

General terms and conditions of sale, supply & delivery of Starline C.L.O. NV

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KBO*: 0476.301.771 (*KBO = Belgian Crossroads Bank for Enterprises)

RPR**Antwerp, Hasselt division (**RPR = Belgian Register of Legal Persons)

Hereinafter referred to as **"Starline"**.

1. These general terms and conditions ('General Terms and Conditions'/'Algemene Voorwaarden') apply to all quotations by and/or agreements made by or entered into by Starline with third parties (hereinafter: the 'Customer') and to their execution. The Customer accepts the applicability of these General Terms and Conditions by awarding his assignment or by the formation of the agreement, even if the terms and conditions of the Customer read otherwise.
2. Each and every applicability of the Customer's general terms and conditions is expressly rejected.
3. Starline is not bound by a quotation or assignment until it has confirmed the order in writing or has started executing it. In other words, quotations made by Starline without confirmation are made without obligation. Assignments and acceptances of quotations by the Customer are irrevocable. In the case of a unilateral cancellation of an Assignment by the Customer, Starline is entitled to compensation that is calculated on a fixed-rate basis in the amount of 30% of the agreed price (including fiscal levies and costs) for standard products and for customised products whose production has not yet commenced at the time of cancellation and at 100% of the agreed price (including fiscal levies and costs) for customised products whose production has indeed already commenced at the moment of cancellation.
4. Verbal commitments and/or arrangements made by or with Starline's staff are only binding on Starline if the latter has confirmed these commitments and/or arrangements in writing.
5. Apart from in the case of a clause that these General Terms and Conditions declare to be inapplicable in whole or part, specific clauses in agreements in which these General Terms and Conditions are deviated from prevail over the provisions of these General Terms and Conditions. In addition, the Customer may only invoke clauses that deviate from these General Terms and Conditions if and in so far as these have been expressly accepted in writing by Starline.
6. Subsequent to the quotation or the formation of an agreement, Starline is entitled to increase the agreed price in the case of an interim increase in raw materials prices, wage costs, energy costs and/or the transportation costs in its business. This price increase will be calculated according to the following formula: $p = P \times ((a \times g/G) + (b \times I/L) + (c \times e/E) + (d \times t/T) + e)$, where p = new price, P = agreed price, a = 40% (estimated share of g/G in the price), g/G = extent of the increase in Starline's total raw materials costs between the date in which the price was agreed and the date on which the price adjustment is applied, b = 20% (estimated share of I/L in the price), I/L = extent of the increase in Starline's total wage costs between the date on which the price was agreed and the date on which the price adjustment is applied, c = 10% (estimated share of e/E in the price), e/E = extent of the increase in Starline's total energy costs between the date on which the price was agreed and the date on which the price adjustment is applied, d = 10% (estimated share of t/T in the price), t/T = extent of increase in Starline's total transportation costs between the date on which the price was agreed and the date on which the energy price adjustment is applied, e = 20%).
This also applies for the situation where the cost price increase was actually foreseen but had not yet been precisely determined at the time that this agreement was formed.
7. If there is a change in an assignment that Starline has accepted and this change is being made at the Customer's request then Starline is entitled to charge the Customer the additional costs caused by this change on the basis of the prices that apply within Starline's business at that moment in time.
8. All deliveries are made 'ex works' from Starline's warehouse in Overpelt. Delivery 'ex works' means that Starline is responsible for making the goods ready for shipment and that the Customer is responsible for the shipment from the relevant warehouse to the destination. Starline will choose the transportation method in the name of and for the account of the Customer. If the Customer requests another shipment method then the additional costs associated with it for Starline will be charged to the Customer, and such a delivery will in all cases be carried out in the name of and for the account of the Customer.
9. The Customer is obliged to take receipt of the goods he has purchased at the agreed location(s) and time(s). When taking receipt of the goods, the Customer must ensure there is a suitable storage area that is safeguarded against loss or theft. The risks of damage, destruction and disappearance are borne by the Customer from the agreed moment in time of taking receipt.
10. Even in the case of processing, mixing, incorporation or resale, Starline retains ownership of the goods, both those already supplied goods and those to be supplied, until all its claims - made for whatever reason and including the claims that arise from a price, penalty, interest and/or cost clause relating to the goods already supplied and those to be supplied - have been paid in full by the Customer.
11. As long as the ownership of the goods supplied by Starline in accordance with these General Terms and Conditions has not passed to the Customer, the Customer must not sell or give in pledge the goods supplied by Starline and the Customer may not grant any third party any right over these goods.
12. In the case of a processing or mixing of the item or items supplied by Starline with an item of the Customer, Starline acquires a right of co-ownership on the newly created item(s) or on the principal item, this to the value of the items supplied by Starline originally or subsequently. In so far as necessary, the Customer already transfers this ownership to Starline. In the case of accession with a movable or immovable item, the Customer will fully cooperate with the isolation and return of the items originating from Starline. This provision of these General Terms and Conditions applies on penalty of an immediately due and payable contractual penalty of 100% of the contractual price if the Customer fails to fulfil his obligations in respect of Starline.
13. In the event of late payment, Starline is entitled to take back possession of the goods it has supplied; in the event of the Customer's late payment, he is obliged to return to Starline the goods that Starline supplied to him, this where relevant at Starline's initial request. This right of Starline's does not affect the latter's right to compensation. Starline cannot be claimed against for the loss that arises directly or indirectly at the Customer or his own customer(s) from the exercising of the rights included in this Article 13.
14. A defect in part of the goods supplied by Starline does not entitle the Customer to reject or refuse the entire shipment.
15. The stated or agreed supply period only commences if all information needed for the execution of the assignment awarded has been communicated by the Customer to Starline.
16. The stated supply and execution periods are stated as estimates and are not to be viewed as expiry periods. Any failure by Starline to honour supply periods or execution periods does not entitle the Customer to compensation and does not give the Customer the right to suspend or fail to fulfil the obligations arising from the agreement.
17. Unless agreed otherwise in writing, the prices agreed with Starline are exclusive of VAT, any transportation costs and government levies of whatever kind.
18. Unless agreed otherwise in writing, Starline's invoices must either be paid at its registered office or through funds transfer to Starline's bank account no later than 8 days after the invoice date without any deduction or rebate.
19. The Customer waives any right to setoff of reciprocally owed amounts (including the right of setoff set out in Article 1289 of the OBW (Belgian Former Civil Code)). Starline is at all times entitled to set off all that it owes the Customer against that which the Customer - and/or an enterprise affiliated with the Customer - owes Starline.
20. Starline is entitled to invoice for, and demand payment for, each partial delivery separately.
21. In the event of the Customer's failure to fulfil his payment obligations, Starline is entitled to suspend or terminate the agreement or assignment, this without prejudice to its right to compensation.
22. If Starline has not received the amount owed by the Customer by the agreed payment deadline then by operation of law and without additional notice of default being required, the Customer owes Starline contractual interest at a rate of 2.2% per month, to be calculated from the invoice's due date. This provision does not affect Starline's right to the statutory interest, including the interest referred to in the Belgian Act dated 2 August 2002 regarding the controlling of payment arrears for commercial transactions (see BS (Belgian Bulletin of Decrees) dated 7 August 2002) nor does it affect Starline's right to the reimbursement of other costs and losses. In addition, where relevant by operation of law and without further notice of default, fixed-rate compensation of 15% of the invoice amount, with a minimum of EUR 250.00, will be charged. This fixed-rate compensation can be increased - by operation of law and without further notice of default - by the reimbursement of the payment collection costs incurred, taking into account the statutorily prescribed contribution towards the other party's legal representation costs.

23. The Customer will treat with the greatest care and discretion all arrangements made with him of whatever nature and the related records, e-mails, messages and correspondence and will refrain from disclosing them to third parties without the written consent of Starline.
24. All statements made regarding amounts, quality, performances, quantity and/or other details relating to the goods supplied by Starline are made by Starline with the greatest care but can only be held to be an indication. Starline cannot be made liable for any differences that occur in this regard. When taking receipt of the goods, the Customer must check that the quantities and/or other details correspond to the amounts and/or other details agreed with and/or indicated by Starline.
25. Illustrations, descriptions, catalogues, advertising materials, information stated on the website and quotations are not binding on Starline.
26. Starline warrants the soundness of the goods it has supplied in accordance with that which the Customer may reasonably expect and indemnifies the Customer against hidden defects. If hidden defects occur in the goods supplied by Starline as the result of manufacturing errors and/or defective materials then Starline will either repair these defects (or cause this to be done) or provide the components necessary for this repair (or cause this to be done) or replace the components involved in whole or part or else apply a reasonable price reduction, the above at the sole discretion and judgement of Starline and without prejudice to the provisions in Article 27 and 36.
27. Unless expressly agreed otherwise in writing, the obligation to indemnify set out in Article 26 applies for the period of 12 months following the delivery of the goods supplied by Starline. Specific warranty conditions have been laid down for Starline. In so far as valid and applicable, these specific warranty conditions laid down prevail over these General Terms and Conditions. Where relevant, the statutory right of indemnification is limited to the warranty agreed in writing.
28. The warranty period will not be extended or renewed if either the goods themselves or components thereof are replaced during - or repair work is carried out during - the warranty period agreed in writing.
29. On no account can Starline be held liable for defects that arose by or that are wholly or partially the result of:
 - Normal wear and tear;
 - the failure to comply with instructions or requirements;
 - unforeseen or improper use of the goods supplied by Starline;
 - overdue or faulty maintenance or a lack or shortage of maintenance;
 - external influences such as climatological influences (incl. coating's loss of shine, faded upholstery), chemical influences (incl. industrial sediment), influence of impurities;
 - work by third parties, changes made, items provided by or prescribed by the Customer and/or the use of non-original components.
30. Immediately after receipt, the Customer must inspect and test the goods supplied by Starline (or cause this to be done), on penalty of the lapsing of any claim for whatever reason. On penalty of claims lapsing, any visible defects must be reported within a period of eight (8) calendar days following the date of receipt of the goods.
31. The Customer is obliged to endeavour to deal with and resolve any complaints made by the end-user about the goods supplied by Starline that the Customer has sold, supplied and/or installed within the sales territory. If the Customer determines that the complaint relates to defective materials or construction defects then irrespective of whether they are covered by the manufacturer's warranty the Customer must contact Starline immediately and at the latest within a period of 14 calendar days that starts from the date on which the Customer learned of the end-user's complaint. If the Customer fails to fulfil this obligation then he is liable for all costs that Starline (and/or a company affiliated with Starline) would have to incur for dealing with and/or resolving the complaint. Where relevant, the Customer is obliged to give Starline the opportunity to come and determine (or cause to be determined) the shortcoming on site.
32. Repair or warranty work carried out by the Customer or by a third party will only be reimbursed by Starline if the work was approved in writing beforehand by Starline. If this prior consent is lacking then this work will be for the Customer's account.
33. On penalty of lapsing of rights, all requests for repair, replacement or reimbursement of any losses must be submitted to Starline by registered letter no later than 14 days after taking receipt of the goods.
34. Requests and/or claims for repair, replacement or compensation do not suspend the Customer's payment obligations.
35. Each right of the Customer to a warranty or for a replacement or compensation lapses if and in so far as the Customer fails to fulfil his obligations in whole or part in respect of Starline.
36. Starline is solely liable for those errors that arise directly from its supplying of the wrong goods, this to be proven by the Customer. If the Customer's complaint is well-founded then Starline is obliged to repair or replace the goods or those components thereof that the complaint relates to. If in Starline's opinion it is the case that the costs of repair or replacement are disproportionate to the interest that the Customer has in the repair or replacement then at Starline's discretion the Customer has the right to compensation instead of to the repair and/or replacement. The compensation is limited to that which is provided for in the provisions of these General Terms and Conditions.
37. In any case, Starline can only be obliged to pay compensation up to a maximum of 25% of the invoice value of the supplied goods, this with an absolute maximum of EUR 50,000.00 (in words: fifty thousand euros and zero eurocents). If the losses are covered by Starline's business liability insurance then on no account will the compensation exceed the amount that is actually paid out by the insurer in the case in question.
38. Under no circumstances will Starline be liable for losses, including direct and indirect losses, consequential loss, personal injury, property damage (including damage to items that are being worked on or to items that are located close to the place where work is being carried out) or intangible loss arising for whatever reason, unless there has been a serious error by or a wilful act on the part of Starline or one of its employees or agents. Starline's liability for minor errors is accordingly excluded.
39. Each claim against Starline, apart from those recognised by Starline, lapses by the passage of 12 months following the occurrence of the losses that the claim in question arises from, this without detracting from mandatory law.
40. If force majeure prevents Starline from fulfilling the agreement then it is entitled to suspend the performance of the agreement and it can no longer be held to any delivery period or deadline. In that case, the Customer is not entitled to the reimbursement of losses and/or costs.
41. Force majeure is considered to be any circumstance that is not solely dependent on Starline's will, including war, war risk, work strikes, pandemic, fire, accident, or staff illness, operational breakdown, transport standstill, production or transport problems unforeseen by Starline, and the non-delivery or late delivery of goods or services by third parties engaged by Starline.
42. If force majeure has occurred then Starline is entitled to use a written declaration to suspend its obligations under the agreement entered into with the Customer. If the state of force majeure lasts longer than six months then the Customer and Starline are entitled to use a written declaration to terminate the agreement in respect of the non-performable part.
43. If Starline has already performed (or can only perform) part of its obligations when the force majeure occurs then it is entitled to invoice separately for the performed/performable part and the Customer is obliged to pay this invoice as if it related to a separate agreement.
44. All claims made by Starline are due and payable immediately if one of the following cases occurs:
 - the Customer stops paying;
 - the Customer asks for postponement of payment;
 - the Customer is insolvent;
 - the Customer is in Judicial Reorganisation proceedings or in another statutory debt adjustment scheme under Belgian or foreign law;
 - the Customer's assets are seized or he otherwise loses the power of disposition over all or part of his assets;
 - the Customer discontinues his business operations in whole or part.If one or more of the aforementioned cases occurs then Starline is entitled to terminate the agreement. Obviously, this right of Starline's does not affect its right to compensation.
45. If any provision of these General Terms and Conditions is nullified (or declared void) in whole or part then this will not affect the validity of the other provisions of these General Terms and Conditions. If any provision of these General Terms and Conditions is nullified (or declared void) in whole or part then the parties will replace the nullified/void provision by a provision that in terms of its object and effect is consistent with the nullified/void provision as much as possible.
46. The agreement(s) entered into between Starline and the Customer and any disputes arising from this/these agreement(s) is/are solely governed by Belgian law, to the exclusion of international treaties (this expressly including the Vienna Sales Convention).
47. Before Starline and the Customer institute any judicial procedure, they are obliged to make a reasonable attempt to settle amicably any disputes that may have arisen between them. Any and all disputes between the Customer and Starline that cannot be settled amicably will be solely settled by the competent courts in Antwerp, Belgium (Hasselt division).