

STARLINGS // TERMS & CONDITIONS

Definitions

1. Starlings: Starlings, located in Asten under Chamber of Commerce registration number 89511514.
2. Customer: the party with whom Starlings has entered into an agreement.
3. Parties: Starlings and the customer together.
4. Consumer: a customer who is also an individual and who acts as a private person.

Article 1 - Applicability of General Terms and Conditions

1. These terms and conditions apply to all quotations, offers, work, orders, agreements, and the provision of services or products by or on behalf of Starlings.
2. Parties can only deviate from these terms and conditions if they have expressly agreed to do so in writing.
3. The parties expressly exclude the applicability of any additional or deviating general terms and conditions of the customer or third parties.

Article 2 - Prices

1. All prices quoted by Starlings are in euros, including VAT and excluding any other costs such as administrative fees, levies, and travel, shipping, or transport costs, unless expressly stated or agreed otherwise.
2. Starlings may change all prices for its services and products listed on its website or otherwise made known at any time.
3. Parties agree on a total amount as an indicative price for services provided by Starlings, unless parties have expressly agreed on a fixed price that cannot be deviated from, in writing.
4. Starlings has the right to adjust prices annually.
5. Starlings will inform the customer of price adjustments before they take effect.
6. The consumer has the right to terminate the agreement with Starlings if they do not agree to the price increase.

Article 3 - Payments and Payment Terms

1. Online products are paid for electronically immediately.
2. When entering into an agreement regarding a service, Starlings may request an advance payment of up to 50% of the agreed amount.
3. The customer must have made payments within 14 days after delivery, unless other agreements have been made between the parties or a different payment term is specified on the invoice.
4. Payment terms are considered to be firm deadlines. This means that if the customer has not paid the agreed amount by the last day of the payment term, they will be in default and in default by operation of law, without Starlings having to send the customer a reminder or notice of default.
5. Starlings reserves the right to make a delivery subject to immediate payment or to require security for the total amount of the services or products.

Article 4 - Consequences of Non-Timely Payment

1. If the customer does not pay within the agreed period, Starlings is entitled to charge the statutory interest of 2% per month for non-commercial transactions from the day the customer is in default, with a portion of a month counted as a full month.
2. When the customer is in default, they are also required to pay extrajudicial collection costs and any compensation to Starlings.
3. The collection costs are calculated in accordance with the Decree on Extrajudicial Collection Costs.
4. When the customer does not pay on time, Starlings may suspend its obligations until the customer has fulfilled their payment obligation.
5. In case of liquidation, bankruptcy, attachment, or suspension of payment on the part of the customer, Starlings' claims on the customer become immediately due and payable.
6. If the customer refuses to cooperate in the performance of the agreement by Starlings, they are still obliged to pay the agreed price to Starlings.

Article 5 - Right of Reclamation

1. Once the customer is in default, Starlings is entitled to invoke the right of reclamation regarding the unpaid products delivered to the customer.
2. Starlings invokes the right of reclamation through written or electronic notification.
3. Once the customer has been informed of the invoked right of reclamation, they must immediately return the products to which this right relates to Starlings, unless the parties have made other arrangements.
4. The costs for the retrieval or return of the products shall be borne by the customer.

Article 6 - Right of Withdrawal

1. A consumer can terminate an online purchase of a physical product during a cooling-off period of 14 days without giving any reason, provided that:
 - the product has not been used
 - it is not a product that has been made or adapted specifically for the consumer
 - the consumer has not waived their right of withdrawal
 - it does not concern a service that, with the consumer's consent, can be fully executed within the 14 day cooling-off period, and where the consumer has expressly declared that they waive their right of withdrawal.
2. The 14-day cooling-off period as mentioned in paragraph 1 begins:
 - on the day after the consumer has received the last product or part of an order
 - when the consumer has concluded the agreement for the delivery of the service.
3. The consumer can declare their right of withdrawal via hello@starlings.nl. The consumer is obliged to return the product to Starlings within 14 days of declaring their right of withdrawal; otherwise, their right of withdrawal will expire.

Article 7 - Compensation for Delivery Costs

1. If the consumer has exercised their right of withdrawal in a timely manner and, as a result, has returned the complete order to Starlings on time, Starlings will refund any shipping costs paid by the consumer within 14 days of receiving the complete order returned on time.
2. The delivery costs are only borne by Starlings to the extent that the complete order is returned.

Article 8 - Compensation for Return Costs

If the consumer invokes their right of withdrawal and returns the complete order on time, the costs of returning the complete order are borne by the consumer.

Article 9 - Right of Suspension

Unless the customer is a consumer, the customer waives the right to suspend the performance of any obligation arising from this agreement.

Article 10 - Right of Retention

1. Starlings may exercise its right of retention and, in that case, hold the customer's products until the customer has settled all outstanding accounts with Starlings, unless the customer has provided sufficient security for those costs.
2. The right of retention also applies based on previous agreements from which the customer still owes payments to Starlings.
3. Starlings is never liable for any potential damage the customer may incur as a result of exercising its right of retention.

Article 11 - Set-off

Unless the customer is a consumer, the customer waives the right to set off a debt to Starlings against a claim on Starlings.

Article 12 - Retention of Title

1. Starlings remains the owner of all delivered products until the customer has fully met all payment obligations towards Starlings under any agreement concluded with Starlings, including claims relating to non-performance.

2. Until that time, Starlings may invoke its retention of title and take back the goods.
3. Before ownership is transferred to the customer, the customer may not pledge, sell, transfer, or otherwise encumber the products.
4. If Starlings invokes its retention of title, the agreement is considered terminated, and Starlings has the right to claim damages, loss of profit, and interest.

Article 13 - Delivery

1. Delivery takes place while stocks last.
2. Delivery of products ordered online takes place at the address specified by the customer.
3. If the agreed amounts are not paid or not paid on time, Starlings has the right to suspend its obligations until the agreed part is paid.
4. Late payment constitutes default by the debtor, resulting in the customer being unable to object to a delayed delivery by Starlings.

Article 14 - Delivery Time

1. The delivery times specified by Starlings are indicative and do not entitle the customer to terminate the contract or claim compensation for exceeding these times, unless the parties have expressly agreed otherwise in writing.
2. The delivery time starts when the customer has completed the electronic ordering process in full and has received electronic confirmation from Starlings.
3. Exceeding the specified delivery time does not entitle the customer to compensation, nor does it give the right to terminate the agreement, unless Starlings cannot deliver within 14 days after written notice has been given or unless the parties have agreed otherwise.

Article 15 - Actual Delivery

The customer is responsible for ensuring that the actual delivery of the ordered products can take place on time.

Article 16 - Transport Costs

Transport costs are at the expense of the customer, unless the parties have agreed otherwise.

Article 17 - Packaging and Shipment

1. If the packaging of a delivered product is opened or damaged, the customer must have the carrier or delivery person make a note of this before accepting the product. Failure to do so will result in Starlings not being liable for any damage.
2. If the customer is responsible for the transport of a product, they must report any visible damage to products or packaging before transportation to Starlings. Failure to do so will result in Starlings not being liable for any damage.

Article 18 - Warranty

1. When the parties have entered into an agreement of a service nature, it only involves an obligation of best efforts for Starlings and not an obligation of results.
2. The warranty for products only applies to defects caused by defective manufacture, construction, or materials.
3. The warranty does not apply in cases of normal wear and tear or damage resulting from accidents, modifications made to the product, negligence, or improper use by the customer, as well as when the cause of the defect cannot be clearly determined.
4. The risk of loss, damage, or theft of the products subject to an agreement between the parties passes to the customer at the moment they are delivered legally and/or effectively, or when they come under the control of the customer or a third party who receives the product on behalf of the customer.

Article 19 - Execution of the Agreement

1. Starlings executes the agreement to the best of its knowledge and ability and in accordance with the requirements of good craftsmanship.
2. Starlings has the right to have the agreed services (partially) performed by third parties.

3. The execution of the agreement is carried out in mutual consultation and after written agreement and payment of any agreed advance by the customer.

Article 20 - Provision of Information by the Customer

1. The customer makes all information, data, and documents relevant to the correct execution of the agreement available to Starlings in a timely manner and in the desired form and manner.
2. The customer is responsible for the accuracy, completeness, and reliability of the information, data, and documents provided, even if they come from third parties, to the extent that the nature of the agreement does not dictate otherwise.
3. If the customer does not, or not in a timely or proper manner, provide the information, data, or documents reasonably requested by Starlings and this causes a delay in the execution of the agreement, the resulting additional costs and hours are at the expense of the customer.

Article 21 - Indemnification

The customer indemnifies Starlings against all claims from third parties related to the products and/or services provided by Starlings.

Article 22 - Complaints

1. The customer must examine a product delivered by Starlings or a service provided as soon as possible for any defects.
2. If a delivered product or provided service does not meet what the customer could reasonably expect from the agreement, the customer must inform Starlings as soon as possible, but in any case within 1 month after discovering the defects.
3. The customer must provide a detailed description of the defects so that Starlings can respond adequately.
4. The customer must demonstrate that the complaint relates to an agreement between the parties.
5. If a complaint relates to ongoing work, this cannot lead to Starlings being required to perform other activities than those agreed upon.

Article 23 - Notice of Default

1. The customer must make notifications of default known to Starlings in writing.
2. It is the responsibility of the customer to ensure that a notice of default actually reaches Starlings (in a timely manner).

Article 24 - Joint and Several Liability of the Customer

If Starlings enters into an agreement with multiple customers, each of them is jointly and severally liable for the full amounts they owe to Starlings under that agreement.

Article 25 - Liability of Starlings

1. Starlings is only liable for any damage the customer suffers if and to the extent that such damage is caused by intent or willful recklessness.
2. If Starlings is liable for any damage, it is only liable for direct damage resulting from or related to the execution of an agreement.
3. Starlings is never liable for indirect damage, such as consequential damage, loss of profit, savings, or damage to third parties.
4. If Starlings is liable, this liability is limited to the amount paid by an (professional) liability insurance policy, and in the absence of a (full) insurance payment, the liability is limited to the (portion of the) invoice amount to which the liability relates.
5. All images, photos, colors, descriptions on the website, or in a catalog are only indicative and approximate. They cannot lead to compensation or (partial) termination of the agreement and/or suspension of any obligation.

Article 26 - Expiry Period

Any customer's right to compensation from Starlings expires in any case 12 months after the event that directly or indirectly gave rise to the liability. This does not exclude the provisions of Article 6:89 of the Dutch Civil Code.

Article 27 - Right to Terminate

1. The customer has the right to terminate the agreement when Starlings is in default of its obligations, unless this default, given its special nature or minor significance, does not justify termination.
2. If the fulfillment of Starlings' obligations is not permanently or temporarily impossible, termination can only take place after Starlings is in default.
3. Starlings has the right to terminate the agreement with the customer if the customer does not fully or timely fulfill its obligations under the agreement, or if Starlings becomes aware of circumstances that give it good reason to fear that the customer will not properly fulfill its obligations.

Article 28 - Force Majeure

1. In addition to the provisions of Article 6:75 of the Dutch Civil Code, it is specified that any failure by Starlings in the performance of any obligation towards the customer cannot be attributed to Starlings in a situation independent of its will, where the fulfillment of its obligations towards the customer is wholly or partially hindered or where the fulfillment of its obligations cannot reasonably be expected from Starlings.
2. The force majeure situation, as referred to in paragraph 1, includes, but is not limited to: a state of emergency (such as civil war, insurgency, riots, natural disasters, etc.); non-performance and force majeure by suppliers, delivery services, or other third parties; unexpected power, electricity, internet, computer, and telecommunications outages; computer viruses, strikes, government measures, unforeseen transport problems, inclement weather conditions, and work interruptions.
3. If a force majeure situation arises that prevents Starlings from fulfilling one or more obligations to the customer, those obligations will be suspended until Starlings can meet them again.
4. From the moment a force majeure situation has lasted at least 30 calendar days, both parties may terminate the agreement in writing, in whole or in part.
5. In a force majeure situation, Starlings is not liable for any compensation, even if it benefits from the force majeure situation.

Article 29 - Amendment of the Agreement

1. If it appears necessary to amend or supplement the content of the agreement after its conclusion for its execution, the parties shall adjust the agreement accordingly in a timely manner through mutual consultation.
2. The preceding paragraph does not apply to products that are purchased in a physical store.

Article 30 - Amendment of the General Terms and Conditions

1. Starlings is entitled to change or supplement these general terms and conditions.
2. Changes of minor importance can be made at any time.
3. Significant substantive changes will be discussed with the customer as much as possible in advance.
4. Consumers have the right to terminate the agreement in case of a substantial change in the general terms and conditions.

Article 31 - Transfer of Rights

1. Rights of the customer from an agreement between the parties may not be transferred to third parties without the prior written consent of Starlings.
2. This provision serves as a stipulation with a property law effect as referred to in Article 3:83, second paragraph, of the Dutch Civil Code.

Article 32 - Consequences of Nullity or Annulment

1. If one or more provisions of these general terms and conditions are found to be null and void or voidable, this does not affect the other provisions of these terms.
2. A provision that is null and void or voidable is then replaced by a provision that comes as close as possible to what Starlings had in mind when drafting the terms on that point.

Article 33 - Applicable Law and Competent Court

1. Dutch law exclusively applies to every agreement between the parties.
2. The Dutch court in the district where Starlings is established, practices, or has its office is exclusively competent to hear any disputes between the parties, unless the law mandates otherwise.