

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

**E**

**1. Scope and validity**

1.01 All deliveries and services to be provided by the Supplier (hereinafter: "Contractual Obligations") are governed exclusively by these General Terms and Conditions (GTC), which may be supplemented by the Supplier's product or service related conditions in writing. No terms and conditions stipulated by the Customer which differ from these General Terms and Conditions or from the Supplier's product and service related conditions are valid. This also applies if the Supplier performs delivery without reservation despite being aware of contradictory terms and conditions stipulated by the Customer. These terms and conditions shall apply to all future business transactions with the Customer.

1.02 The German Construction Contract Procedures [Verdingungsordnung für Bauleistungen, VOB] (Parts B and C) in the applicable version at the time of concluding the contract shall apply to all construction work, provided that the contract is awarded by a contractual partner active in the building industry, in addition to these General Terms & Conditions.

**2. Conclusion of the contract**

2.01 The offers contained in the Supplier's catalogues and sales documents as well as those made on the Internet are always subject to confirmation, unless expressly identified as binding. They are only to be understood as an invitation for offers.

2.02 Orders placed by the Customer are considered to be binding. The Supplier may choose to accept this offer at his discretion within three weeks, either by sending an order confirmation or by delivering the ordered goods or providing the requested services to the Customer within this term.

2.03 Offers made by the Supplier are not binding. A contract only comes into existence when the Supplier accepts the Customer's order in accordance with subparagraph 2.02.

2.04 If and when the Supplier's salespersons or commercial agents make verbal subsidiary agreements or assurances that go beyond the written contract, they shall only be valid with written confirmation from the Supplier.

2.05 If the Customer is an entrepreneur [Kaufmann], the following shall also apply: Additional terms and conditions, including those of a technical nature, shall result from supplementary terms of delivery, price lists, in particular those concerning measurements and their calculation, glass thickness, price calculation, box or package contents, packaging, shipping costs, deposit, etc. If no information is provided therein and if no special agreements have been made, customary practice applies.

2.06 If, after the conclusion of contract, the Supplier becomes aware of facts, especially delay of payment for earlier deliveries, which would convince a conscientious entrepreneur that payment of the purchase price is in doubt due to the Customer's poor financial solvency, the Supplier is entitled – after setting a reasonable time limit – to require the Customer to make payment in advance or provide appropriate security and, if the Customer refuses either of these options, to withdraw from contract in which case all invoices for partial deliveries already made shall become due for payment immediately.

2.07 Requests for subsequent changes to or cancellation of the order by the Customer can only be taken into consideration on the basis of a special agreement, and only as long as manufacture, cutting or processing have not yet commenced.

2.08 The Supplier is entitled to withdraw from the contract if he is unable to deliver due to the failure one of his suppliers to deliver, for which he is not responsible, despite the Supplier having made all reasonable efforts to obtain the required items. In this event, the Supplier shall immediately inform the Customer of the unavailability and refund any payment already made.

2.09 The Supplier reserves the right to delegate performance of the contract to a third party. This does not affect the Customer's rights with regard to the Supplier.

**3. Terms of delivery and delay**

3.01 The observance of delivery or performance obligations requires the Customer's punctual and proper performance of his obligations.

3.02 Delivery deadlines or delivery periods are not binding unless the Supplier has expressly confirmed them as being binding. Delivery periods shall begin on the date when confirmation of the order is sent, and in no event prior to the provision of the documents, permissions and approvals to be obtained by the

Customer and not before receipt of the agreed down-payment. The terms of delivery shall be deemed observed if the item to be delivered is dispatched prior to the delivery deadline or notice of readiness for shipment has been given.

3.03 The Supplier expressly reserves the right to partial performance and partial delivery and partial invoicing if this is reasonable for the Customer in due consideration of the Supplier's interests.

3.04 Force majeure or the interruption of operations at the Supplier's or his subcontractors' facilities after conclusion of the contract due to unforeseen circumstances (including, in particular, strikes, lockouts or road traffic disruptions) which temporarily prevent the Supplier or his subcontractors from delivering the items on the agreed date or within the agreed period, or to fulfil the contract, shall prolong the agreed deadlines and periods by the length of time for which such circumstances delay the delivery or performance of services. The Supplier shall inform the Customer about the beginning and the end of such circumstances as soon as possible. If such circumstances result in a delay in performance exceeding three months, the Customer is entitled to withdraw from the contract concerning the item or service in question.

3.05 Concerning deliveries made on time, the Supplier is only liable for his own fault and that of his agents. The Supplier is not responsible for the fault of his suppliers. In such cases however, the Supplier undertakes to assign to the Customer any claims for compensation made against his supplier.

3.06 If the Customer sets a reasonable final deadline with a warning of refusal after the Supplier is already in delay, the Customer is then entitled to withdraw from the contract if the Supplier fails to meet this final deadline. The Customer is only entitled to claims for damages instead of performance of the contract amounting to the damage that is typical and foreseeable for the contract as well as to claims for the reimbursement of expenses if the delay is a result of intent or gross negligence. Otherwise, liability for damages is limited to 50% of the damage incurred. The setting of a final deadline with a warning of refusal is dispensable if the Customer can assert that it is superfluous according to Section 323, paragraph 2 of the German Civil Code because the Supplier is responsible for the delay.

**4. Dispatch, transfer of risk, packaging**

4.01 Transport route and means are left to the choice of the Supplier. Packing is not done per item but exclusively according to aspects of transport and production as well as environmental sustainability. The largest unit measurement shall always determine the packing length.

4.02 Deliveries are made ex warehouse or ex works. With the handover of goods to the carrier – regardless of whether he is commissioned by the Customer, manufacturer or Supplier –, the risk is passed on to the Customer, even in the event of partial deliveries. This also applies to deliveries paid for by the Supplier. For deliveries effected using the Supplier's vehicles, the risk is passed on to the Customer as soon as the goods have been provided at the location specified by the Customer.

4.03 Upon the Customer's request and at his expenses, the items to be delivered will be insured by the Supplier against theft, transit damage as well as other insurable risks. The Customer must submit any claim for damage in transit directly to the carrier.

4.04 If dispatch is delayed at the Customer's request or through his fault, the goods shall be stored at the Customer's expense and risk. In this case, notification of readiness for dispatch is equivalent to actual dispatch. The invoice becomes due immediately as soon as the goods are put into storage.

4.05 If transport is effected by means of a vehicle, the handover of the goods is considered to have taken place at the latest once they become available to the recipient in front of the delivery destination on a surfaced road and while still on the vehicle. If the access road is impassable from the deliverer's point of view, delivery shall take place where the vehicle can enter and leave without difficulty.

4.06 Insofar as the Customer is an entrepreneur [Kaufmann], unloading is his sole responsibility and he is required to ensure that appropriate unloading equipment and support is available. Waiting time is invoiced according to the Road Traffic Ordinance (KVO) for long-distance goods traffic and GNT (Short-Distance Goods Traffic Rate) for short-distance traffic.

4.07 If, contrary to the contractual agreements, the Customer requests help with unloading the goods (including the use of unloading equipment), further

transportation or installation, the time and effort shall also be invoiced. However, assistance with this work does not imply any assumption of additional liability or bearing the risk.

4.08 Reusable packaging and transport racks for glass (hereinafter: "Packaging") shall only be made available to the Customer on loan. The Customer must notify the Supplier in writing within two weeks that the Packaging is to be returned and make it available. Failure to do this entitles the Supplier to demand 20% of the net cost of the Packaging per week from the third week onwards, though not exceeding the full price of the Packaging, or to invoice the customer for the cost of the Packaging, which shall become immediately due upon receipt.

**5. Prices and payment**

5.01 The prices apply in accordance with the agreement or order confirmation. If no price is included in the order confirmation, the Supplier's price list valid at the time the contract was concluded shall apply. Unless otherwise agreed, the prices apply ex works or ex warehouse plus packaging, shipping and other forwarding charges, plus the legally valid sales tax and any other country-specific duties if delivery is made abroad.

5.02 The Supplier's price calculation assumes that the items on which the offer was based remain unchanged, that any necessary preliminary work has already been completed and that the goods and services can be rendered without interruption or hindrance. The Supplier's offers are based on the Customer's specifications, without further knowledge of the local circumstances.

5.03 In the event of deliveries or services that are scheduled to take place four months or more after conclusion of the contract the Supplier reserves the right to increase the price in accordance with any increase in costs due to increases in personnel costs, equipment and material. If the increase exceeds 4% of the agreed price, the Customer – if he is a consumer – is entitled to withdraw from the contract. In this event, he must give notice in writing within one week of receiving notice of the price increase.

5.04 The Supplier is entitled to demand partial payments if his performance is delayed beyond the agreed period through no fault of his own.

5.05 Unless otherwise agreed, payments are due no later than on the handover of the goods or performance of the service. For payments within 14 days, the Supplier shall grant a 2% discount. Payments are always used to settle the oldest debts due plus accrued interest on debts. Discounts are not given if the Customer is in arrears with payment for previous deliveries.

5.06 All of the Supplier's receivables become due immediately if the Customer fails to meet the payment dates and deadlines due to this fault or the Supplier gains knowledge of a significant deterioration in the Customer's financial circumstances.

5.07 If the Customer gets into arrears, the Supplier is entitled to revoke the direct debit authorisation (subparagraph 6.03) and demand advance payment for outstanding deliveries. The Customer can, however, avert this legal consequence by providing a security in the amount of the endangered payment claim.

5.08 If the Customer gets into arrears with a payment, default interest shall be invoiced at the statutory level. The Supplier can set a higher default interest if he is able to prove a debit with a higher interest rate.

5.09 Refusal to pay or retention of payment is ruled out if the Customer was aware of a defect or any other cause for complaint. This also applies in the event that this remained unknown to him as a result of gross negligence, unless the Supplier fraudulently concealed the defect or other cause for complaint, or if the Supplier assumed a guarantee for the condition of the item.

5.10 The Customer is only entitled to offset his own claims against invoices of the Supplier if and to the extent that his counter-claims are undisputed or have been legally established. The Customer is only entitled to the right of retention if and to the extent that his counter-claims are based on the same contractual relationship and are undisputed or have been legally established.

**6. Retention of Title**

6.01 The Supplier shall retain title to the goods delivered until all present and future claims arising from the business relationship with the Customer have been paid in full ("Goods under Retention of Title"). In the case of a running account, the property under retention

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

E

of title shall serve to secure the balance claim.

6.02 The Customer shall treat all Goods under Retention of Title with care and shall adequately insure the same against fire damage, water damage and theft on a replacement value basis at its own expense. In so far as servicing and inspection work is necessary, the Customer shall carry out such work in due time at its own expense.

6.03 The Customer shall be entitled to on-sell Goods under Retention of Title in the ordinary course of its business. However, the Customer hereby assigns to the Supplier all claims accruing to it from or in connection with on-selling against its customers or third parties (including all security and all ancillary rights) up to the sum of the final invoiced amount of the Supplier's claims (including value-added tax), regardless of whether the item purchased is on-sold without having been processed or after having been processed. The Customer shall, even after this assignment of claims, remain authorised to collect such claims. The Supplier's right to collect such claims itself shall remain unaffected hereby. However, the Supplier undertakes not to make use of this right as long as the Customer meets its payments out of the proceeds received and has not defaulted on payment, particularly as long as no petition for the institution of insolvency proceedings has been filed and no payments have been suspended. In such cases, the Customer shall inform the Supplier of the claims assigned and the debtors concerned, provide all information necessary for collecting the claims, hand over all relevant documents and give the debtors (third parties) notification of this assignment.

6.04 The Customer shall not be entitled to pledge Goods under Retention of Title assign the same as security or encumber the same with any other third-party rights. The Customer shall, without undue delay, inform the Supplier of all third-party compulsory execution measures concerning Goods under Retention of Title and hand over all documents necessary for any intervention. This shall apply also to impairments of any kind. Notwithstanding the foregoing, the Customer shall point out to the third parties in advance all rights existing in respect of the Goods under Retention of Title. In so far as the third party is unable to reimburse the costs in connection with any intervention by the Supplier, the Customer shall bear such costs.

6.05 Any processing or remodelling of Goods under Retention of Title by the Customer shall always be deemed to have been carried out on the Supplier's behalf. If any Goods under Retention of Title are processed together with other items not belonging to the Supplier, the Supplier shall acquire joint title to the new item in the ratio of the value of the Goods under Retention of Title (final amount invoiced, including value-added tax) in relation to the other processed items at the time of processing. Moreover, the terms and conditions applicable to Goods under Retention of Title shall apply equally to the item created as a result of processing.

6.06 If any Goods under Retention of Title are inseparably mixed with other items not belonging to the Supplier, the Supplier shall acquire joint title to the new item in the ratio of the value of the Goods under Retention of Title (final amount invoiced, including value-added tax) in relation to the other mixed items at the time of mixing. If such mixing occurs in such a manner that the Customer's item is to be regarded as the main item, it shall be deemed agreed that the Customer shall transfer joint title to the Supplier on a pro-rata basis. The Customer shall hold in safekeeping for the Supplier the sole or joint property thus created.

6.07 As security for the Supplier's claims against the Customer, the Customer hereby also assigns to the Supplier all claims accruing to the Customer against a third party as a result of Goods under Retention of Title having been connected to any plot of land.

6.08 If the Supplier is entitled to reclaim possession of Goods under Retention of Title, the Customer shall bear the cost of such repossession. The Supplier shall be authorised to realise such repossessed Goods under Retention of Title on the open market for the best possible price and credit the proceeds, less any appropriate costs in connection with such realisation, against the amounts owed by the Customer.

6.09 If the realisable value of the security exceeds the Supplier's claims against the Customer by more than 10 %, the Supplier shall, if the Customer so requests, release such security to a corresponding extent. The Supplier hereby reserves the right to choose the security to be released.

6.10 If, in the case of deliveries abroad, this retention of title cannot be agreed upon with the same effect as under German law, yet it is permissible to reserve other rights in the item delivered, the Supplier shall be entitled

to such rights. The Customer shall co-operate therewith in every respect.

### 7. Technical product properties and standards

7.01 Within the scope of building law applicable in each federal state, only building products and techniques that comply with the relevant regulations under building law may be used, e.g., the list of technical building regulations, Building Rules List [*Baugelliste*], general technical approvals and general appraisal certificates. The functional values indicated by the Supplier for glass constructions are calculated in accordance with the technical set of regulations valid or agreed upon at the time of delivery and applying the test dimensions and conditions required therein. Any deviation from these parameters in terms of size, glass construction and processing may result in changes to the functional value. The indicated glass thicknesses are not tested for the order-related static requirements (wind, snow, climate and traffic loads).

7.02 Properties and technical requirements of the products are described in the manual *Toleranzen* (Tolerances), 4<sup>th</sup> edition 04.2013, with the tolerances of float glass and the processed products thereof such as multi-pane insulating glass, toughened glass, heat-strengthened glass, partially pre-stressed glass, Emailit and Seralit glass as well as laminated glass. For additional information on special products, please refer to the appropriate product data sheets. The basis for this is represented in the set of regulations mentioned above and the manufacturer-specific information as described in detail. The documents are available for download from [www.glassolutions.de](http://www.glassolutions.de) or can be sent by post upon request.

7.03 Because of its material and manufacture, toughened glass may, in isolated cases, break spontaneously due to so-called nickel sulphide inclusions. Depending on the intended purpose of the glass, it is therefore advisable to use heat-strengthened glass. The residual risk of such breakages is reduced considerably by performing a Heat Soak Test, but cannot be ruled out completely. Depending on the installation situation, the use of other types of glass, e.g. laminated glass, may be advisable.

### 8. Warranty rights

8.01 The quality of the goods to be delivered, including their suitability for a certain purpose, result exclusively from the Parties' agreements to that effect. Differences in size, colour and weight within the usual tolerance limits do not represent a defect. Illustrations in catalogues, brochures and on the Supplier's websites are not binding for the actual properties of the product. The Supplier reserves the right to make technical changes or modify the design of the goods, provided such changes are not unusual, do not unreasonably impair the Customer nor affect the suitability for the intended purpose. The technical specifications and descriptions in the respective product data sheets or advertising materials shall only become part of the contract by expressly inclusion in the contract in writing.

8.02 The Customer is obliged to check the goods immediately upon delivery. He shall inform the Supplier in writing of all apparent and/or identified defects, missing quantities and wrong deliveries no later than one week after receipt of the goods, but in any case prior to processing or installation; to meet this deadline it is sufficient to send the written complaint in time. The more extensive obligations for entrepreneurs [*Kaufmleute*] according to Sections 377, 378 of the Commercial Code remain unaffected.

8.03 The Customer is obliged to give the Supplier the opportunity to inspect the claimed defects at the place of delivery or to make the rejected delivery item or samples thereof available to the Supplier. In the event of culpable failure to comply, the Customer loses his claims for defects. If the Customer accepts a defective performance of the contract despite being aware of the defect, he shall only be entitled to claim for defects if he expressly reserves his rights with regard to a defect upon acceptance. The Customer cannot refuse acceptance of the performance of contract if there are only irrelevant defects.

8.04 In case of supplementary performance, the Supplier hereby reserves the right to choose between eliminating any defect and delivering an item free from defects. This shall not apply in the event of supplier recourse under sections 478 and 479 German Civil Code (*BGB*).

8.05 If the Customer is an entrepreneur [*Kaufmann*], the warranty period shall be one year. The statutory time-bar periods in cases of fraudulent concealment, in cases where an item used for a building commensurately with its customary use has caused

such a building to become defective and in cases of supplier recourse under sections 478 and 479 German Civil Code (*BGB*) shall remain unaffected.

### 9. Liability

9.01 The Supplier's liability for loss shall be limited to wrongful intent and gross negligence. This shall not apply to liability based on any defect fraudulently concealed, based on injury to life, body or health, based on breach of material contractual duties or based on the Product Liability Act (*Produkthaftungsgesetz*). Material contractual duties in this sense are duties ensuing from the nature of the contract and whose breach would jeopardise the attainment of the purpose of the contract. Regardless of the form of fault, the Supplier's liability shall be limited to compensation for any foreseeable loss typical of this type of contract. This shall not apply to liability based on any defect fraudulently concealed, injury to life, body or health or the Product Liability Act (*Produkthaftungsgesetz*).

9.02 All limitations of the Supplier's liability shall apply equally to any breaches of duty on the part of the Supplier's authorised agents.

9.03 The time-bar period for the Customer's damage claims shall be one year, unless such claims are based on any defect fraudulently concealed, any defect in an item that has been used for a building commensurately with its customary use and has caused such a building to become defective, any injury to life, body or health, wrongful intent or gross negligence or the Product Liability Act (*Produkthaftungsgesetz*). The statutory time-bar period shall apply in such cases.

### 10. Place of performance, place of jurisdiction, applicable law

10.01 The place of performance for deliveries and payments is the Supplier's place of business, unless otherwise stated in the Supplier's order confirmation.

10.02 The Customer may only assign his rights and obligations specified in this contract with the Supplier's written consent.

10.03 Should any provision in these General Terms and Conditions be or become completely or partially ineffective, the validity of the remaining provisions remain unaffected. The Parties shall replace the invalid provision by a valid one that comes closest to the economically intended purpose of the ineffective provision.

10.04 The place where the Supplier's registered office is situated shall be the place of jurisdiction., provided that the Customer is an entrepreneur [*Kaufmann*] or that he has moved his place of residence or habitual residence out of the country at the time the contract is concluded, or that his place of residence or habitual residence is unknown at the time of bringing an action.

10.05 The laws of the Federal Republic of Germany, excluding the UN sales law (CISG), shall apply.