not mean acceptance of the customer's conditions. Actually, by accepting our order confirmation, it is the customer who expressly acknowledges that they waive their legal objection derived from the general terms and conditions.

II. Information, advice, features of the products

1. Information and advice as well as other services provided by us are based solely on our previous experience.
2. Our product descriptions and information do not constitute a guarantee of quality or durability in the sense of Section 434 of the German Civil Code, unless we have previously expressly confirmed this to the customer in writing or a feature is listed in a written purchase contract with the customer.
3. Guarantees are only deemed to have been accepted by us if we have designated a feature or service as "guaranteed" in writing.
4. We only assume liability for the customer being able to use our products for their intended purpose if we have agreed this in writing.

III. Offers and conclusion of contract

1. Our offers, offer brochures (price lists, internet offers etc.) are subject to change and non-binding. They merely represent an invitation to the customer to place a respective order. With their order, the customer makes a binding purchase offer, which we accept by written confirmation or by sending the ordered item. A contract comes into existence- subject to the following conditions- only with our written order confirmation. The same holds for additions or supplementary agreements.
2. In the case of immediate delivery or provision of services, our confirmation can be replaced by our invoice or a delivery note.
3. We can accept an order or commission, which is to qualify as an offer to enter into a contract, within two weeks by sending an order confirmation or by sending the ordered products within the same period.
4. Documents in connection with offers, such as figures, drawings, details concerning weight and dimensions, are only approximate unless they have been expressly designated as being binding.

IV. Prices and payment conditions

1. Our prices do not include the applicable Value Added Tax. This we shall identify separately on the invoice at the statutory rate on the date of billing.
2. A discount is only permitted with a special written agreement between us and the customer. The price is net payable (without deduction) no later than 30 days after invoicing, provided no other period of payment is indicated in the order confirmation. Non-cash payments are only accepted in lieu of performance and only count as payment once they have been irrevocably credited. Collection and redemption costs are borne by the customer.

3. In the event that the customer shall fall into default in respect of a payment, the legal regulations shall apply. From the time of the delay in payment and subject to further claims, we can charge default interest to entrepreneurs in the amount of 9 percentage points above the base rate and flat rate default costs of EUR 40.00. Claiming and proving higher damages remain unaffected.
4. In the event of facts that give rise to doubts as to the solvency or willingness of a customer to pay (e.g. in the event of non-payment of a check or a direct debit as well as in an out-of-court debt settlement plan or institution of insolvency proceedings against the customer's assets) and in the event of default in payment, we are entitled to defer execution of deliveries and performance until full advance payment or provision of adequate security. If the customer does not comply with a corresponding request within a reasonable period, we are entitled to withdraw from the contract in whole or in part. Further claims remain reserved.
5. The customer is only entitled to reduction and offsetting, even if claims or complaints have been put forward, if their claims are been legally binding, recognised by us or undisputed. The customer is only authorized to exercise a right of retention only if his counterclaim is based on the same contractual relationship.

V. Delivery and performance period

1. Delivery dates or deadlines that have not been expressly agreed upon as being binding are only non-binding information. The delivery time specified by us only begins when the technical issues have been clarified. All agreements regarding the delivery time are furthermore subject to our own timely delivery, unless we are responsible for the incorrect or late delivery by the supplier.
2. Delivery times always refer to the shipping date of the goods or the provision of the goods for collection. They are considered to be met if the goods leave the factory at this time or the customer is informed that the goods are ready for delivery.
3. Delivery and performance times are extended to a reasonable extent if we are prevented from fulfilling our obligations by force majeure or other unforeseeable and extraordinary events that cannot be avoided despite all reasonable care. Events in the sense of sentence 1 include in particular war, riot, strikes, lockouts, fire, pandemics, floods and other unforeseeable operating disruptions, including at suppliers. In these cases, the customer is not entitled to withdraw from the contract and/or to claim damages. If such events make delivery or performance significantly more difficult or impossible and the hindrance is not only of a temporary nature, we are entitled to withdraw from the contract. In the event of temporary obstacles, the delivery or performance deadlines are extended or the delivery or performance dates are postponed by the duration of the hindrance plus a reasonable start-up period.
4. Changes subsequently requested by the customer also extend the delivery and performance time to a reasonable extent.
5. Adherence to delivery and performance times presupposes the timely and proper fulfilment of the customer's contractual and cooperation obligations. If the customer defaults, the delivery and performance time will be interrupted.
6. If binding delivery deadlines are exceeded, the customer must grant us a reasonable grace period, which cannot be less than three weeks.
7. If the delivery deadline, including the reasonable grace period, is not met, we shall only be liable for the invoice value of the quantity of goods that was not delivered on time, up to a maximum of the negative interest.
8. If we are also commissioned with the assembly, we reserve the right to decide when and which fitters will perform the assembly work within the performance period. In this respect, we are not bound by instructions; in particular, the customer has no right to permanent occupation of the construction site for the construction project.

9. If the underlying contract is a fixed transaction within the meaning of Section 286 (2) No. 4 of the German Civil Code or Section 376 of the German Commercial Code, we are liable in accordance with the statutory provisions. The same applies if, as a result of a delay in delivery for which we are responsible, the customer is entitled to claim the discontinuance of their interest in the further performance of the contract. In this case our liability is however limited to the reimbursement of the foreseeable, typically occurring damages, if any delay in delivery is the result of a wilful or grossly negligent infringement of the contract for which we are responsible, whereby culpability of our representatives or agents shall be attributed to us.
10. We are also liable to the client under the statutory provisions if the delay in delivery is the result of a wilful or grossly negligent infringement of the contract for which we are responsible, whereby culpability of our representatives or agents must be attributed to us. Our liability is limited to the foreseeable, typically occurring damage if the delay in delivery is not due to an intentional breach of the contract for which we are responsible.
11. If we are responsible due to a delay in delivery for a culpable breach of a material contractual obligation, whereby a fault of our representatives or agents is to be attributed to us, we are liable in accordance to statutory provisions to the extent that in this case the liability for damages is limited to foreseeable, typically occurring damage.
12. Any further liability for any delay in delivery caused by us is excluded. Any further legal claims and rights of the customer that he is entitled to in addition to the claim for damages due to a delivery delay caused by us, remain unaffected.
13. We are entitled to partial deliveries and partial services at any time insofar as this is reasonable for the customer.
14. The customer is in default with the acceptance if they have not picked up/accepted the object of the order within 14 days after receipt of the notification of completion and handing over or sending of the invoice. In the event of non-acceptance, we can exercise our legal rights. We are particularly entitled to demand compensation for the damage incurred and for any additional expenses. The same applies if the customer culpably violates obligations to cooperate. With the occurrence of default in acceptance and debtor default, the risk of accidental deterioration and accidental loss passes to the customer.

VI. Delivery and performance period

1. If the customer is an entrepreneur, the customer's claims for material defects expire one year after transfer/delivery of the object of purchase to the customer. When erecting buildings or buying materials for installation into such, warranty claims will become statute-barred after 5 years and with inclusion of the German Construction Contract Procedures (VOB)/B after 4 years according to Section 13 No. 4 VOB/B. This does not include claims for damages due to injury to life, limb or health and/or claims for damages caused deliberately or due to gross negligence by the seller. In this respect, statutes of limitation shall apply.
2. The customer shall inspect the goods immediately upon delivery for defects. Defects must be reported to us in writing immediately after receipt of the goods. If obvious defects are not notified in a timely and appropriate manner, the warranty governing this no longer remains applicable.
3. The customer is entitled to supplementary performance, whereby we reserve the right to eliminate the defect or to deliver a replacement free of defects. We shall be given an appropriate grace period for each defect, which cannot be less than two weeks.
4. If the supplementary performance fails, we are entitled to repeat subsequent performance. Even in the event of repeated supplementary performance, we decide between new delivery or elimination of the defect.
5. The customer is only entitled to withdraw from the contract or to reduce the purchase price if the supplementary performance has repeatedly failed.
6. Unless otherwise expressly agreed, the information and figures contained in order confirmations, brochures and other documents serve only as a mere product description. Warranted features must be expressly marked in writing by us as an "warranty".

7. Rejected goods may only be returned after prior consultation with us. Defects in part of the delivery or performance do not entitle the customer to object to the overall performance, provided that the usability of the faultless performance parts is not impaired.
8. Any guarantee expires if the delivery item or the service provided has been changed by the customer or a third party or has been used or treated improperly.

VII. Delivery and performance period

1. Until all claims, including all balance claims from current accounts, which we are left with the customer now or in the future, the delivered goods (goods under retention of title) or - to the extent that it is legally permissible - incorporated material our property. In the event of breach of contract by the customer, e.g. breach of payment, we have, after setting a reasonable deadline, the right to take back the goods under retention of title.
2. The customer must treat the goods with care as long as they remain our reserved property. If the customer acts contrary to the contract - especially in the event of delayed payment - we are entitled and authorised to take back the reserved goods at the customer's costs. Insofar as the goods under retention of title are no longer in the customer's possession, the customer hereby assigns their rights to recover possession against third parties to us. This withdrawal or the return demand does not constitute a withdrawal from the contract unless we have expressly stated so or mandatory statutory provisions do not provide otherwise.
3. Until revoked, the customer is entitled to combine or resell the goods under retention of title in the ordinary course of business. However, this only applies as long as they meet their obligations towards us on time. Pledges or security transfers of the goods subject to retention of title by the customer are not permitted.
4. The full scope of any claims concerning the goods under retention of title (including all claims to balances from current accounts) arising from resale or on any other legal ground (insurance, tortious action) is hereby assigned by the customer in advance by way of security to us until all of our claims have been paid in full; we hereby accept such assignment. We irrevocably authorise the customer to collect the receivables assigned to us in his own name. This collection authorization may be revoked at any time, if the customer does not properly fulfil his/her financial obligations. The customer is not authorised to assign this claim for the purpose of factoring, unless the obligation of the factor to bring the counter-performance in the rate of the demands immediately to us, as long as we have claims against the customer, is established simultaneously. At our request, the customer must disclose the assignment to third parties and provide us with all the information and documents required to collect the assigned claims. We are entitled to disclose the assignment to third parties.
5. Any processing or alterations of the goods under retention of title shall be deemed to have been carried out on our behalf. If the goods under retention of title are processed with any other items that are not our property, we will obtain joint ownership of the new item in the proportion of the value of the good under retention of title (final invoice amount including VAT) to the value to the processed item at the time of processing. For the new item resulting from this processing applies the same as for the goods under retention of title. If the goods under retention of title are inseparably united with any other items that are not our property, we will obtain joint ownership of the new item in the proportion of the value of the good under retention of title (final invoice amount including VAT) to the value to the united item at the time of joining. If the item of the customer must be regarded as the main item due to joining process, we and the customer agree that the customer shall transfer a proportional share in the ownership on the item to us; we hereby accept such transfer. The customer keeps our right of sole and co-ownership of the product.
6. In the event of claims by third parties on the goods under retention of title, in particularly in case of seizures, the customer must state that they are our property, and must inform us immediately. If the third party is unable to reimburse us for the costs arising from the judicial and extrajudicial costs, the customer is liable.
7. We undertake to release the securities to which we are entitled to the extent that the feasible value of our securities exceeds the claims to be secured by more than 10%, whereby the selection of the securities to release are incumbent upon us.

VIII. Liability

1. We are only liable for damage resulting from breach of contract or unauthorised actions, in the event of intent or gross negligence. This does not apply to the violation of essential contractual obligations, damage from injury to life, limb or health or guarantees or in case of claims under the Product Liability Act. The damage is limited to the typical damage foreseeable when the contract was concluded. The same applies to breaches of duty by our vicarious agents.
2. In the event of an impossibility of performance for which we or our representatives or vicarious agents are responsible, we are liable for compensation for non-performance. In the case of simple negligence, the limitation of liability in paragraph 1 applies accordingly. The same applies to compensation for damage caused by delay.
3. If the damage is caused by a third party, whom we use as a vicarious agent, the customer is obliged to first assert their claims for damages against the third party- if necessary in court- before they can claim against us.
4. Insofar as the damage is covered by insurance taken out by the customer for the relevant damage event, we are only liable for any related
5. disadvantages of the customer, for example higher insurance premiums or interest rate disadvantages up to damage settlement by the insurance company.
6. We are generally not liable for breaches of duty resulting from work performed in accordance with the drawings, print templates or patterns checked by the customer and approved by the customer as production documents. The entrepreneur is not liable for the constructive design and correctness of the reproduced templates.
7. In particular, liability for the violation of property rights of third parties is excluded in the provision of work services as specified by the customer. We do not assume any obligation to verify the industrial property rights of third parties.

IX. Offsetting/Retention

The customer has no right to offsetting or retention, unless the claim is undisputed or legally enforceable.

X. Data protection

Personal data (e.g. title, name, address, e-mail address) are collected, processed and stored by us exclusively in accordance with the provisions of the German data protection law, in particular the Federal Data Protection Act (BDSG) and the General Data Protection Regulation (GDPR).

XI. Place of performance / Jurisdiction / Applicable law

1. The place of performance for both parties is the seat of our branch in Döbeln/Leschen District.
2. The place of jurisdiction for all disputes arising from this contract is also the seat of our branch in Döbeln/Leschen District (District Court of Döbeln, Branch of Hainichen or Regional Court of Chemnitz). However, we remain entitled to bring claims against the customer before another legally competent court.
3. The law of the Federal Republic of Germany shall apply. The application of the uniform law on the international purchase of movable property and the law on the conclusion of international sales contracts for movable property is excluded.

XII. Final provisions

1. An assignment or transfer of rights and/or obligations from this contract by the customer requires our prior written consent.
2. Modifications and additions to agreements made and these conditions shall be effective only in writing. Differing terms and conditions of the customer do not constitute part of the Contract.
3. Should one or more of these provisions be or become ineffective, or should the contract concluded on the basis thereof contain any gaps in its provisions, the effectiveness of the remaining provisions remains unaffected. Instead of the ineffective or missing agreement, the contractual partners will agree upon a provision that comes closest to the economic intent.