

# GENERAL TERMS AND CONDITIONS OF BUSINESS, DELIVERY AND PAYMENT (Terms and Conditions)

Hillebrandt Glas, Tietjenstr. 11, 12309 Berlin, Germany

## § 1 SCOPE OF APPLICATION

- (1) Our supplies shall be effected solely on the basis of the following conditions unless otherwise agreed upon expressly in writing. Any conditions of the buyer that contradict or deviate from these conditions shall only apply if express written consent has been obtained and shall be precluded even if we do not expressly object to such conditions and provide the service.
- (2) Our Terms and Conditions shall be agreed upon with the buyer at the time when the first contract is concluded and shall be deemed to be accepted at the latest when delivery of our goods is taken. They shall also apply to the same type of future transactions with the buyer until we have informed the buyer of new terms and conditions.

## § 2 OFFER AND CONTRACT CONCLUSION

- (1) These Terms and Conditions shall form part of the contract. Any subsidiary agreements, additions or other amendments shall only be effective if they have been agreed upon in writing.
- (2) Our offers are subject to change and non-binding. Submitting an offer shall not obligate us to conclude a contract. We shall be bound to offers that we submit for a period of 2 weeks.
- (3) We shall adhere to the number of units stated in the order acceptance as far as possible. Any deviations within a scope that is customary in the industry shall be permitted provided they do not exceed 10%.
- (4) All information regarding weight, content, dimensions, etc. shall be average values. Unless particular values have been agreed or are prescribed by law, industry-standard and technically unavoidable deviations are permitted.
- (5) The color definition of the products is based on standard specifications (generally standard sheet "T 102" by BV Glas) of the respective manufacturers and must be checked by the customer before ordering, if required.

## § 3 DOCUMENTS PROVIDED AND INTELLECTUAL PROPERTY

- (1) We reserve ownership rights and copyright in all the documents provided to the buyer in connection with the placement of the order. They must not be made accessible to third parties unless we provide the buyer with our express written consent in this regard.
- (2) All the rights and claims relating to quality and production data, molds, tools, designs, models, drawings as well as all other materials and information that the buyer receives from us, including all the associated intellectual property rights, shall be retained by us. All the intellectual property rights as well as all the rights to all the work outcomes arising in the context of completion of a contract shall accrue to us.

## § 4 MOLDS AND TOOLS

- (1) The costs for the manufacture, procurement, change or repair of individual molds or molded parts shall be borne by the buyer. The buyer's debt obligation shall arise as soon as the molds are ready for use.
- (2) We shall keep such special molds and tools for the buyer with the due care of a prudent businessman and only use same for the buyer's orders. Furthermore, the retention obligation up until natural wear and tear shall also apply to future purchase agreements with the buyer. These obligations shall cease to apply if no new agreement for the completion of which the mold is required is entered into for 3 years after conclusion of the last purchase agreement respectively.

## § 5 PACKAGING, DELIVERY, PASSING OF RISK AND POOL MATERIALS

- (1) We shall select the packaging unless separate agreements have been concluded.
- (2) We shall distinguish between non-returnable packaging and loaned packaging. If the goods are delivered on loaned packaging such as pallets, those shall remain our property and shall be treated with care. The buyer shall be responsible for disposing of non-returnable packaging (cardboard, foil, etc).
- (3) The pallets shall be provided on loan for a maximum of three months. It is at our discretion to deposit the pallets until they are returned or to provide them free of charge via a pallet exchange account. The current general deposit price for pallets is 16.00 Euros unless otherwise agreed upon in writing. Upon return of the pallets in perfect (barterable) condition, all pallets accepted by the return point will be refunded at the deposit amounts invoiced by us. In the process those open deposit amounts will be credited first, which have also been invoiced first. For free of charge pallets via a pallet exchange account, the accepted number of pallets is credited to the respective customer account. A return of pallets is always possible up to the current account balance (total of delivered pallets that have not yet been returned). Deviations in the return quantity of 10% upwards, but not more than +80 pallets to the current account balance, are permitted. Quantities exceeding this upper limit must be agreed upon in writing prior to the return of the pallets. If the pallets are not returned within three months or are damaged they shall be invoiced at the re-purchase price (however a minimum of 16.00 Euros) unless the buyer can prove that the buyer was not at fault for the impossibility of returning the pallets or their deterioration. Alternatively, an appropriate rental fee may be charged (also in addition to a deposit) if return is not possible within three months. The pallets shall be returned at the expense and risk of the buyer unless otherwise agreed upon in writing.
- (4) The parties shall agree on who shall bear the freight costs, where applicable, on conclusion of a contract. Sections 446 and 447 BGB [German Civil Code] shall apply with respect to the passing of risk irrespectively of who assumes the freight costs. If the buyer collects the goods ex-works, the vehicles and load securing must comply with the loading guidelines of the German glass industry (cf. standard sheet "T 125" by BV Glas). If we deliver the goods, the delivery shall only be made free kerbside to the named delivery address by means of a standard truck without tail lift unless otherwise agreed upon in writing. Unloading by means of a forklift is the obligation of the buyer. If required, a tail lift or truck-mounted forklift must be requested and booked by the buyer in good time for an additional fee. If unloading cannot take place due to a lack of unloading equipment (pallet truck, forklift, tail lift) and if no written request for this has been made by the buyer, the buyer shall bear the costs of delivery and return delivery and shall also be liable for any damage to the goods during return transport. The goods shall be insured against transport damage and other risks only at the express request of the buyer and at its expense.
- (5) In cases in which goods are delivered on pool materials such as plastic sheets, those pool materials shall remain the property of the respective pool holder. Regularly and on request, a schedule of the pool materials delivered shall be sent to the buyer and the respective pool holders separately according to pool holder. For buyers without a respective direct account with the pool holder, the pool materials (usually reusable plastic sheets) shall be deposited as collateral. Any costs for returning the pool materials to the pool holder shall be borne by the buyer unless otherwise agreed upon in writing. The buyer undertakes to keep ready and provide the pool materials listed in our schedule according to pool holder (in full quantity) for return to the respective pool holder no later than three months after delivery and to hand them over on request or return them himself. This term may be extended by mutual agreement and taking into

account economic aspects. If the buyer does not, or does not fully, meet that obligation, pool materials that are not returned or are damaged shall be invoiced at the re-purchase price (however, depending on the type, a minimum of 4.50 Euros to 5.95 Euros) unless the buyer can prove that the buyer was not at fault for the impossibility of returning the pool materials or their deterioration.

- (6) We shall be entitled to make partial deliveries if that is advantageous for completing the contract quickly and is reasonable for the buyer.

## § 6 PRICES AND PAYMENT

- (1) Unless otherwise agreed upon in writing, our selling prices shall be quoted as net amounts in Euros and shall exclude packaging, statutory value added tax, customs fees and other levies.
- (2) The payment terms shall arise either from the offer, the order confirmation or the invoice. The invoice shall be authoritative in the event of discrepancies. Deduction of discounts is only permissible if a separate written agreement has been concluded.
- (3) Appropriate price changes as a result of changes in the raw materials, energy, wages and selling costs for deliveries that are effected three months or later after contract conclusion shall remain reserved. That reservation of price adjustment shall also apply even if a fixed price agreement exists. Should no agreement be reached within six weeks, each party can withdraw from the part of the contract that has not yet been fulfilled by delivery.
- (4) Unless otherwise agreed upon in writing, our invoices shall be payable within 14 days after the date of invoice without deduction. The presentation of bills of exchange shall require our prior consent. Checks and bills of exchange shall only be accepted on account of performance. We can send invoices electronically.
- (5) The first and second delivery shall only be made against prepayment in cash or by a bank transfer to one of the business accounts specified by us unless otherwise agreed upon in writing. Any subsequent change in payment terms shall, in all cases, require our consent.
- (6) Default interest of 9 percentage points above the respective base interest rate shall be charged. We reserve the right to charge higher default fees.
- (7) The buyer shall only have a right to offset if its counterclaims have been recognized by declaratory judgment or acknowledged by us and they do not relate to claims relating to manufacture or rectification of defects. The buyer can only exercise its right of retention if the claims result from the same contractual relationship.
- (8) If the payment terms are not adhered to or if knowledge is obtained of the buyer's lack of creditworthiness, all the receivables from the buyer will become due and payable. In that case, the buyer shall be obligated to immediately pay in advance for any supplies still outstanding by us upon request. In that case, we shall furthermore be entitled to withdraw from the contract after having set a deadline or to claim compensation for damages on the grounds of non-performance.

## § 7 DELIVERY TIMES AND DUTY TO ACCEPT

- (1) Schedules and times for delivery shall only be binding if agreed upon in writing and shall generally begin with the agreed date documented in the order confirmation.
- (2) Information about delivery times for new productions shall always be non-binding depending on technical requirements. Information provided by us in this regard does not constitute a contractual assurance.
- (3) Information regarding delivery times shall be provided subject to our receiving our deliveries on time. Any operational or transportation-related delays as well as lockouts and other force majeure events in connection with receiving our deliveries shall release us from complying with our delivery obligation for the duration thereof. The supplier shall inform the buyer immediately if such events occur. The buyer shall also be released from its contractual obligations, in particular payment of the purchase price, for the duration of such a disruption. If acceptance of the delay cannot be reasonably expected from the buyer, the buyer can withdraw from the contract after having set an appropriate deadline by means of a written declaration.

- (4) The buyer shall be obligated to accept goods delivered by the scheduled date and must ensure that all the necessary requirements are in place in good time.
- (5) Delivered goods shall be accepted by the buyer even if there are minor defects (flaws according to the general technical delivery conditions [ATLB]).
- (6) If the buyer delays acceptance or culpably violates other cooperation obligations, we shall be entitled to request compensation for the losses incurred by us, including any additional expenses. The right to assert further claims remains reserved. In that case, the risk of accidental loss or accidental deterioration shall pass to the buyer at the time at which the latter defaulted on acceptance or payment. Damage claims by the buyer on account of default shall be limited to 3% of the value of the relevant delivery per week of delay, limited however to a maximum of 15% of the value of the relevant delivery to the extent that we are not responsible for intent or gross negligence. The right of the buyer to withdraw from the contract and/or request damage compensation for non-performance after expiry of an appropriate deadline in accordance with the regulation in § 10 of these Terms and Conditions shall remain unaffected.

## § 8 RESERVATION OF TITLE

- (1) The goods delivered by us shall remain our property until payment of all receivables arising from the business relationship with the buyer. That shall also apply to all future deliveries even if we do not always refer thereto expressly. We shall be entitled to take back the delivery if the buyer acts in breach of the contract. We undertake to release the buyer's collateral upon request of the buyer to the extent that the realizable value of the collateral exceeds more than 10% of the receivables to be collateralized; we retain the right to choose the collateral to be released.
- (2) The buyer shall only be permitted to sell goods in which we reserve title in the ordinary course of business if the buyer is not in default. The buyer herewith assigns all of the receivables from its buyers arising from such a resale of the goods to us. We accept that assignment on account of performance. The buyer undertakes to provide us with the information required to assert our claims. The assignment shall apply irrespective of whether the goods are resold without or after processing.
- (3) The buyer shall not be authorized to pledge our goods or to conclude collateral assignment agreements affecting our goods. The buyer must immediately notify us of any enforcement measures relating to the goods subject to our reservation of title or to the receivables assigned.
- (4) If the goods subject to reservation of title are combined with other items we shall acquire co-ownership of the intermediary and final products arising thereby according to the ratio of the pro rata value of the goods subject to reservation of title. If the goods subject to reservation of title are processed by the buyer, that is undertaken for us without the buyer becoming entitled to a fee for it. In all cases, the buyer shall retain the new item for us without charge. The above agreements shall apply mutatis mutandis with regard to the disposal of those goods and assignment of the receivable from the buyer.
- (5) The buyer undertakes to properly store the goods subject to reservation of title and to insure the same against theft, breakage, fire, water and other damages at its own expense in accordance with its industry-standard practices. The claims arising from the insurance policy shall be regarded as assigned to the supplier in the amount of the value of the goods subject to reservation of title.
- (6) For deliveries abroad, if the supplier is not subject to a reservation of title with the same effect as under German law but the reservation results in other rights to the supplied item, those rights shall accrue to the supplier. In this connection, the buyer shall cooperate in all respects.

## § 9 WARRANTY

- (1) Unless agreed upon separately, the general technical delivery conditions (ATLB) / special technical delivery and purchase conditions (STLB) of the respective manufacturer shall apply on the basis of the general European manufacturing directives and legal regulations in their most current version.
- (2) Any warranty claims by the buyer require that the buyer has met its obligations pursuant to Section 377 HGB [German Commercial Code] in respect

of the examination and defect notification duties owed. Any defects shall be documented in writing.

- (3) The goods shall be regarded as having been accepted in a manner customary in the industry when they have been utilized or used. We shall not accept any liability in the event that the damages arise in connection with the utilization or processing of the supplied goods.
- (4) We shall not accept any liability for the supplied goods being suitable for the purposes envisaged by the buyer unless such has been made a subject matter of the contract. In this respect, any warranty claims, including for a reduction in the price, shall be precluded.
- (5) If a defect that we are responsible for arises, we shall be entitled, at our choice, to rectification of the defect, substitute performance (freight paid respectively). The buyer shall be entitled to a reduction in the purchase price or, at its choice, to withdraw from the contract if the subsequent improvement or subsequent delivery fails. Any offsetting from other transactions shall not be permitted. Any replaced parts shall become our property.
- (6) Any claim to objection can, however, only be asserted if the loss from the defect amounts to more than 0.25% of the total order volume. In the event of faulty material, only to the extent that the complaint is recognized by our own suppliers.
- (7) In the event of custom-made products, excess or reduced quantities shall be accepted as they are supplied to us depending on the total duration of production.
- (8) Warranty claims shall expire 12 months as of the date of delivery. No warranty shall be given for used items except for any liability for damage compensation in accordance with § 10 of these Terms and Conditions.

## § 10 LIABILITY

We shall assume unlimited liability if the cause of the damage is intent or gross negligence. Furthermore, we shall assume liability for a slightly negligent violation of cardinal duties the violation of which puts the purpose of the contract at risk or for the violation of duties the performance of which makes the proper execution of the contract possible and compliance with which the buyer regularly trusts. In that case, however, we shall only assume liability for foreseeable damage typical of this type of contract, which is limited to the contractual remuneration and a maximum of five times the contract amount as a matter of principle and to the extent it is appropriate. We shall not be liable for slightly negligent violation of obligations other than those mentioned in the aforementioned sentences. The aforementioned limitations of liability shall not apply in the event of injury to life, body and health, a defect after acceptance of goods covered by a guarantee for the characteristics of the product and for fraudulently concealed defects. Liability in accordance with the product liability act shall remain unaffected. If our liability is excluded or limited, that shall also apply to the personal liability of employees, representatives and vicarious agents.

## § 11 INTELLECTUAL PROPERTY RIGHTS

If the buyer provides drawings, samples or models, the buyer warrants that those are free of copyright, intellectual property rights or other third party rights. The buyer shall indemnify us for any such claims and must itself compensate for any damages arising.

## § 12 CONFIDENTIALITY AND SAFEKEEPING

- (1) The parties to the contract undertake to keep confidential, not to disclose to third parties, and not to use in ways other than contractually agreed, all information (e.g. documents, drawings, data) containing business or trade secrets, that is identified as confidential or is inherently confidential by

nature, and that may come to the parties' knowledge while the contract goods or services are being provided. The parties shall transfer such information only to the person responsible for it, and shall particularly call attention to the confidentiality obligation at that time. The parties shall properly destroy or return information that is no longer needed. Models, templates and similar objects may not be transferred or otherwise made accessible to third parties without authorization.

- (2) Our offers and information are confidential and intended only for the recipient addressed by us and our purchaser. They shall only be passed on to third parties with our written consent.

## § 13 PROOF OF EXPORT, ENTRY CERTIFICATE

- (1) In cases where the buyer collects the goods himself or through a commissioned third party and forwards or dispatches them to a territory of a non-EU country, the buyer must provide us with the export proofs required for tax purposes. If these proofs are not submitted in a timely manner, the buyer shall pay the VAT rate applicable to deliveries within the Federal Republic of Germany from the invoice amount.
- (2) In cases where the buyer collects the goods himself or through a commissioned third party and forwards or dispatches them to another EU member state (intra-Community supply), the buyer must provide us with the entry certificate required for tax purposes. If this proof is not submitted in a timely manner, the buyer shall pay the VAT rate applicable to deliveries within the Federal Republic of Germany from the invoice amount.

## § 14 APPLICABLE LAW AND PLACE OF JURISDICTION

- (1) This contract and all the legal relationships of the parties shall be subject to the law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (2) The place of performance for all liabilities as well as the place of jurisdiction shall be Berlin if the buyer is a merchant, a legal entity under public law or a separate fund under public law. The international jurisdiction of German courts is agreed upon with foreign buyers. We shall be entitled to file an action at the registered offices of the buyer.

## § 15 ASSIGNMENT

- (1) We shall be entitled at any time and without prior notification to transfer the buyer's contractual rights, in particular payment claims, in whole or in part to third parties including professional financing providers and, in this connection, to disclose the required contractual information to the transferee and any third parties that have a legal interest in the transferee or the transfer to the extent required for the transfer.
- (2) The buyer shall not be permitted to transfer the rights and duties from the business relationship without our consent.

## § 16 PARTIAL INVALIDITY AND MISCELLANEOUS

- (1) Should individual provisions of this contract be or become invalid or contain a gap, that shall not affect the remaining provisions. To replace the invalid provision, the parties undertake to agree to a lawful provision that is as close as possible to the economic intent of the invalid provision or which fills that gap.
- (2) It should be noted that these Terms and Conditions shall apply as from 1st August 2023 and any previous regulations shall be invalid as of that date unless otherwise agreed upon in writing.

Effective: July 2023