

We can only accept your general terms and conditions if they are not contradictory to our terms.

General Terms and Conditions of Martin Staud GmbH

I. Execution and ordering

1. All orders, no matter if placed with us directly or via field service employees, must be accepted by our written order confirmation.
2. Deviations in the models, material, design and dimensions are explicitly reserved within the scope of technical progress. Provided illustrations, sketches and the like shall remain our property.

II. Delivery period

1. The delivery dates given by us shall be non-binding, unless they explicitly confirmed by us in writing as "binding delivery date". Compliance with the delivery period shall be based on timely performance of the contractual obligations, in particular rendering of the agreed payments and, if applicable, procurement of securities by the purchaser.
2. Apart from this, the purchaser shall only be entitled to assert further rights in the event of default after a grace period of at least three weeks set by him after the occurrence of the delay has expired without success.

III. Ineffective GTC of the purchaser

1. Provisions in the purchaser's general terms and conditions shall be invalid if violating any statutory regulations, in particular if they (i) inappropriately disadvantage us contrary to the requirements of good faith (ii) are not clear and comprehensible, (iii) are irreconcilable with fundamental principles of the statutory provisions from which they deviate, or (iv) limit essential rights or obligations based on the nature of the contract to such an extent that the purpose of the contract may be endangered (hereinafter together the "**Ineffective Purchaser's Terms**").
2. The purchaser commits towards us to not (i) assert any Ineffective Purchaser's Terms, (ii) to include Ineffective Purchaser's Terms in contracts with us or (iii) to assert or enforce any rights or claims from Ineffective Purchaser's Terms against us.

IV. Delivery and passing of risk

1. We deliver the goods by unloading them from the arriving means of transport and providing them to the purchaser at the named unloading point in the ramp area or picking area.
2. If the shipment is delayed by the purchaser, the risk shall pass to him on the day of readiness for dispatch. The costs incurred due to the delay (in particular storage fees) shall be borne by the purchaser.
3. We are not obligated to have the shipment insured against damage in transit, unless the such an insurance has been agreed in writing.

V. Performance times, delivery, default of acceptance

1. To ensure efficient and rationalised delivery to the contractual partner by us, the parties agree exclusive application of the unloading standards issued by the Zukunftsinitiative Möbellogistik (ZIMLog), as amended from time to time, available online at <http://dcc-moebel.org/zimlog.html> for download or submitted to the contractual partner in text form upon request.
2. We have the right to make customary over- or underdeliveries. The purchaser may not refuse acceptance at the above scope.

VI. Warranty

1. The rights of the purchaser from any defects of material or title shall be subject to the statutory provisions unless specified differently below. In any case, this shall not affect the statutory special provisions for final delivery of the goods to a consumer (recourse against supplier according to Sections 478, 479 of the German Civil Code (*Bürgerliches Gesetzbuch*; BGB)).
2. Our liability for defects shall be based primarily on the agreement reached on the properties of goods. If no properties are agreed, the statutory provisions shall be used to assess whether there is a defect exists or not (sentences 2 and 3 of Section 434(1) BGB). We assume no liability for any public statements made by third parties.
3. If the delivered object is defective, we have the right to choose to perform subsequent performance by remedying the defect (improvement) or by delivery of a defect-free object (replacement delivery). The right to refuse subsequent performance under the statutory prerequisites shall remain unaffected.
4. We have the right to make the subsequent performance owed dependent on the purchaser paying the due purchasing price. The purchaser does, however, have the right to retain a share of the purchasing price appropriate for the defect.
5. The purchaser must grant us the time and opportunity necessary for the owed subsequent performance, and in particular hand over the goods subject to complaint for inspection. In case of replacement delivery, the purchaser must return the defective object in accordance with the statutory provisions.
6. Claims of the purchaser for damages or reimbursement of expenses made in vain shall only apply according to the proviso of item VII in case of effects as well. They shall otherwise be excluded.

VII. Liability

1. If nothing different results from these general terms and conditions, including the following provisions, we shall be liable according to the statutory provisions in case of violation of contractual and non-contractual obligations.
2. We shall be liable for damages - no matter the legal reason - within the scope of fault-based liability in cases of malicious intent and gross negligence. In case of simple negligence, we shall be liable subject to a milder standard of liability in accordance with the statutory provisions (e.g. for care in our own matters) only
 - a. in case of damages from injury to life, body or health,
 - b. in case of damage arising from more than inconsiderable violation of an essential contractual obligation (obligation that must be met to permit proper execution of the contract and on the compliance with which the purchaser regularly relies and may rely); in this case, however, our liability shall be limited to replacement of the foreseeable damage typical for the contract.
3. The limitations of liability resulting from item VII (2) shall also apply in the event of violations of obligations by or for the benefit of persons for whose fault we are liable under the law. They shall not apply if we have fraudulently concealed a defect or assumed any guarantee for the properties of the goods and for claims of the purchaser under the Product Liability Act (*Produkthaftungsgesetz*).
4. Violation of obligations that do not constitute a defect only entitle the purchaser to withdraw from or terminate the contract if we are at fault for the violation of obligations. A free termination right of the purchaser (in particular in accordance with Sections 651, 649 BGB) is excluded. Apart from this, the statutory requirements and legal consequences shall apply.

VIII. Limitation

1. Contrary to Section 438(1)(3) BGB, the general limitation period for claims from defects of material and title shall be one year after delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.
2. Further statutory special provisions on the limitation (in particular Section 438 (1) (1), (3) Sections 444, 445b BGB) shall not be affected.
3. The above periods of limitation from purchasing right shall also apply to contractual and extra-contractual claims for damages of the purchaser based on any defect of the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period from case to case. The purchaser's claims for damages in accordance with sentence 1 of item VII (2) and point (a) of sentence 2 of item VII (2), as well as pursuant to the Product Liability Act, shall, however, expire exclusively in accordance with the statutory limitation periods.

IX. Complaint obligations

1. The purchaser's warranty claims require (if the purchaser is a merchant) that he has complied with his statutory obligations to inspect and report (Sections 377, 381 of the German Commercial Code (*Handelsgesetzbuch*; HGB)). Our liability for any defect not reported shall be excluded if the purchaser does not properly inspect the goods and/or does not report any defects in time.
2. The purchaser must inspect our goods without undue delay, i.e. within three working days after the delivery.
3. The purchaser shall meet his obligation to inspect if he inspects the goods, without opening the packaging, for outwardly visible quantity or quality defects (hereinafter the "Appropriate Inspection Methods"). Appropriate Inspection Methods shall be, in particular, but not exclusively, (i) inspection of the delivered quantity of goods, (ii) visual inspection of the packaging and (iii) inspection of the goods for externally visible transport or other damage.
4. The purchaser must report defects without undue delay, and at the latest within two working days. Timely dispatch of the report of defects shall suffice for the complaint to be in time.
5. Any report of defects shall require text form to be effective.

X. Reservation of contractual penalty

1. A contractual penalty agreed between us and the purchaser from case to case shall require reservation of the purchaser at acceptance of the goods, which must be declared in text form.
2. Reservation of a contractual penalty must be addressed directly to us. Our employees, drivers or other third parties are not entitled to receive a reservation of contractual penalty.

XI. Prices

1. Prices are calculated ex works in EUR, excluding the respective applicable value added tax.

XII. Terms of payment

1. All invoices shall be paid net cash point; cash discount deduction shall require written agreement.
2. Bills of exchange shall only be accepted in lieu of payment upon advance written agreement. Discount charges shall accrue from the due date of the claim onwards, no matter the time of payment. We assume no guarantee for timely debt collection or timely protest.
3. If any bills of exchange or cheques are not redeemed in due time, all other claims shall fall due, even if different payment dates were originally agreed for them. This shall apply accordingly if a claim is not paid on time when due.
4. The purchaser shall only be entitled to set-off if his counterclaims have been finally determined or are undisputed. Apart from this, the purchaser shall only have the right to exercise a retention right if his counterclaim is based on the same contractual relationship.
5. Our claims shall be due for payment immediately if events occur that entitle us to withdraw from the contract under item XIV.

XIII. Assignment of claims, factoring

1. We shall have the right to assign claims against the purchaser from deliveries and services to third parties (e.g. a bank or a factorer) at the statutory scope. The purchaser permits passing on of the data necessary for collection of the demands to the third party.

XIV. Reservation of title

1. Any goods delivered by us shall remain our property until full payment of the purchasing price and until all claims from the business relationship are met (extended reservation of title). Any disposal by the purchaser of goods subject to our reservation of title shall only be permitted in the ordinary course of business. The goods must not be provided to any third parties as collateral even within the framework of the ordinary course of business.
2. If the goods are sold in the ordinary course of business, the purchasing price paid shall replace the goods. The purchaser hereby assigns all claims arising from any sale to us. The purchaser is authorised to collect these claims as long as he meets his payment obligations towards us. Under consideration of the extended reservation of title (advance assignment of the purchase price claim), assignment to third parties, in particular to a bank, is unlawful and therefore not permitted. We are entitled at any time to examine the purchaser's sales documents and to inform his buyers of the assignment.
3. In the event that the purchaser's receivables from the resale are included in a current account, the purchaser hereby also assigns his claims against his customer from the current account to us. The assignment shall be in the amount we have charged to him for the resold reserved goods.
4. We must be informed at once if forced execution affects our goods.
5. If the value of the collateral in accordance with items 1 to 4 exceeds the amount of the unpaid claims secured by it by more than 10% for a certain duration, the purchaser shall be entitled to demand the release of collateral from us until the excess has been balanced out.

XV. Withdrawal rights

1. We shall be entitled to withdraw from the contract for the following reasons,
 - (i) if it turns out, contrary to the assumption made before conclusion of the contract, that the purchaser is not creditworthy. Credit unworthiness may be assumed without further requirements in the event of a cheque or bill protest, if payment ceases or after an unsuccessful attempt at enforcement;
 - (ii) if it turns out that the purchaser made incorrect statements that are essential for his creditworthiness, or
 - (iii) if goods subject to our reservation of title are disposed of other than by sale in the ordinary course of business, in particular by way of collateral, unless we have expressly agreed to the disposal in writing.

XVI. Final provisions

1. If any individual one of these conditions is not applicable for any reason, this shall not affect the validity of the remaining conditions.
2. If the purchaser is a full merchant within the meaning of the German Commercial Code, a legal entity under public law or special fund under public law, Bad Saulgau shall be the exclusive place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship; we reserve the right to sue the purchaser at any other place of jurisdiction. Deliveries abroad shall be subject to German law.