

# General Terms and Conditions B2B (GTC)

## Section 1 General – Scope

- (1) Our GTC apply exclusively; we do not accept contradictory or deviating terms and conditions of the Customer unless expressly approved in writing. Our GTC shall also apply even if we have delivered/performed without reservation to the Customer in the awareness of the Customer's contradictory or deviating terms and conditions.
- (2) Additional contractual requirements arise alongside the relevant DIN-/EN-/ISO standards especially from the Technical Guidelines of Glaserhandwerk (Verlagsanstalt Handwerk GmbH), which can be ordered on [www.vh-buchshop.de/glas.html](http://www.vh-buchshop.de/glas.html), the guidelines of Bundesverband Flachglas, which can be ordered on [www.bundesverband-flachglas.de](http://www.bundesverband-flachglas.de), as well as our price lists, each of the aforementioned in the version currently in force.
- (3) These GTC only apply to those parties listed in Section 310 Para.1 of German Civil Code (BGB).
- (4) For work contracts and work supply contracts in addition the provisions listed in Part II apply.

## Section 2 Quotation – Quotation Documents

- (1) Our quotations are at all times subject to change. Prior to a writing confirmation, orders shall not become binding on us. In the event of immediate delivery, the delivery note or invoice shall also be deemed an order confirmation.
- (2) We reserve title of ownership, copyrights and other property rights to pictures, drawings, calculations and other documents, especially to any written document, which is marked as "confidential". The Customer must have our express written approval before passing on any such information to third parties.
- (3) Unless otherwise agreed, quotation related documents such as pictures, drawings, calculations, data regarding weight, consumption and dimension shall only be approximate, if and when deviations comply with commercial practice, depend on technical reasons or in particular result from material properties and tolerances. The above provision also applies to technical modifications and improvements, which modify neither appearance nor functionality. Specimen and samples shall also be deemed approximate examples for quality, dimensions and colours, unless otherwise agreed.
- (4) Data in quotations, product information and marketing material shall be deemed neither quality agreements nor guarantees of quality or durability, unless expressly stated by us in writing. For technical details supplied by third-party manufacturers, we shall warrant only under special agreement.
- (5) If the quotation is prepared on basis of Customer's documents, these documents shall be deemed binding only if and when reference is made to them in the quotation.
- (6) If we are required to provide services based on drawings, models, samples or using parts supplied by the Customer, the Customer shall warrant that no third-party intellectual property rights are infringed thereby. The Customer shall indemnify and hold us harmless from any and all third-party claims for those infringements and shall reimburse us for any incurred damages, including costs and expenses.
- (7) Customer requests for subsequent changes or order cancellation may be taken into account only under special agreement, and only if and when production, processing or cutting has not yet begun.

## Section 3 Prices – Payment Terms

- (1) Unless otherwise stipulated in the order confirmation, our prices are shown in Euro (€) ex works, packaging excluded.
- (2) Our prices are shown excluding statutory VAT, which will be shown separately on the invoice at the rate, which applies on the date the invoice is issued.
- (3) Glass prices are understood plus toll and current energy surcharge of glass industry at the time of delivery/performance.
- (4) For all deliveries we have taken out a transport breakage insurance. For this, we charge a lump sum amounting to 1.3% of net invoice amount with every invoice.

- (5) Should delivery or performance take place four (4) months or later following the conclusion of the Contract, the contracting parties shall, in case of a change in price determinants, renegotiate the prices.
- (6) Unless otherwise stipulated in the order confirmation, the net purchase price (without deductions) shall be due and payable within thirty (30) days of the invoice date. The legal provisions for default in payment shall apply.
- (7) Payments using endorsed cheques-bills of exchange always require a special agreement. Bills of exchange and cheques shall be credited, less costs, as received on the day on which we have the funds at our disposal. Cheques and bills of exchange are accepted only on account of performance, and subject to return at any time.
- (8) If, after concluding the Contract, we become aware of facts, which in the exercise of reasonable business discretion, suggest that the purchase price claim is jeopardised by the Customer's inability to perform, we shall be entitled to demand that the Customer, at his option and after setting a reasonable time period, makes advance payment or provides appropriate guarantees, and to withdraw in the case of refusal.
- (9) Moreover, we shall be entitled to retain our performance for so long as the Customer fails to perform its obligations to us arising from this Contract, from another contract, or from any other legal ground.
- (10) Receivables of companies affiliated with the Schollglas Group of Companies under Sections 15 et seq. of German Corporation Act (AktG) may be offset against any and all of the Customer's receivables, regardless of their legal ground, even if such receivables are due at different times.
- (11) The Customer shall be entitled to set off counterclaims only if and when such claims have been finally and non-appealably established, are uncontested or have been acknowledged by us. Furthermore, he shall be entitled to a right of retention only if and when his counterclaim is based on the same contractual relationship. Otherwise, payments shall not be retained inappropriately due to defects or any other complaint.

## Section 4 Delivery and Performance Deadlines

- (1) The start of the delivery period we have stipulated is conditioned upon the clarification of all technical and process-related issues, the receipt of materials to be supplied by the Customer, any agreed deposit – if any -, and the presence of all required permits and approvals.
- (2) Delivery dates or deadlines will be respected as far as possible. Unless otherwise agreed, they are not binding. Our contractual obligations are subject to duly supply by our pre-suppliers at due date.
- (3) Partial supplies or partial deliveries are permitted on a scale reasonable for the Customer and we are entitled to invoice for these. Moreover, we are entitled to demand payments on account on a reasonable scale if our delivery/performance is delayed beyond the agreed period of time through no fault of our own.
- (4) If and when the Customer is in default of acceptance or is in culpable breach of other co-operation obligations, we shall be entitled to request compensation for any and all loss or damage we have consequently suffered, including any additional expenses.
- (5) A performance or delivery period shall be extended reasonably - even during default - in case of Force Majeure or any other unforeseen event for which we are not at fault, especially business disruptions, loss of production facilities, operational interruptions due to insufficient raw materials or energy, traffic disruptions, or interference by public authorities. The foregoing shall likewise apply if our pre-suppliers or subcontractors experience the same. We shall immediately inform the Customer with respect to the beginning and the ending of such hindrances. In the event delivery/performance is delayed for more than one month due to Force Majeure or any other unforeseen event, both we and the Customer shall be entitled to revoke the Contract.

## Section 5 Despatch - Transfer of Risk - Packaging

- (1) Unless otherwise specified in the order confirmation, delivery "ex works" is agreed. Unless otherwise agreed, the risk shall be transferred to the Customer upon handover of the goods to the carrier,

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regardless of whether he has been engaged by the Customer, by us or by a third party. The above provision shall also apply to partial and free deliveries.

If and when our vehicles are used to make deliveries, the risk shall be transferred to the Customer as soon as the goods have been made available on the vehicle at the delivery point agreed to in the Contract. If, at the reasonably exercised discretion of the person making the delivery, local conditions do not permit him to drive the above-mentioned vehicles on the access path to, or to park at, the agreed delivery point and/or if, at the reasonably exercised discretion of the person making the delivery, the path cannot be accessed at all or cannot be accessed without putting the consignment at risk, handover and risk transfer shall be deemed to have occurred at the point where a risk-free arrival, departure or parking of the vehicle is assured. If the Customer is not prepared to accept the goods at this location, he shall be deemed in default of acceptance. We expressly reserve the right to claim any and all additional costs and expenses which accrue to us from the foregoing, in particular the costs of repeated travel.

In this context, we point out that deliveries using our vehicles can be made with lorries in combination with trailers/semi-trailers which can reach a gross weight of up to forty (40) tonnes, if necessary. In the case of deliveries using crane lorries, the weight can be at least twenty six (26) tonnes. Care must be taken to ensure that the agreed delivery point, as well as the paths to and from it, are suitable for these vehicles to park and drive on. Crane operations may only be carried out where there is sufficient swing range available.

Therefore, in cases of doubt we request timely consultation prior to delivery in order to avoid later inconvenience.

- (2) Unless otherwise agreed on, unloading of the delivered goods is the sole responsibility of the Customer. If the Customer does not provide the personnel and unloading equipment required to unload the consignment, we shall be entitled to charge for waiting times. If the Customer requests aid in unloading the goods, including the provision of unloading equipment, and we are able to meet this request, we shall be entitled to bill the Customer additionally for this expense. Irrespective of the above provision, we do not have any legal obligation to provide aid in the unloading of the goods. We shall be liable for any damage either to the delivered goods or to other legal interests caused by our personnel during unloading only in the event of wilful or grossly negligent action. The above provision shall not apply if and when the damage consists of injury to life, body or health.
- (3) Returnable packaging shall be made available to the Customer only on loan. With reference to the racks, which we deliver with the goods, we refer to the special conditions for delivery of goods with reusable racks (Version July 2013) which forms a part of every contract. These are supplied on request and can be ordered over the Internet at [www.energy-glas.com](http://www.energy-glas.com).

Disposable packaging becomes the property of the customer.

### Section 6 Liability for Defects

- (1) Due to the special characteristic of our goods, the Customer undertakes to inspect immediately and carefully the goods we have delivered. Incoming inspections upon delivery shall take place in any case before the goods are used, processed, installed or resold. Detected defects shall be notified in writing without undue delay, within three (3) working days at the latest. As for the rest, Section 377 of German Commercial Code (HGB) shall apply.
- (2) Variations in dimension, thickness, weight, and shade of colour or in the wire structure due to production or cutting do not constitute a defect, provided they do not exceed the tolerances applicable in the industry. This particularly applies in the case where the functional characteristics are unaffected.
- (3) The following technical-physical appearances are deemed to be contractually agreed nominal qualities:
- For tempered glasses roller waves can be expected, which are technically unavoidable;
  - Condensation on the external surfaces of multi-pane insulating glass, as well as slight spacer-deformation, due to production requirements;
  - If nickel sulphide inclusions occur in tempered glass even after carrying out heat soak test, a slight risk of spontaneous breaking cannot be excluded;

- Optical appearance in multi-pane insulation glass (e.g. interferences) and in tempered glass (e.g. anisotropies (irisation));
- Distortions of the outer mirror image ("double glazing effect") for insulation glass;
- Hanging points for tempered, bending scars for curved glass;
- Wettability of glass surface by humidity;
- Rattling in sash bars;
- Slight deviations in colour may occur in screen-printed glass if the screen-printing is not conducted in a single production process (batch). The Customer is consequently obligated to specify if glass from a single batch is required so that a uniform appearance is achieved;
- In the case of lead and brass glazing prepared by the Customer, contamination from the plaster can occur in the middle of the art glazing.

- (4) We assume that the Customer knows about the physical behaviour and the property of our products in accordance with the state of technology. We do not assume any warranty for damages, which result from unsuitable or improper use, from improper installation, application, commissioning, modification or repair which we have neither carried out nor approved, from incorrect or negligent handling or from natural wear and tear.
- (5) The Customer is responsible for the required compatibility testing of the materials used by it. In particular, we do not accept liability for a lack of compatibility of our products with silicones, adhesives and sealants unless we have expressly approved the use of specific silicones, adhesives or sealants.
- (6) We shall not accept liability for the failure to comply with our respectively applicable system descriptions, product data sheets and glazing guidelines, which we will gladly send upon request and which can be retrieved from our Internet site at [www.energy-glas.com](http://www.energy-glas.com), nor for the failure to comply with manufacturer's guidelines or the specifications from relevant general building supervisory approvals [ABZ] and test certificates.
- (7) The Customer is required to offer us the opportunity to inspect the defect it is complaining about on site, or at our request to make available to us with the object being complained about or samples thereof. For damages during transport or breakages, the goods must be left in the condition it was in when the defect was detected. If any defects are first observed during processing, the work must be immediately halted and the as yet unprocessed and unopened original containers secured. They shall be made available to us at our request.
- (8) If and when there is a proven defect in the purchased object, the Customer shall be entitled to request cure in the form of remedy of defects or delivery of a new item free of defects. The choice between the two possible forms of cure described above shall be at our discretion.
- (9) If the remedy fails three (3) times or is impossible, the Customer shall be entitled, at its discretion, to request revocation or a price reduction. However, revocation shall be precluded in the case of only minor defects.
- (10) In the case of the Customer's recall against us as supplier, only the statutory provisions shall apply.
- (11) The period of limitations for claims due to defects shall be twelve (12) months, commencing upon the transfer of risk; the limitation periods subject to Section 479 of German Civil Code (BGB), Section 438 Para. 1, No. 2 of German Civil Code (BGB) and Section 634a Para. 1, No. 2 of German Civil Code (BGB) shall remain unaffected.
- (12) The provisions of this Paragraph shall not apply if we have fraudulently concealed the defect or have expressly undertaken to guarantee the quality of the item. In such cases, the Customer's claims shall be governed by the statutory provisions.

### Section 7 Guarantee in the Event of Condensation

- (1) We guarantee for a period of five (5) years, commencing on the day of the delivery, with respect to the initial customers that the transparency of GEWE-therm<sup>®</sup> insulation glass units will not be impaired by condensation on the pane areas in the pane interspace under normal conditions when used in the building construction sector.
- (2) Any rights from the guarantee indicated above only arise for the Customer if it informs us immediately of the relevant circumstances of the case, has complied with the glazing guidelines of

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insulating glass, no modifications has been made and/or the edge seal was not damaged.

- (3) The guarantee shall not apply to curved insulating glasses, the installation of insulated glass units in means of transportation and in deep-freeze units and in special combinations.
- (4) If and when the initial customer or a further customer exports insulated glass units within the territory of the EU or beyond, this guarantee shall be effective only if and when we have expressly confirmed the export in writing.

### Section 8 Liability

- (1) In cases of contractual or non-contractual liability, irrespective of its legal grounds, we shall only be liable to damages or the reimbursement of futile expenses under the following provisions. No change in the burden of proof for the disadvantage of the Customer is connected therewith.
  - We assume liability only for direct damages; liability for indirect and consequential damages shall be excluded.
  - In case of gross negligence or the culpably breach of an essential contractual obligation our liability shall be limited to the foreseeable loss or damage typically occurring. Essential contractual obligations are those whose completion enables the correct completion of the Contract in the first place and whose respect is habitually relied on by the Customer and can be relied on.
  - In case of ordinary negligence, our liability is excluded unless we are culpably in breach of an essential contractual obligation.
  - Any fault on the part of our representatives and vicarious agents shall be attributed to us. If and when our liability for damages is excluded or limited, the exclusion or limitation shall also apply with respect to the personal liability of our employees, workers, representatives and vicarious agents.
  - The above liability limitations are without prejudice for the liability for intent, guaranteed quality characteristics, for Customer's claims in accordance with the German Product Liability Act and for liability resulting from culpable injury of life, body or health.
- (2) Claims for damages by our Customers shall generally expire within twelve (12) months upon commencement of the statutory limitation period. If we, our legal representatives or vicarious agents have caused culpable injury to life, body or health, then the statutory limitation periods shall apply to claims for damages by the Customer. The same applies if we, our legal representatives or vicarious agents have acted with intent or gross negligence.

### Section 9 Retention of Title

- (1) We retain title to the purchased object until all payments from the Contract have been received. In the event of breach of Contract by the Customer, we shall be entitled to take back the purchased object after having set a reasonable time limit. All costs arising from the return are to be borne by the Customer. Our taking back or seizure of the purchased object shall be deemed a revocation of the Contract. After taking back the purchased object, we shall be entitled to dispose of the object; we will offset the revenue from its disposal against the receivables due from the Customer, less any reasonable costs of sale.
- (2) The Customer shall be obligated to handle the purchased object with care; in particular, it shall be obligated to insure it adequately at its own expense against fire, water and theft loss at replacement value. If and when maintenance and inspection work is required, the Customer shall perform the work in due time at its expense.
- (3) The Customer shall notify us immediately in writing of any attachments or other seizures by third parties. Should the third party not be in a position to reimburse us the court and other costs incurred in this respect, then the Customer is liable therefor.
- (4) The Customer shall be entitled to sell further the purchased object in the orderly conduct of its business; however, it here and now assigns to us as a precautionary measure any and all receivables, to which it is entitled from its customer or third parties due to the further sale, in the amount of the invoiced final amount of our claim, regardless of whether the purchased object has been sold further with or without processing; we hereby accept its assignment. The Customer shall remain entitled to collect said receivables even after the assignment. The above provision is without prejudice for our right to collect the receivable ourselves. However, we promise not to collect the receivable as long as the Customer

properly fulfils its payment obligations to us from the received income and in particular, no petition for the initiation of composition, bankruptcy or comparable proceedings has been filed. If this is the case, however, we may request that the Customer discloses to us the assigned claims and their debtors, provides any and all information necessary for collection, hands over the relevant documents and notifies the debtor (third party) of the assignment.

- (5) The processing, inseparable mixture or alteration of the purchased object by the Customer shall always be performed on our behalf. If and when the purchased object is processed together or inseparably mixed with other objects not belonging to us, we shall acquire co-ownership in the new object in the ratio of the value of the purchased object (final invoice amount) to the other processed or mixed objects at the time of the processing or mixture. In other respects, the same provisions applicable to retention of title for delivered objects shall apply to the object resulting from the processing. If the mixing is of such a nature that the Customer's object must be deemed the primary object, it is hereby deemed to be agreed that the Customer shall transfer to us proportionate co-ownership; we hereby accept this transfer. The Customer shall safeguard the resulting object of sole ownership or co-ownership on our behalf.
- (6) The Customer assigns to us as a precautionary measure the debts to the value of the goods subject to retention, which it is entitled to from a third party in relation to the sales transaction linked to a piece of land. If the objects subject to retention are jointly owned by us, then the assignment of the amount is equal to the share of the value in the co-owned object.
- (7) We promise to release, at the Customer's request, any securities to which we are entitled to the extent that the realisable value of our securities exceeds the secured claims by more than ten (10) %; the selection of the securities to be released shall be at our discretion.

### Section 10 Assignment

The Customer may assign its rights arising from this Contract without our permission only to insurers, and then only to the extent the same arise from damages asserted by the Customer. Section 354(a) of German Commercial Code (HGB) shall remain unaffected hereby.

### Section 11 Data Protection

We refer to our Privacy Policy on [www.energy-glas.com](http://www.energy-glas.com).

### Section 12 Jurisdiction – Place of Performance

- (1) Provided the Customer is included in the groups defined in Section 310 Para. 1 of German Civil Code (BGB), our registered office is the place of jurisdiction; however, we are entitled to proceed against the Customer at the court of its place of residence.
- (2) The contract shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and without regard to its provisions on the Conflicts of Laws.
- (3) Unless otherwise stipulated in the order confirmation, our registered office shall be the place of performance.