

General Terms and Conditions of Business for Deliveries and Services¹¹ of Vandaglas GmbH

1. Scope

1.1. All deliveries and services of the Supplier (hereinafter also referred to as "contractual performance") are rendered solely in accordance with these General Terms and Conditions of Business ("AGB"), as possibly supplemented by written product and performance-related conditions of the Supplier. Terms and conditions of the Customer which deviate from or supplement these AGB or supplementary product- or performance-related conditions of the Supplier do not apply; **they are hereby contradicted**. This is also the case if the Supplier executes a delivery without reservations while fully aware that conditions of the Customer deviate from or conflict with these AGB. These AGB also apply to all future business with the Customer.

1.2. All construction services, including installation, are governed in **addition to these General Terms and Conditions** by parts B of the German Construction Contract Procedures (German: "VOB, Teile B") in the version that is applicable when the contract is concluded (provided only that the contract partner which placed the order is active in the construction sector).

1.3. All agreements made between the supplier and the customer must be declared in writing. Changes and additions to the contract and for its annexes as well as the waiver of the written form requirement must be made in writing. Verbal collateral agreements do not exist.

2. Conclusion of the Contract

2.1. The offers contained in the Supplier's catalogues and sales documents **and or other offers** - unless expressly designated as binding are always non-binding, i.e. only to be understood as an invitation to submit an offer. All orders placed by customers are binding offers. The Supplier can opt to accept such an offer by sending an order confirmation within three weeks or by delivering the items or rendering the services ordered within these three weeks. Contracts are concluded only when an offer made by the Customer is accepted by the Supplier in accordance with **this point**

2.2. Oral agreements and assurances that go beyond the written contract and are concluded with or given by any of the Supplier's sales personnel or commercial agents must be confirmed by the Supplier in writing to take effect.

2.3. The following applies if the customer is a merchant (*Kaufmann*) as defined by the German Commercial Code (HGB): Additional conditions, including conditions of a technical nature, result from supplementary delivery conditions, price lists - especially regarding dimensions and calculation thereof -, glass thicknesses, price determination, box and package contents, packaging, freight costs, deposit money, etc. Insofar as nothing is contained therein and no special agreements have been made, the customary commercial practices shall apply.

2.4. **The delivery/services only needs to have the properties that are specified in the contract or in a product data sheet included in the technical information. The delivery/services is conclusively described by these characteristics. The supplier is entitled to make technical and structural changes to the goods if this is due to legal regulations or insofar as these are commercially normal, do not constitute an unreasonable imposition on the Customer and do not interfere with the ability to use the goods for the purpose that has been agreed. Technical data and descriptions in the applicable product information and promotional materials do not form parts of the contract unless they are included explicitly and in writing.**

2.5. **If the supplier provided the customer with a sample or an exhibit before or after the conclusion of the contract, then these do not have to be of the same quality as in the contract. Sentence 1 applies accordingly provided by the supplier to the customer before or after the conclusion of the contract.**

2.6. **The supplier reserves all rights without restrictions to all cost estimates, drawings, models, exhibits, specimens, photocopies or other documents in which he makes available to the customer. Without the prior written consent of the supplier, the customer is not entitled to make the documents or their content accessible to third parties. At the request of the supplier, the customer is obliged to immediately and completely surrender all documents to the supplier, if they are no longer required by the customer in the ordinary course of business or if the customer finally fails to place an order.**

2.7. If, after conclusion of the contract, the Supplier becomes aware of facts which according to conscientiously exercised commercial judgment indicate that the Supplier's claim to payment of the purchase price is endangered by a lack of the Customer's ability to pay (e.g. payment default in regard to previous deliveries), then the Supplier is entitled to demand that the Customer pay in advance or provide appropriate securities within a reasonable period of time set by the Supplier. If the Customer refuses to do so, the Supplier may withdraw from the contract, whereby the invoices for any partial deliveries that have been made so far shall be due at once.

2.8. Requests by the Customer for subsequent changes to or cancellation of an order can be respected only on

the basis of a special agreement and then only if work on manufacturing, cutting or processing has not yet begun.

2.9. If one of the Supplier's suppliers is unable to deliver for reasons for which the Supplier is not responsible, and if the Supplier has undertaken all reasonable efforts to obtain the goods required, then the Supplier may withdraw from the contract by informing the Customer of this unavailability without delay and returning any consideration already received.

2.10. The Supplier reserves the right to have contractually owed performance rendered by third parties. This shall not affect the Customer's rights vis-à-vis the Supplier.

3. Delivery Periods and Default

3.1. Compliance with the delivery or service obligation presupposes the timely and proper fulfillment of the customer's obligations, **especially his participation**.

3.2. Delivery dates and periods are non-binding except to the extent that the Supplier has explicitly agreed that they are binding and **he has declared in writing to be liable for exceeding the agreed period of time**. Delivery periods begin when the order confirmation is sent, provided that the documents, approvals and releases to be furnished by the Customer have been received, along with a down payment if one has been agreed. Delivery deadlines are deemed to have been met if the items to be delivered come to shipment by the deadline or if the Customer has been notified that they are ready to ship.

3.3. The Supplier expressly reserves the right to render services and deliveries in part and to invoice them accordingly, provided that in view of the Supplier's interests this is not unreasonable for the Customer.

3.4. If force majeure or operational disruptions sustained by the Supplier and/or its suppliers and subcontractors as a consequence of unforeseeable hindrances which occur after the conclusion of the contract (particularly strikes, lockouts, and disruptions of transportation routes) temporarily prevent the Supplier and/or its suppliers and subcontractors, through no fault of their own, from delivering items by the agreed deadline or within an agreed period of time and/or from rendering contractual services, then this shall extend the agreed deadlines and periods of time by the duration of the disruptions of services and deliveries caused by these circumstances; **the supplier is entitled to postpone the delivery for the duration of the hindrance plus a reasonable start-up time or to withdraw from the contract in whole or in part because of the part that has not yet been fulfilled**. The Supplier shall notify the Customer of such hindrances and their beginning and end as soon as possible **as far as this is reasonable for him**. If such a disruption leads to a backlog of more than three months, the Customer may withdraw from the contract in respect to the delivery items and services involved.

3.5. **Number 3.4. applies accordingly in the event of delivery due to documents not being made available to the supplier by the customer in good time before delivery, approvals, clearances, clarification of technical details and information that are necessary for the delivery from the supplier's point of view.**

3.6. **3.5.** The Supplier is liable for un punctual deliveries only if it or any of its assistants are at fault. The Supplier is not responsible for faults of its own suppliers; however, in such a case the Supplier would have to assign to the Customer its rights to compensation for damage.

3.7. **3.6.** If the Supplier slips into default, if the Customer then sets a period of grace with threat of rejection, and if this period of grace expires to no avail, then the Customer is entitled to withdraw from the contract. The Customer has claims to compensation for damage in lieu of performance in the amount of the foreseeable damage that is typical of the type of contract in question, as well as claims to reimbursement of expenses, only if the delivery default is based on intention or gross negligence. Otherwise, liability for compensation for damage is limited to 50% of the actual damage. The period of grace with threat of rejection can be dispensed with to the extent that the Customer can assert that it can be dispensed with pursuant to Section 323.2 German Civil Code (BGB) because the Supplier was responsible for the delivery default.

3.8. **If a delivery is made on the customer's request, the customer is obliged to provide the desired delivery date in writing with a correct description and naming of all necessary data, at least 10 working days before delivery. The supplier will try to achieve the desired delivery date. The above provisions of this section apply accordingly to retrieval dates.**

4. Shipment, Passage of Risks, Packaging¹¹

4.1. Shipping route and means are selected by the Supplier. Packaging is not by item but solely in accordance with technical considerations of transport, production and the environment. The unit of packaging length is always determined by the greater dimension.

4.2. All deliveries are deliveries ex warehouse or ex works. The risks pass to the Customer when the goods are transferred to the carrier, regardless of whether the carrier has been hired by the Customer, the manufacturer or the Supplier. This also applies to partial deliveries in respect to the partial delivery and it applies when shipping charges are paid by the Supplier. In case of delivery with vehicles of the Supplier, the risks pass to the Customer as soon as the goods have been made available at the place specified by the Customer.

4.3. At the Customer's request, the items to be shipped will be insured by the Supplier at the Customer's expense against theft, transport damage as well as other insurable risks. Transport damage should be asserted by the Customer directly vis-à-vis the carrier. **Delivered goods must first be accepted by the customer regardless of existing claims for defects, even if they are damaged in transit or are defective.**

4.4. If shipment is delayed at the Customer's request or for reasons for which the Customer is at fault, then the goods will be stored at the expense and risk of the Customer. In such a case, notification that the goods are ready to ship is equivalent to shipment itself. The invoice for the goods becomes due when the goods are placed in storage. **The supplier is entitled to charge the usual storage costs for the storage space used (on his own or third-party premises) as well as for the packaging chosen by him.**

4.5. If transport is conducted with a motor vehicle, the goods are deemed to have been transferred as soon as they are available to the intended recipient on/in the vehicle in front of the delivery point on a paved road. If the deliverer considers this access to be impassable, then the goods are transferred at a place where this motor vehicle is able to drive to and depart from properly.

4.6. If the Customer is a merchant (see 2.5), then unloading is solely a responsibility of the Customer, which is responsible for providing suitable equipment and workers for unloading. Waiting times are charged in accordance with the German Motor Traffic Regulations (KVO) for long distance freight traffic and in accordance with the German Regulations on Short-Haul Transport (GNT) for local freight traffic.

4.7. If, in deviation from the contractual agreements, the Customer demands assistance with unloading (including equipment for unloading), further transport or deployment, then this effort will be invoiced additionally. However, the Supplier's assistance with such tasks does not entail any assumption of additional liability or transfer of risks.

4.8. Multiple use packaging and glass transport racks ("packaging") are provided to the Customer only as loans. The Customer shall prepare the packaging for return and notify the Supplier in text form and within 2 weeks that it is ready to be picked up. If this does not happen, the Supplier will be entitled to demand 20% of the net procurement price per week from the third week up to a maximum of the full procurement price, or to submit an invoice for the packaging, which will then be due for payment in full immediately on receipt of the invoice.

5. Prices and Payment

5.1. The prices are those according to agreement or the order confirmation. If the order confirmation does not set a price, the prices are those according to the Supplier's price list as of the date on which the contract was concluded. The prices are prices ex works or ex warehouse plus packaging, freight and other shipment costs, statutory value added tax and, in the case of exports from Germany, all country specific levies, unless something else has been agreed.

5.2. The Supplier's price calculation assumes that the items on which its offer is based remain unchanged, that any required preliminary work has already been done in its entirety, and that the Supplier's services can be rendered in a single operation - without interference. The Supplier's offers are based on the Customer's description of the performance required, but without knowledge of the Customer's local circumstances.

5.3. In respect to deliveries and services that are scheduled to take place 4 or more months after formation of the contract, the Supplier reserves the right to increase its prices in accordance with the increases of its own costs for personnel, means of production and costs of materials. If such an increase comes to more than 4% of the agreed price, then the Customer, if he is a consumer, has the right to withdraw from the contract in text form and within one week after receipt of the notification of the price increase.

5.4. The Supplier is entitled to demand advance payment if, through no fault of its own, its performance is delayed beyond the agreed period of time.

5.5. Unless something else is agreed, payments are due, at the latest, upon transfer of a delivery or rendition of a service. All payments are applied to the earliest debt item that is due plus any interest on debt that has accrued.

5.6. The Supplier's claims against the Customer become due immediately if the payment dates and periods are not kept and this is the Customer's fault or if the Supplier becomes aware of significant deterioration of the Customer's financial position.

5.7. If the Customer slips into payment default, the Supplier may refrain from using its direct debit authorization (if any) (see Section 6.3) and demand advance payments for any outstanding deliveries. The Customer can ward off this legal consequence by providing securities in the amount of the payment claims that are endangered.

5.8. If the Customer comes into default with a payment, default interest at the rate provided by law will be charged. The Supplier may charge a greater default interest rate if it shows that it is burdened with a greater interest rate.

5.9. Refusals to pay and retentions of payments are excluded if the Customer was aware of the defect or other reasons for objection. This also applies if the Customer was unaware of the said defect or objection due to gross

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negligence unless the Supplier fraudulently concealed the defect or other reason for objection or the Supplier assumed a guarantee for the item's characteristics.

5.10. The Customer may offset such claims only if and only to the extent that its counterclaims are not in dispute or have been established with force of law. The Customer can have a right of retention only if and only to the extent that its counterclaims result from the same contractual relationship and are either not in dispute or have been established with force of law.

5.11. If the supplier takes back a delivery made without acknowledging a legal obligation or out of goodwill or for other reasons, he is entitled to charge an expense allowance in the amount of 20% of the invoice value of the respective delivery and only to credit the remaining amount. This amount of the expense allowance is to be reduced if the customer can prove and that the actual expense is lower than the lump sum according to sentence 1. If the customer cancels the contract or if he withdraws for a reason for which the supplier is not responsible, or if the supplier cancels the contract or if it withdraws for a reason for which the customer is responsible, the supplier can claim lump sum compensation in the amount of 30 % of the agreed remuneration for the contractual service no longer provided; the supplier can demand that the service rendered be paid for separately, even if it has not yet been delivered. This does not exclude further claims by the supplier as well as the customer's proof that a lower compensation is justified.

6. Retention of Title

6.1. The Supplier retains title of the goods delivered until all present and future claims from the business relationship with the Customer have been paid in full ("reserved goods"). In case of a current account, the reserved property serves to secure the balance claim.

6.2. The Customer is obliged to treat the reserved goods with care and to insure them at value when new at its own expense against any damage due to fire, water and theft. Required maintenance and inspection work must be carried out by the Customer in good time at its own expense.

6.3. The Customer has the right to resell reserved goods during the normal course of business; however, the Customer now assigns to the Supplier, in advance, all claims which accrue to the Customer against its own customers or third parties out of or in connection with the resale (including collateral and ancillary rights) in the amount of the invoiced total of the Supplier's claims against the Customer (including value added tax), regardless of whether the goods in question have been resold without or after processing. The Customer is entitled to collect these claims even after they have been assigned. The Supplier's authority to collect these claims by itself remains unaffected by this. The Supplier agrees to make no use of this authority for as long as the Customer complies with its payment obligations from the agreed proceeds, the Customer does not slip into payment default, no application is filed for commencement of insolvency proceedings and payment has not been discontinued. In these cases, the Customer is obliged to inform the Supplier of the claims that have been assigned and of their debtors, and to provide all information required to collect these claims, to surrender the attendant documents and to notify its debtors (third parties) of the assignment.

6.4. The Customer is not authorized to pledge reserved goods, to assign them as security, or to encumber them with rights of third parties in any other way. The Customer shall inform the Supplier of any debt enforcement measures taken by third parties against reserved goods and provide the Supplier with the documents that are necessary for an intervention; this also applies to disturbances of all other types. In addition, the Customer must, from the outset, advise the said third parties of the existing rights to the reserved goods. If the said third party is not in a position to reimburse all of the costs of an intervention by the Supplier, then these costs shall be borne by the Customer.

6.5. When the Customer processes or restructures reserved goods, it always does so on behalf of the Supplier. When reserved goods are processed together with other objects that do not belong to the Supplier, the Supplier acquires co-ownership of the new object in accordance with the ratio of the value of the reserved goods (invoice total, including value added tax) to that of the other objects processed at the time of processing. Moreover, the same applies to the new object which arises from the processing as applies to the reserved goods themselves.

6.6. If reserved goods are inseparably mixed with other objects that do not belong to the Supplier, then the Supplier acquires co-ownership of the new object in accordance with the ratio of the value of the conditional goods (invoice total including value added tax) to that of the other objects in the mixture at the time of mixing. If the objects are mixed so that the Buyer's objects are to be regarded as the main object, then it shall be deemed to have been agreed that the Customer has transferred co-ownership to the Supplier in accordance with the foregoing ratio. Then the Customer shall hold in safe custody for the Supplier the sole ownership or joint ownership that has arisen in this way.

6.7. The Customer also assigns to the Supplier the claims for securing the Supplier's claims against the Customer that accrue to the Customer against a third party through connection of reserved goods with real property.

6.8. If the Supplier is entitled to demand surrender of reserved goods, then the Customer bears the costs of returning them. The Customer authorizes the Supplier to liquidate in the open market at best price any reserved goods which it has taken back from the Customer and to credit the proceeds less reasonable liquidation costs to the Buyer's liabilities.

6.9. If the realizable value of the security exceeds the Supplier's claims against the Customer by more than 10 %, and if the Customer demands that this excess be released, then the Supplier must release securities accordingly, whereby it is the Supplier which decides which security is released.

6.10. If, in the case of deliveries into a country outside Germany, it is not possible to agree retention of title that has the same effects as under German law, but it is still permitted to reserve other rights to the goods delivered, then the Supplier is entitled to all such other rights. The Customer shall cooperate in this connection in every respect.

7. Product Characteristics and Standards

7.1. In the domains of the building codes of the German states, the construction products and types used must comply with the pertinent regulations under law, e.g. list of the technical construction regulations, building rules list, general approvals and test certificates under construction supervision. The functional values stated by the Supplier for the glass structures are ascertained in accordance with the sets of rules introduced or agreed under construction supervision under the test dimensions and conditions required there. Formats, glass structures and treatments that deviate from these can result in changes of characteristics. The indicated glass thicknesses are not checked for the static requirements related to the order (wind, snow, climate and live loads).

7.2. Characteristics and technical requirements of the products are described in the "Handbuch Toleranzen" [Tolerances Manual], 4th edition, 04.2013 with the tolerances of basic glasses and the treatments for the resulting refined products such as multi-pane insulating glass, toughened safety glass, heat-soak-tested toughened safety glass, heat-strengthened glass, Emailit, Seralit and laminated safety glass. Additional information about products is contained in the product information sheets. These are based on the foregoing sets of rules and information specific to manufacturers, which describe them in detail.

7.3. In the case of toughened safety glass, spontaneous fractures can develop in individual cases through so-called nickel sulphide inclusions due to materials and manufacturing. Consequently, heat-soak-tested toughened safety glass should be used, depending on the purpose. The residual risk of such fractures can be greatly reduced with a heat soak test, but not completely eliminated. **The supplier is not liable in this respect.** Use of other types of glass, such as laminated safety glass, might be advisable, depending on the installation situation.

8. Warranty Rights

8.1. The characteristics of the goods to be delivered, including their ability to be used for a particular purpose, result exclusively from the parties' agreements. Deviations of dimensions, colour and weight that lie within normal commercial tolerances do not constitute defects. The applicable tolerances are stated in the "Handbuch Toleranzen" ("Tolerances Manual"), which can be retrieved at <http://www.climaplus-securit.com>. Illustrations in catalogues, brochures and the Supplier's websites are not binding for execution.

8.2. The Customer is obliged to check the items in each delivery without delay. All obvious and/or recognized defects, shortages and wrong deliveries must be reported to the Supplier in text form within one week from receipt of the goods at the very latest, however, in all cases before they are processed or installed, whereby it suffices for complaint in text form to be sent before the deadline. This does not affect further obligations of merchants (see 2.5) pursuant to Sections 377 of the German Commercial Code (HGB). If the Buyer omits to examine the goods for the characteristics which are definitive for their intended use before the Buyer installs or mounts them, at least by examining samples (e.g. by means of functional tests or a test installation), then the Buyer has failed to a great extent to exercise the care that is customary in commercial intercourse (gross negligence).

8.3. The Customer is obliged to give the Supplier the opportunity to ascertain the alleged defect at the place of delivery or to provide the Supplier with the allegedly defective item or a sample thereof. If the Customer refuses to do so and is at fault for this, then the Customer loses its claims based on the defect. If the Customer accepts defective performance under the contract, even though the Customer knows about the defect, then the Customer is entitled to claims based on the defect only if the Customer expressly reserved its rights because of a defect when the Customer accepted the defective performance. Acceptance of performance under the contract cannot be refused by the Customer on the basis of negligible defects.

8.4. In cases of supplementary performance, the Supplier may decide between removing the defect or delivering an object that is free of defects; however, this does not apply to the case of a delivery regress pursuant to Sections 445a and 445b BGB for which the last contract in the chain is a consumer goods purchase.

8.5. The necessity of expenses for removing defective and installing defect-free goods must be presented and proven by the Buyer. The actual costs of the measure that was reasonably undertaken must be shown in an understandable accounting of costs. Section 439.3 BGB remains unaffected by this.

8.6. If the costs of supplementary performance are disproportionate in view of the circumstances of the case at hand, then the **supplier** may refuse to reimburse them. In particular, the costs are disproportionate if the costs of supplementary performance and the significance of the defect stand in a disproportionate relationship to each other. This is regularly the case when the total required costs for supplementary performance exceed the invoiced value of the goods by 50 % or the value of the goods as reduced because of the defect by 100 %.

8.7. Claims for compensation of damage because of a defect that is not already covered by Point 8.2 are handled in accordance with Point 9. Regression claims of the Buyer pursuant to Sections 445a and 445b BGB (recourse of the Seller) exist only to the extent that the Buyer has not concluded any agreements with its customers that go beyond the statutory claims based on defects. In this case, the Buyer's regress claim pursuant to Sections 445a and 445b BGB is limited to 150% of the invoiced value of the goods. This does not apply to the case of a regress in which the last contract of the delivery chain is a consumer goods purchase.

8.8. If the Customer is an entrepreneur as provided by the German Civil Code, the warranty period is 12 months from passage of risks. The statutory limitation periods in the case of deceitful concealment and in the case of an object which was used for a building in accordance with its customary manner of use and caused the building to be defective remain unaffected. The limitations period for regress claims of the Buyer pursuant to Sections 445a and 445b BGB is one year from the statutory beginning of the limitations period unless the last contract of the delivery chain is a consumer goods purchase. In this case, the statutory limitations period applies.

8.9. If it turns out within the scope of the supplementary performance that the defects reported by the customer are not subject to liability for defects, the customer will pay the costs incurred to the supplier (for example for working hours, labour costs, spare parts, travel and so on) at the appropriate prices for a Replace remuneration even if the supplier has not previously declared an accounting reservation.

9. Liability

9.1. The Supplier's liability for damage is normally restricted to intention and gross negligence. This does not apply to liability because of a deceitfully concealed defect, because of loss of human life, bodily injury or damage to health, or because of violation of a cardinal duty, or because of the German Product Liability Act. Cardinal duties in this sense are duties which are inherent in the nature of the contract and the violation of which would endanger achievement of the purpose of the contract. The Supplier's liability to compensation for damage is limited to predictable damage that is typical of the type of contract, regardless of the type of fault. Liability for indirect damage, consequential damage and claims of third parties is excluded. This does not apply to liability because of a deceitfully concealed defect, because of loss of human life, bodily injury or damage to health, or because of the German Product Liability Act.

9.2. Personal liability of the Supplier's statutory representatives, its assistants and members of its company for damage caused by these individuals is restricted in the same way.

9.3. The supplier is also only liable for the loss of data and programs or their restoration to the extent shown in sections 9.1. and 9.2. and only to the extent that this loss is not caused by appropriate precautionary measures by the customer, in particular the daily creation of backup copies of all data and programs would have been avoidable.

9.4. 9.3. The limitations period for the Customer's claims for compensation for damage is one year unless a claim is based on a deceitfully concealed defect, on a defect of an object which was used for a building in accordance with its customary manner of use and caused the building to be defective, on loss of human life, bodily injury or damage to health, on intention or gross negligence, or on the German Product Liability Act. Then the statutory limitations periods apply.

10. Place of Fulfilment, Place of Jurisdiction, Applicable Law

10.1. The place of fulfilment for deliveries and payments is the registered office of the Supplier unless something else is stated in the order confirmation from the Supplier.

10.2. The Customer may transfer his rights and obligations arising from the contract under these conditions only with the written consent of the Supplier.

10.3. If any provision of these General Conditions of Business proves to be or becomes ineffective in whole or

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in part, this shall not affect the validity of the remaining provisions. The parties shall replace the ineffective provision with an effective provision which best achieves the economic purpose that the parties wanted.

10.4. The place of jurisdiction for all disputes that arise from this contract is the court with jurisdiction for the Supplier's registered office insofar as the Customer is a merchant (see 2.5) or the Customer's residence and customary place of abode do not lie in Germany or are not known when legal proceedings are commenced. **The language for disputes and also the languages for disputes in court is German.**

10.5. The contractual relationships are subject to the law of the Federal Republic of Germany. Application of the Vienna Convention on the International Sale of Goods of 11 April 1980 and of German law on conflicts of laws is excluded.