

General Terms and Conditions governing supplies and services provided by the SAINT-GOBAIN Deutsche Glas companies

1. Applicability

1.01 All supplies and services from the supplier (hereafter also referred to as the “contractual services”) are provided exclusively according to these present General Terms and Conditions. These may be supplemented by written product or performance related conditions of the supplier. Customers’ conditions deviating from these General Terms and Conditions and the product and performance related supplier conditions are not valid. This also applies where the supplier makes deliveries to the customer without reservations in the knowledge of contrary customer conditions deviating from these General Terms and Conditions. These General Terms and Conditions also apply to all future business with the customer.

1.02 The German Verdingungsordnung für Bauleistungen (VOB, parts B and C) (Standard building contract terms) in its applicable version at the time of contract conclusion shall apply to the performance of building works, insofar as the order is fulfilled by a contracting partner active in the building industry, as will these General Terms and Conditions.

2. Conclusion of the contract

2.01 The supplier’s offers contained in catalogues and sales documents and – insofar as these are not described as binding – the offers contained in the internet are always subject to change, i.e. only constitute a request to submit an offer.

2.02 The customer’s order is a binding offer. At his own choice, the supplier can accept this offer within three weeks by sending an order confirmation or by supplying the customer with the ordered goods or services within the same time period.

2.03 The suppliers’ offers are non-binding. Contracts are only concluded upon the acceptance of the customer’s order by the supplier according to the provisions of Paragraph 2.02.

2.04 Insofar as sales employees or commercial representatives of the supplier conclude verbal subsidiary agreements or give assurances extending beyond the written contract, these always require the written confirmation of the supplier for their validity.

2.05 The technical data and descriptions in the relevant product information or advertising material only become an integral part of the contract following their explicit written inclusion in the contract. The illustrations, drawings, weights and dimensions such as noise insulation, heat insulation and light transmission values are only close approximations, insofar as they have not been described as binding.

2.06 Where particular importance is attached to a special arrangement of the suspension points in the case of prestressed glass, the customer must specify this explicitly. Such requests can only be taken into account within the scope of technical production capability.

2.07 Insofar as the customer is an entrepreneur, the following also applies: Additional conditions including those of a technical nature result from supplementary delivery conditions, price lists, especially also concerning dimensions and their calculation, glass thicknesses, pricing

calculations, crate or packaging contents, packaging, freight costs, deposit payments etc.. Insofar as nothing to the contrary is contained therein and no special agreements have been concluded, normal business practice applies.

2.08 After contract conclusion, where the supplier gains knowledge of circumstances, especially payment delays relating to earlier deliveries, which would permit a conscientious entrepreneur to draw the conclusion that his claim to the purchase price is in doubt due to the customer’s poor financial solvency, the supplier is entitled, subsequent to giving an appropriate grace period, to demand advance payment or corresponding security from the customer according to his own choice and in case of refusal, to rescind from the contract, whereby the invoices for partial deliveries already effected will become due for immediate payment.

2.09 The customer’s requests with regard to subsequent changes in the contract or its cancellation can only be taken into account based on special agreement and only as long as manufacture, cutting or processing has not yet begun.

2.10 The supplier may rescind from the contract if the supplier cannot deliver due to his own supplier’s failure to deliver for reasons outwith his control, despite all the supplier’s reasonable efforts to procure the goods. In such a case the supplier will immediately notify the customer of such unavailability and reimburse the purchase price.

3. Delivery deadlines and delay

3.01 The observance of delivery and service obligations respectively depends upon the timely and proper fulfilment of the customer’s obligations.

3.02 Delivery deadlines or delivery periods are non-binding insofar as the supplier has not explicitly agreed them to be binding. Delivery periods begin with the despatch of the order confirmation, however not before the customer has provided the required documents, approvals, releases and an agreed payment has been received. Delivery periods have been complied with where the goods for delivery have been despatched within that period or their availability for despatch has been notified.

3.03 The supplier expressly reserves the right to provide partial services and deliveries and to invoice these, where this is reasonable for the customer taking into account the interests of the supplier.

3.04 Force Majeure or operational disruptions at the supplier’s or his subcontractor’s facilities resulting from obstacles unforeseen at the time of contract conclusion (especially including strikes, lock outs or disruption of the traffic routes), which prevent the supplier, his own supplier or his subcontractor from delivering the goods on the agreed date or within the agreed period or fulfilling the contractual service, shall prolong the agreed deadlines and periods by the length of time for which such circumstances delay the provision of supplies or services. The supplier will notify the customer of the beginning and end of such disruptions as soon as possible. Should such a disruption lead to a delay in services lasting more than three months, the customer can rescind from the contract for the relevant contractual supply or service.

3.05 The supplier shall be liable for making deliveries in good time only in cases where he himself or his agents are at fault. The supplier shall not be liable for the faults of his own suppliers.

However, the supplier is obliged in such a case to assign possible claims for compensation against his supplier to the customer.

3.06 Should the customer set an appropriate grace period for subsequent delivery on pain of rejection after the supplier is already in delay, he is entitled to rescind from the contract should this additional grace period pass fruitlessly. The customer is only entitled to claims for compensation and expenses instead of the performance at the level of the foreseeable damage typical for the contract, if the delay is due to deliberate intent or gross negligence. In addition, the damage compensation liability is limited to 50% of the actual damage caused. Setting an additional grace period on pain of rejection can be waived insofar as the customer can claim that due to the delay, for which the supplier is responsible, setting an additional grace period can be dispensed with according to § 323, Para. 2, BGB (German Civil Code).

4. Dispatch, transfer of risk, packaging

4.01 Transport route and means are left to the choice of the supplier. The packaging shall not be according to items but rather exclusively according to technical production and environmental aspects. The largest dimension of the item shall always determine the length of the packaging.

4.02 Deliveries shall be effected ex warehouse or ex works. With the handover of the goods to the carrier – regardless of whether he has been appointed by the customer, the manufacturer or the supplier – the risk shall pass to the customer, even with respect to partial deliveries where these are effected. This also applies to deliveries for which carriage is paid by the supplier. For deliveries effected using the supplier’s vehicles the risk passes to the customer as soon as the goods have been provided at the location specified by him.

4.03 Upon the request of the customer and at his cost, the goods to be delivered will be insured by the supplier against theft, transport damage and other insurable risks. Transport damage must be claimed by the customer directly from the carrier.

4.04 Should the delivery be delayed at the request of the customer or due to his fault, the goods will be stored at the customer’s cost and risk. In such a case, the notification of readiness for dispatch is equivalent to actual dispatch. The invoice falls due for immediate payment upon storing the goods.

4.05 Where transportation is effected by means of a vehicle, the handover of the goods shall be considered to have taken place as soon as they are available to the recipient in front of the delivery location on a surfaced road and on the vehicle. Where it is not possible to drive on the access road in the opinion of the deliverer, the handover will take place where the vehicle can enter and leave without difficulty.

4.06 Insofar as the customer is an entrepreneur, unloading lies within the sole responsibility of the customer, who must provide suitable unloading equipment and the necessary workers. Waiting times in long distance haulage traffic will be invoiced according to KVO and in local haulage traffic according to GNT.

4.07 Should the customer, contrary to the contractually agreed terms, request assistance in unloading (including unloading equipment), onward transportation or implementation, such additional cost will be invoiced additionally. However, co-

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operation in such work shall not constitute an acceptance of additional liability or risk.

4.08 Reusable packaging and transport frames (hereafter referred to as "packaging") are provided to the customer only on loan. The customer must notify the return of the packaging to the supplier in writing within 2 weeks and make it available. Where this is not done, the supplier is entitled to demand 20% of the net purchase price for each week beginning from the third week, however up to a maximum of the full purchase price or to invoice the full value of the packaging. Such invoice shall be due for payment immediately upon receipt.

5. Prices and payment

5.01 The prices agreed or according to the order confirmation respectively shall apply. Where no price is stated in the order confirmation, the prices valid according to the supplier's price list at the time of contract conclusion shall apply. Insofar as nothing is agreed to the contrary, the prices shall apply ex works or warehouse plus packaging, freight and other shipping costs as well as VAT at the relevant legal rate and other specific national dues in the case of deliveries abroad.

5.02 The supplier's pricing depends upon the items, upon which the offer is based, remaining unchanged, possibly required preliminary work having already been fully completed and that the services can be provided in an unbroken process without hindrance. The suppliers' offers are based on the customer's performance specifications without knowledge of the local circumstances.

5.03 In case of supplies or services, which are intended to be provided 4 months or more after contract conclusion, the supplier reserves the right to increase the prices according to the cost increases, which have taken place due to personnel cost, working material or material price increases. Should the increase be more than 4% of the agreed price, the customer, where he is a consumer, has the right to rescind from the contract. Such right to rescission must be exercised in writing within one week of the receipt of the notification of the increase.

5.04 The supplier is entitled to request partial payments where his performance of the contract is delayed beyond the agreed time period through no fault of his own.

5.05 Where nothing to the contrary has been agreed, payments are due at the latest upon the handover of the delivery or service. The supplier will apply 2% discount for payment within 10 days. Payments will always be applied to the oldest due debts plus the accumulated interest upon them. Discount will not be applied where the customer is in arrears with his payments in respect of earlier deliveries.

5.06 Payments by means of the so-called cheque/bill of exchange procedure must always be agreed separately. Credit notes for bills of exchange and cheques are always subject to a deduction of expenses on the value date of the day on which the supplier can dispose over the counter value.

5.07 All of the supplier's receivables become due for immediate payment upon non-compliance with payment deadlines and periods or when the supplier gains knowledge of a substantial deterioration in the customer's assets.

5.08 Should the customer fall into arrears with his payments or should he fail to honour a bill on the due date the supplier can revoke the direct debit authorisation (cf. Paragraph 6.05) and demand prepayment for such deliveries as are still outstanding. However, the customer can avoid such legal consequences by making a security payment to the value of the outstanding deliveries.

5.09 Should the customer fall into arrears with a payment, overdue interest at the legal rate will be charged. The overdue interest can be charged at a higher rate by the supplier if the supplier provides evidence of a higher interest rate.

5.10 A refusal to make payment or a withholding of payment is excluded where the customer had knowledge of the defect or other complaint. This also applies where he was unaware of it due to gross negligence unless the supplier had fraudulently concealed the defect or other complaint or had provided a guarantee for the quality of the goods.

5.11 Offset is permitted only with regard to undisputed or legally binding counter claims. In addition, the customer is only entitled to exercise a right to withhold insofar as his counter claim is based on the same contract. A right to withhold based on earlier or other transactions involved in the current business relationship cannot be claimed. Where the customer is an entrepreneur he can only claim a right to withhold in cases of undisputed or legally binding claims.

5.12 The supplier can redeem possibly agreed security payments by means of a guarantee for the net value.

6. Retention of title

6.01 The supplier retains title to the delivered goods (hereafter called "reserved goods") until all legitimate claims upon the customer resulting from the business relationship have been completely fulfilled.

6.02 Where the customer has combined the reserved goods with other goods, the supplier is entitled to coownership of the newly created goods in the proportion of the invoice value of the reserved goods to the invoice value of the other goods and the conversion value. Where the supplier's ownership expires due to combining, mixing or processing, the customer transfers his legitimate ownership rights to the new goods to the extent of the invoiced value of the reserved goods at the date of contract conclusion and will store them free of charge for the supplier. The ownership rights arising as a result constitute reserved goods in the sense of Paragraph 6.01.

6.03 The customer must notify the supplier immediately of any possible accessing of the reserved goods by third parties. He may only sell the reserved goods as part of his normal business practice at his normal business conditions and for as long as he is not in arrears, provided that the payments receivable for the onward sale are transferred to the supplier in accordance with Paragraphs 6.04 to 6.05. He is not entitled to make any other dispositions over the reserved goods. Installation of the goods in a building, aircraft or ship also constitutes an onward sale.

6.04 The customer's receivables from the onward sale of the reserved goods including possible rights resulting from the Bauhandwerkssicherungsgesetz (German building trades security law) are assigned to the supplier

here and now. The supplier accepts this assignment. The assigned receivables serve as security to the same extent as the reserved goods. The same also applies to the claim for the provision of a security mortgage according to § 648 BGB (German Civil Code). Where the reserved goods are sold together with other goods not supplied by the supplier, the receivables resulting from the onward sale will be assigned in the relationship of the invoiced value of the goods delivered by the supplier to the other goods sold. In the sale of goods in which the supplier has co-ownership rights according to paragraph 6.02, a part corresponding to the supplier's ownership proportion will be assigned.

6.05 The customer is entitled to collect receivables from the onward sale. In case of an important reason, especially in case of payment arrears, suspensions of payments, initiations of insolvency proceedings, bill protests or where comparable justified indications are given providing grounds for assuming the insolvency of the customer, the supplier is entitled to revoke the customer's direct debit authorisation and his right to onward sale. At the supplier's request the customer is obliged to notify his customers immediately of the assignment – insofar as the supplier does not do so himself – and to provide the supplier with the information and documents necessary for the direct debit, which may include the provision of names and addresses of debtors and building site. On no account is the customer entitled to assign the receivables further. The customer is only entitled to assign by way of genuine factoring upon condition that this is done giving the name of the factoring bank and the accounts held there by the customer and that the factoring proceeds exceed the value of the secured receivables. Upon receipt of the factoring proceeds, the supplier's claim for payment becomes due immediately.

6.06 Upon the request of the customer, the supplier is obliged to release the securities to which he is entitled insofar as their realisable value exceeds the receivables secured by more than 20%.

6.07 The customer is obliged to treat the delivered goods in the ownership of the supplier with care and in particular, he is obliged to insure them adequately at his own cost against damage by fire, water and theft.

7. Defects in the delivered goods

7.01 Due to the special characteristics of the delivered goods, especially of glass, and the associated danger of damage, the customer is obliged to examine the delivered goods immediately upon receipt. All obvious and/or recognised defects, shortages and wrong deliveries must be notified in writing to the supplier at the latest within a week of the receipt of the delivered goods, however in any case before they are processed further or installed, whereby the timely transmission of the complaint within the specified grace period is sufficient for compliance. Further obligations of the entrepreneur according to §§ 377, 378 HGB (German Commercial Code) remain unaffected.

Deviations resulting from the manufacturing process with regard to dimensions, contents, thicknesses, weights and colour tones are – insofar as no quality guarantee in the sense of § 443 BGB has been given – permitted within the range of tolerances typical for the sector. The same applies to dimension tolerances in cutting typical for the sector.

7.02 The customer is obliged to give the

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supplier the opportunity to determine the defect constituting cause for complaint at the delivery location or to provide the supplier with the defective goods or a specimen thereof. In case of culpable refusal, the customer shall forfeit his claims for defects.

7.03 Where the customer accepts a defective good although he has knowledge of the defect, he is only entitled to the claims for defect if he has explicitly reserved his rights with regard to a defect at the time of acceptance.

7.04 The acceptance of contractual performance may not be refused by the customer where only insignificant defects are present.

7.05 Physical characteristics of the supplier's delivered goods cannot be claimed. This particularly includes

- Interference characteristics
- Double pane effect
- Anisotropy
- Condensation on the outer surfaces of the pane (formation of condensation)
- Varying capacity for coating glass surfaces with liquids
- Colour and reflection variances in coatings
- Streaking typical of the product, surface structures, air bubbles, drawing traces in ornamental glass
- Rattling noises can occasionally occur in ornamental and operational parts in the space between panes due to climatic influences (e.g. double pane effect) as well as vibrations or manually induced oscillations.

These do not constitute grounds for a claim.

7.06 Characteristics dictated by the manufacturing process, which cannot be claimed

- Where the insulated glass edging bond is not covered by a frame on one or more sides due to the manufacturing process, slight irregularities can occur in the edge bond area.

- In staged insulated glass, in which the outer pane is coated on the surface facing the air space, the surface of the glass overlap is not decoated. In these areas discolouration occurs and the metal oxide layer becomes detached from the glass.

- In case of lead and brass glazing provided by the customer, contamination by the cleaning materials used on the artistic glazing can occur. This too does not constitute grounds for a claim.

7.07 In using single pane safety glass (German ESG) so-called nickel sulphide inclusions can cause spontaneous breakages in individual cases due to the nature of the material and the production process. Dependent upon the application, the use of ESG-H is therefore to be recommended. A heat soak test can significantly reduce the residual risk of such breakages but not completely exclude them. Dependent upon the installation circumstances the use of other glass types e.g. composite safety glass (German VSG) can make sense.

7.08 The supplier accepts no liability for damage caused due to unsuitable or inappropriate use, faulty assembly not carried out by the supplier, operating, modification or repair, faulty or careless handling or natural wear and tear.

7.09. The following will apply if the customer is a contractor: Warranty claims are subject to a limitation period of 12 months after delivery of the products and services specified in the contract.

That will not apply if statutes specify longer periods of time; among other situations, there will be a limitation period of five years for products that were used for a building in accordance with their customary usage and that caused defects in it, § 438 (1) 2b BGB [German Civil Code].

The supplier can, at its option, remedy the defect or deliver a defect-free product as subsequent performance.

If the subsequent performance is not successful, the customer can withdraw from the contract - notwithstanding other compensation claims.

7.10 The provision in Paragraph 7.09 does not apply where the supplier has maliciously concealed the defect or has provided a quality guarantee for the delivered goods. Where the customer has sold the delivered goods to a consumer in the sense of § 13 BGB and where he had to take back the goods from the consumer because of a defect or where the consumer reduced the purchase price, the customer can, contrary to Paragraph 7.09, choose to have the defect rectified, the goods replaced, rescind from the contract or to reduce the purchase price. This only applies insofar as the consumer's claim was justified and only to its legal extent, however not to goodwill provisions not previously agreed in writing with the supplier. In addition, this is subject to the observance of all of the customer's own obligations, especially the observance of the obligations concerning the making of complaints.

8. Liability

8.01 Customer's claims on the supplier for damage compensation, irrespective of their legal grounds, with the exception of cases in which the supplier has fraudulently concealed a defect or has given a quality guarantee for the goods and which are based on simple negligence, can only exist where a cardinal obligation has been violated, i.e. an obligation whose fulfilment is a prerequisite for enabling the proper fulfilment of the contract in the first place and in which the customer may normally trust or whose violation curtails such customer rights whose provision is the very object of this contract in its content and purpose. Where such cardinal obligations are deliberately or negligently violated by vicarious agents (Erfüllungsgehilfen), the supplier is also liable. The supplier is only liable for damage caused by vicarious agents without violating cardinal obligations in cases of deliberate damage.

8.02 In the cases mentioned in Paragraph 8.01, the supplier's obligation to compensate entrepreneurs is limited to the value of the foreseeable damage typical of the contract. Insofar as the foreseeable damage typical of the contract exceeds the order value of the respective performance in individual cases, the customer will notify the supplier of this upon conclusion of the respective individual contract. In such a case the parties will agree a correspondingly higher liability amount. Liability for indirect damage, consequential damage caused by a defect and claims of third parties are excluded.

8.03 Claims for injury to life, body or health as well as claims under the product liability law remain unaffected.

9. Data protection

The customer hereby agrees that data, in the sense of the German data protection law, obtained during the course of the contractual and business

relationship may be stored, processed and communicated by the supplier to corporate companies associated with the supplier as well as third parties employed by the supplier for customer maintenance insofar as this is necessary for the fulfilment of the contract and especially for order processing and customer support, whereby the interests of the customer must be observed.

10. Place of performance, court of jurisdiction, applicable law

10.01 Place of performance for deliveries and payments is the registered seat of the supplier insofar as nothing to the contrary is stipulated in the supplier's order confirmation.

10.02 The customer may only delegate his rights and obligations from the contract concluded under these conditions upon the written agreement of the supplier. The same applies to the assignment of his rights from this contract

10.03 Should a provision of these General Terms and Conditions be or become wholly or partially invalid, the validity of the remaining provisions shall not be affected by this. The parties will replace the invalid provision with a valid provision, which most closely approximates to the intended economic purpose of the invalid provision.

10.04 The competent court of jurisdiction for all disputes arising from this contract is the court at the registered seat of the supplier insofar as the customer is an entrepreneur or the customer has relocated his residence or his habitual residence abroad or his residence or habitual residence is unknown at the time of raising a claim.

10.05 The contractual relationship is subject to the law of the Federal Republic of Germany. The application of the Vienna Convention on the International Sale of Goods (CISG) dated 11th April 1980 and the application of the German conflict of laws provisions are excluded.