

## **Terms and Conditions of Sale and Delivery for International business transactions - LAMILUX Heinrich Strunz Group -**

### **I. Scope - General Terms**

1. These terms and conditions apply to the companies LAMILUX Heinrich Strunz Holding GmbH & Co. KG, LAMILUX Heinrich Strunz GmbH and LAMILUX Composites GmbH, which together are referred to as the "LAMILUX Group".
2. Our terms and conditions apply to all present and future transactions with our contracting partner, hereinafter called Customer, even if we do not express our objection to divergent Terms of Purchase or counter-confirmations which we do hereby expressly reject. They are considered accepted by the Customer at the latest upon acceptance of delivery or service. All supply agreements, other agreements and deviations from our Terms and Conditions only become binding on us after our written confirmation and only on the terms confirmed by us.
3. Our silence concerning contractual declarations of the Customer shall never imply our consent.
4. The goods are subject to prior sale
5. Any assignment of a claim against us requires our express confirmation in writing.
6. All documents and information – especially tender documents – which are handed over to us for generation of offers are of pure informative nature and only become a part of our contractual relation with our express consent.

### **II. Terms and Conditions of Assembly**

1. If our products are installed by us in accordance with the agreement, the following additional terms apply: Guard scaffoldings, safety nets pursuant to the accident-prevention rules shall be provided to us free of charge. If additional expenses occur due to the fact that the Customer falsely notified us that all prerequisites are present onsite and that assembly services can be performed, the Customer shall bear any expenses based on a corresponding calculation.  
Installation prices are subject to the precondition that work can be carried out without interruption during normal working hours. Installation locations shall be freely accessible for our fitters. Our installation works shall not be impeded by other work or similar.  
Assembly interruptions due to the weather conditions shall not lead to a delay in performance by us. Engineering drawings shall be released in writing by the Customer. Deadlines agreed upon do not start until return of such release by the Customer.
2. The customer has to make sure at his own charge and at his own risk, that his building project shows the necessary constructional and structural conditions for a proper installation of our products in accordance with the significant legal regulations. If these conditions are not met, we will not be liable or responsible therefore.

### **III. Offer – Conclusion of the Contract – offer documents**

1. The Customer's order represents a binding offer which we can accept by forwarding an order confirmation or through delivery of the merchandise. The conditions for the assembly to be fulfilled onsite do not form a part of our service.
2. Our quotations are subject to change and without committal.
3. The contractual relationship or rather the performance of the contract is subject to the necessary export permits being granted and to there being no other obstacles arising from German or other relevant export regulations.

4. We reserve our copyright for any sketches, drawings and other documents provided by us.
5. Economic viability calculations and the yield forecasts they contain shall only represent calculation examples and are not binding.

#### **IV. Prices**

1. The prices included in the sales agreement are binding for an agreed time of delivery of up to 4 months. Our price calculations are carried out exclusively in EUROS.
2. The prices for deliveries abroad are to be understood as ex works (EXW) Rehau (Incoterms 2000). Those for rolls and reelstands exceeding 200 m<sup>2</sup> are free.
3. We do not accept any collateral security for invoice amounts of less than EUR10,000. We will solely furnish security by way of bank guaranty for the aforementioned invoice amounts, if the Customer bears all costs relating to such security.

#### **IVa. Material price escalation clause**

1. A contracting party shall be entitled to an adjustment of the contract prices if the material prices increase or decrease after conclusion of the contract for reasons which were not foreseeable for the contracting parties at the time of submission of the offer. This shall not apply to contracts in which the construction work owed is performed in full within a maximum period of four months from the conclusion of the contract
2. The respective current cost changes shall be taken into account insofar as they are specifically incurred during the execution of the contract and were not foreseeable in terms of calculation. Cost changes shall not be taken into account if the respective contractual partner is responsible for them or if they result from circumstances for which the respective contractual partner is responsible
3. The adjustment claim shall be determined as follows:
  - a. If the material price increases by more than the usual price fluctuation compared to the material price on which we have based our contract price, the additional costs shall be remunerated separately by the customer at our request. If the material price falls by more than the usual price fluctuation in comparison with the material price on which we have based our contract price, this lower price shall be taken into account at the customer's request when determining our remuneration. As a rule, the usual price fluctuation is 3%.
  - b. In the event of a price increase to be taken into account, our remuneration shall increase by the difference between the material costs actually incurred (MK<sub>actual</sub>) and the material costs that would actually have been incurred without the price increase that has occurred (MK<sub>original</sub>). Agreed discounts shall be taken into account. The order total shall be adjusted by this amount.
  - c. In the event of a price reduction to be taken into account, our remuneration shall be reduced by the difference between the material costs that would actually have been incurred without the price reduction that occurred (MK<sub>original</sub>) and the material costs actually incurred (MK<sub>actual</sub>). Agreed discounts shall be taken into account. The order total shall be adjusted by this amount.
  - d. In order to determine the increase or reduction of our remuneration in accordance with lit. b and c, the respective contractual partner shall provide evidence of the MK<sub>original</sub> in a suitable and comprehensible manner, for example by submitting a price list of a suitable supplier valid at the time of the preparation of the offer. In this case, we shall be obliged, upon request, to break down the contract price in such a way that the portion of the material costs included can be seen. The MK<sub>tatsächlich</sub> are also suitable and comprehensible evidence, for example, by a valid at the time of the order price quotation of the supplier

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4. The claim for adjustment shall only relate to that material / that part of the material which is affected by the price change. If necessary, a differentiation shall be made between material which could still be procured at the originally quoted material price and material which is affected by the price change
5. As a rule, we shall not be obliged to change our planned construction schedule due to impending price changes; in particular, we shall not be obliged to bring forward or postpone the order or production date and consequently to store material or manufactured components or to start production at a later date.
6. Claims arising from disrupted construction progress shall remain unaffected by this clause.

## **V. Payment terms**

1. Invoices shall be due on receipt of the invoice not later than 7 days of the date of the invoice unless otherwise agreed in written.  
All terms of payment are under reserve of confirmation of cover by our credit insurance.  
In the case that goods ordered are not called they will become payable 4 weeks after the initially agreed delivery date.
2. Any set-off against other undisputable or legally enforceable counterclaims as well as any exercise of the right to refuse performance or right of lien require our express consent.
3. Bills of exchange will only be accepted, if agreed upon in advance. Any discount charges and other expenses will be charged to the Customer. All bills of exchange must be issued in accordance with the requirements laid down by the central bank. If bills of exchange are not presented within due time, we are authorized to demand immediate payment.
4. In case of any decline regarding the financial circumstances of the customer and/or any reservations about the credit standing of the customer (e.g. futile enforcements, revocation of credit insurance coverage) we are entitled to refuse our services until – at our option – an advance payment or payment of an appropriate surety is made. In the case that our demand for such advance payment or bail is not complied with within an appropriate period – as a rule two weeks – we are entitled without setting a further period to withdraw from the contract or to claim for damages for default.  
If the deal is a trading transaction for the customer and the above premises exist we can – at our choice – either ask for immediate payment of all claims whether due or undue resulting from all contracts existing between us or ask for a bail for these claims. We are entitled to refuse performance until payment or reception of a bail.
5. Invoices sent by e-mail are to be considered legally binding.

## **VI. Period of Delivery – passing of risk**

1. Statements concerning delivery dates are to be understood as estimations. We do not guarantee the meeting of delivery deadlines. We default only if the circumstances leading to non-performance are attributable to us. Any claims for damages by the Customer for default of delivery or non-fulfilment are excluded – except for cases of injury to person, life or health or gross negligence.
2. Delivery deadlines are reasonably extended in cases of force majeure or other extraordinary, unforeseen and excusable circumstances which prevent us from executing deliveries at due time; such circumstances are e.g. difficulties in procurement of materials, operational breakdowns, strike, lock-outs, lack of means of transport, government interventions, lack of energy supply, lack of staff, etc. – even if these circumstances occur with our suppliers. If the performance of delivery or service becomes impossible or unacceptable due to the aforementioned circumstances, we are relieved of any

delivery obligation. If the delay in delivery exceeds 2 months, the Customer is entitled to cancel the contract. No damages can be claimed by the Customer, if the delivery deadline is extended or if we are relieved of the delivery obligation. We shall only be entitled to invoke the aforementioned circumstances, if we immediately notify the Customer.

3. Deliveries – also those which are performed free building site or warehouse – are performed at the Customer's risk, assuming that the street used for delivery was built for trucks with a total weight of up to 38 tons. Building materials and components must be able to be stored on the building site without the necessity of additional transport. If the aforementioned conditions are not fulfilled and, thus, additional expenses occur, such expenses will be invoiced separately to the Customer.
4. The risk passes to the Customer at the start of loading at the factory, even if partial deliveries are performed or any assembly obligations have not yet been performed by us. If the material delivered is not unloaded at ground level but – according to the Customer's request – is delivered or unloaded at or onto the construction in any other way, we do not assume any liability.
5. If the provision "delivery free building site" is agreed, this shall mean delivery without unloading by us. Unloading shall be carried out without delay and correctly by workers supplied in sufficient numbers by the buyer. We reserve the right to invoice standby times. The customer shall bear the risk of deterioration and loss of materials delivered until final completion of works, unless deterioration or loss are caused by gross negligence of the seller.
6. Insofar as we are obliged to take back packaging material (in particular transport packaging) on the basis of the provisions of the Packaging Act, the customer shall either return the corresponding material to us at its own expense and risk or bear the costs of any necessary disposal.

## **VII. Cancellations and return**

1. Cancellations are fundamentally excluded, because all products are manufactured according to customer requirements.
2. If we accept cancellations as a gesture of goodwill, then we request administrative costs in the amount of at least 10 per cent of the value of the goods of the total order value.
3. We shall only accept return consignments of goods if this has been agreed upon in advance and the costs for carriage and packaging are covered. We do not accept any liability for return consignments not agreed upon in advance. Following inspection of the returned goods, we shall reimburse the customer an appropriate portion of the supply price, however at most 85% of the supply price. There will be no reimbursement for goods which have already been processed.

## **VIII. Liability for defects – unless it concerns purchase of consumer products, the following shall apply:**

1. Complaints due to obvious defects, shall be asserted in writing without delay at the latest, however, within 5 days after the date of receipt of goods, otherwise, the items delivered are considered accepted. Slight deviations in colour – e.g. due to environmental influences – are not considered as defects. This also applies to minor changes in the surface structure (colour, shape) as well as minor defects in the appearance of the material which do not affect the function of the item. Concealed defects are to be reported to us within the same time period from when they are discovered.
2. If complaints are submitted properly and within due time and which we have confirmed are justified, we are entitled to the option of either supplementary performance or replacement. If the supplementary performance fails the Customer can demand an appropriate price reduction. If the delivery is based on a purchase contract the right of the purchaser to cancel the contract shall remain unaffected. We do not bear the costs for dismantling and reinstallation.
3. If after the failure of the supplementary performance the customer chooses to cancel the contract this shall not include claim for damages instead of the fulfilment because of the fault. If after the failure of the supplementary performance he chooses compensation instead of fulfilment the goods shall remain with the Customer if that is acceptable to him. The compensation shall be limited to the difference between the purchase price and the value of the faulty goods. Further claims of the Customer are excluded.

tomer on whatever legal grounds shall be excluded. That shall not apply to injury to person or health or for the loss of the life of the Customer that is attributable to us. Should a notification of defects by the client transpire to be wilfully or gross negligently unwarranted, the Customer assumes all costs relating to the technical inspection.

4. For purchase contracts, liability for defects is in principle 1 year from the delivery of the goods. That does not apply if the Customer has not met his obligation for immediate notification for obvious defects. For work performances to a construction and for an object that corresponding to its usual application has been used or will be used for a construction and has caused defectiveness in this, the liability for defects is 2 years.  
For all pneumatic, mechanical or electrotechnical/electronic systems or parts thereof where maintenance has an influence on the safety and functionality the limitation period for claims for defects is one year in deviation from Para. 1 if the Customer has decided not to transfer the maintenance to us or a certified body appointed by us for the duration of the limitation period.
5. Claims for compensation against us for defects going back to simple negligence shall be excluded.
6. The Customer receives no guarantees from us in a legal sense. For all devices that we receive from third parties, the factory guarantee of the manufacturer shall apply, which will be provided by us on request.
7. For the nature of the goods only the product description of the manufacturer shall apply in principle as agreed. Public statements, marketing or advertising of the manufacturer represent no contractual details of the nature of the goods.
8. Improper maintenance or cleaning of our product can lead to the forfeiture of the liability for defects claims. Therefore we urgently recommend that you take note of our care and maintenance instructions from our website [www.lamilux.de/tbl/pflege.htm](http://www.lamilux.de/tbl/pflege.htm).
9. Abnormal stresses on daylight elements by emissions of e.g. production plants or processes can cause increased wear, malfunctions and damage and cannot be used as a reason for claims regarding liability for defects .

## IX. Indemnity

Advice as to the applications in words, writing and through experience only consists of non-binding information, including with respect to any third-party industrial property rights, and shall not discharge the Buyer from verifying the products supplied by us for their suitability for the intended processes and purposes. The application, use and processing of the products are beyond our control and fall under the Buyers exclusive responsibility. Should liability come into question, this is limited for all damages to the value of the goods supplied by us and used by the Buyer. We naturally guarantee the flawless quality of our products. This does not concern experimental products.

## X. Title to Ownership

1. All deliveries are subject to reservation of title. The goods supplied shall remain our property until full payment of the purchase price and all claims, including future claims that we acquire against the Buyer. The reservation of title shall remain in existence even if some of our claims are incorporated in a current invoice and a balance is struck and accepted.  
If the Buyer processes the goods delivered into a new item, the processing shall be for us. The Buyer cannot acquire title to the processed items. In case of processing with other items that do not belong to us we shall acquire joint ownership in the new item in the ratio of the value of the goods we delivered and the other goods at the time of processing. This new item shall be deemed to be reserved goods as defined in these terms and conditions.  
The Buyer shall reserve conditional title to the goods to which he is entitled as against his buyers until the latter have paid the purchase price in full. The invoice value of the goods supplied by the Seller for this transaction shall be assigned to him from the claim that the Buyer acquires on the resale with the conclusion of the contract or this confirmation. In case of assignment the Buyer can only collect the claim for the Seller. The Buyer shall notify the debtors of the assigned claims on demand by the Seller. The Seller can notify the assignment to the debtors.

If the resale takes place together with other goods that do not belong to us at a total price, the Buyer hereby assigns his claims from the resale with the amount that corresponds to the value of the reserved goods. The assignment of the claim is assumed.

If the Buyer installs the reserved goods into premises belonging a third party as an integral part, the Buyer hereby assigns the claim for payment to which he is entitled against the third party or against the person concerned with the amount that corresponds to the value of the reserved goods. The assignment of the claim is assumed.

The Buyer shall keep incoming amounts of money that accrue to reserved goods in part or in whole separately and pay them to us without delay. Even insofar as the Buyer fails to comply with this obligation the Seller shall be entitled to the collected amounts and they shall be kept separately.

The Buyer shall notify the Seller immediately of access by third parties to the goods supplied under reservation of title or to assigned claims.

The Buyer shall be obliged to insure the goods supplied against the risk of theft and to provide evidence to the Seller on demand of the conclusion of the insurance policy.

## **XI. Secrecy**

1. All documents, tools, production equipment, products, parts, etc. transferred to the ordering party may not be transferred to third parties and are to be treated with strict confidentiality, even after the respective transaction has been concluded, and returned to us on request.
2. The customer must maintain confidentiality regarding all technical data, as well as other commercial and technical information which is not manifest, and which become known to them through the business relationship. He is not permitted to pass this information on to third parties. The customers' clients have to be obligated accordingly in writing.
3. The customer undertakes to commit all employees entrusted with the confidential data to strictly secrecy. This obligation shall obtain to us on demand.

## **XII. Place of Fulfilment and Jurisdiction**

1. The place of performance is Rehau.
2. The legal venue for all disputes arising is Hof/Saale, Germany.
3. German law, including CISG applies.

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