

## General Terms and Conditions of OKALUX GmbH Version: September 1, 2011

### 1. Generally

- 1.1 These General Terms and Conditions are only for use in business connections with companies.
- 1.2 The following provisions shall apply for all first-time, current and future business relationships between us and our customers. Our terms of delivery and payment, with which our customer declares itself in agreement with at placement of the order, shall apply exclusively, as well as for future transactions, even if they are not expressly referred to, but which the customer has received with an order confirmed by us. If the order is placed with variations from our delivery and payment terms, only our terms of delivery and payment shall apply, even if we do not object. Variations shall only apply if they are expressly accepted by us in writing.
- In addition to this, our Infotexte for the ordered glass, the customer notes, the product-specific customer notes, the cleaning instructions and the "Richtlinie zur Beurteilung der visuellen Qualität, in their respective valid versions apply. These are all generally accessible on the Internet. We would be happy to send these to you upon request.
- The customer may only rely on subsidiary agreements made before and at conclusion of the contract with prompt written confirmation.
- 1.3 Our offers are subject to confirmation; we reserve the right to make technical improvements to our products. We can save data necessary for contract implementation on computers.
- 1.4 Partial deliveries are permissible to a reasonable extent. We can invoice installment payments in a reasonable amount.
- 1.5 Claims arising from the contractual relationship can not be assigned by the customer without our written consent. Setoffs or retentions made by the customer are only permissible with counter claims that are undisputed or have been legally established. We are authorized to avoid the exercise of the right of retention through provision of a security – even through a guaranty.
- 1.6 The place of performance is our company headquarters in Marktheidenfeld, at our option, the place of venue is our company headquarters or 74819 Mosbach (Baden) – even for check and exchange processes – or the court having jurisdiction for the registered office of the customer. The same place of venue shall apply if the customer has no general place of jurisdiction in the Federal Republic of Germany at the time of the initiation of the judicial procedure. German law shall be exclusively applied to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 1.7 In the event of doubt in respect to the scope of these General Terms and Conditions or their interpretation, the German version shall apply.

- 1.8 Quotations shall be applicable for the country in which the inquirer has its registered office. The inquirer shall be responsible for all liabilities and obligations that accrue to us through the use of the delivered goods outside of this country.

## **2. Risk, shipping**

- 2.1 The risk transfers to the customer when the delivered goods leave our factory. This also applies, even if we assume the costs of shipping, export or assembly.

- 2.2 A paved access road to the place of delivery is the pre-requisite for delivery. If the access road is not passable, the transfer will occur at a place where the arrival and departure of the delivery vehicle is guaranteed.

Unloading is the sole affair of the customer, who must provide for appropriate unloading equipment and the necessary manpower. The customer will be charged for waiting periods.

- 2.3 If shipping is delayed at the request or fault of the customer, the goods will be stored at the expense and risk of the customer. In this case, notification of readiness for shipping equals shipping of the goods.

- 2.4 Broken glass will not be returned.

- 2.5 The items are not packaged individually, but rather exclusively according to transportation and production factors. To the extent the packaging, especially companions, are our property, the customer shall preserve such at his risk and free of charge to us and must compensate us for their value in the event they are not returned to us in a timely manner.

## **3. Delivery times, delay, damage caused by delay**

- 3.1 Delivery periods are calculated ex works. They begin to run only after clarification of technical questions that are still open at conclusion of the contract, after the receipt of documents to be procured by the customer such as drawings and permits and/or advance payments to be paid as well as release for production. The right to proper and timely self-delivery remains reserved. We will immediately inform the customer regarding the unavailability of the delivery item.

- 3.2 Losses due to breakage and quality defects are unavoidable in the processing and handling of high-quality glass for the building industry. The number of losses climbs with the increasing number of processing and intermediary transport steps. In dealing with coated glass, we are bound to the manufacturer of the specific coating. Rare coatings will be produced in intervals of up to 3 months. The coating systems are very touchy, which repeatedly causes production downtimes thereby leads to delays in delivery. Non-delivery, delayed or incorrect delivery by our upstream suppliers shall extend the delivery period correspondingly. The same applies for force

majeure, as well as strikes, lock-outs, disruptions of operations and supply shortages that are not our responsibility.

The delivery periods will likewise be extended by additional or changed performances required by the customer.

- 3.3 In every case, our delay in delivery presupposes a warning from the customer with a reasonable grace period.

If we are inhibited in the timely execution of delivery by force majeure, war, strike, lock-out, natural catastrophes, changes in statutory provisions, official measures or other unforeseen events that lie outside of our intentions, then the delivery time will be extended in a commensurate manner.

- 3.4 For damages caused by delays, we shall limit our liability for damage claims in addition to performance to 5% and for damage claims instead of performance to 10% of the value of our delivery/performance. The limitation shall not apply in instances of deliberate acts, gross negligence and/or for death, injury to the body and health.

## **4. Prices, terms of payment, provision of security**

- 4.1 Our prices are stated in Euros and are calculated without legally required VAT. This will be invoiced separately at the currently valid rate according to the currently valid tax-related regulations. If more than 4 months pass between completion and delivery, we can require a reasonable surcharge under § 315 BGB (German Civil Code) within the scope of our discretion, which is equivalent to our increased costs until the time of delivery.
- 4.2 Invoices are – subject to written special agreement – immediately due and payable without deduction in Euro. We will only accept checks as a provisional performance and at the expense of the customer.
- 4.3 The prices for export transactions are deemed to be ex works; the costs for packing, insurance and freight are the responsibility of the customer. The prices for domestic transactions are calculated including delivery, if not otherwise agreed.
- 4.4 Upon a delay in payment and/or justified questions regarding the credit rating of the customer, we can make each individual delivery dependant on your prepayment in the amount of your invoice amount.

## **5. Retention of title, assignment in advance**

- 5.1 The delivered goods remain our property up until your complete, unrestricted payment. If we have additional claims against the customer, the retention of title remains in effect until payment of the claims, even if the individual item has been paid for.

- 5.2 The customer may resell the goods subject to retention of title – in the proper course of business – only if he has not assigned, pledged or otherwise encumbered his claims from the resale.
- 5.3 The customer may not combine the goods subject to retention of title to other items to which rights of third parties exist. If goods subject to retention of title nevertheless become a component of a new (aggregate) item through combination with other objects we shall become immediate co-owner at the respective ownership ratio even if the goods are deemed as main goods. Our joint ownership ratio is based on the relationship of the invoice amount of the goods subject to the right of retention to the value of the new item at the moment of combination.
- 5.4 Until your complete payment has been made, a combination of the delivered goods with a plot of land is only for a temporary purpose (§ 95 BGB (German Civil Code)). The customer shall preserve our joint ownership percentage free of charge.
- 5.5 Already in advance, the customer assigns to us the claims for security against his buyers from the sale of goods subject to the right of retention (clause 5.2) and/or newly formed items (clauses 5.3 and 5.4) until the repayment of all our claims, without still requiring special statements at a later time; the assignment also relates to outstanding balance claims, which result in the framework of existing current account relationships or upon the termination of such relationships. As long as the customer does not default with the payment of the goods subject to retention of title, he can collect accounts receivable in the orderly course of business. However, he can only use the proportional proceeds for payment to us of the goods subject to the right of retention.
- 5.6 At the request of the customer, we will release securities at our option, if and to the extent that the nominal value of the securities exceeds 120% of the nominal value of our outstanding claims against the customer.
- 5.7 In the case of default, we are entitled to withdraw from the contract and/or to recall existing goods subject to retention of title without withdrawal by the customer and collect the assigned accounts receivable itself. For the determination of our rights, we can have all documents/books of the customer affecting our rights of reservation reviewed by a person obligated to professional confidentiality.

## 6. Claims for defects and compensation

- 6.1 We shall be responsible that our delivered goods are free of defective at the transfer of the risk. However, negligible deviations from the agreed-upon quality or immaterial impairments of usefulness are insignificant. The quality, durability and utilization of our delivered goods owed is based exclusively on the written, stipulated specification and/or product description. Excess details, especially in preliminary talks, advertising and/or industrial standards relating thereto only become a component of the contract through express written inclusion.

- 6.2 Deviations in dimensions, contents, thicknesses, weights and color tones due to production are permissible within the limits of tolerances normal in the industry, even in the event of partial or subsequent deliveries. The guidelines for the assessment of the visual quality of glass for the building industry of the Federal Trade Guild Association of Glass and Glazing in the respective version applicable upon award of the contract in reference to the evaluation of delivered goods.
- 6.3 We presume that the customer has the knowledge – according to the state of the art – regarding the physical performance and the characteristics of glass, in particular in a transformed state. If the knowledge is not available, the customer agrees to notify us thereof.
- 6.4 If the customer needs the delivered goods for special purposes exceeding the usual area of application, he must verify their special suitability for these uses and their conformance with all relevant technical, legal or official regulations before they are used. We shall not be liable for damages of the customer that are avoidable through such proper verification.

If the delivered goods are exposed to special operational demands, such as for glazing in rooms with high humidity or glazing that is exposed to high thermal, static or dynamic stresses and strains, which require special measures to preserve the durability of the insulated glass, then these operational demands must be performed exactly. If this information is omitted by the customer, we will not be liable for damages that are caused in the omission of the special measure for preservation of the durability of the glass.

The use and/or transport of insulated glass in higher elevations requires that measures be taken at the factory for pressure equalization. The customer is obligated to provide us with written specifics regarding the destination point and the transportation route. If he breaches this duty, we will not be liable for damages arising from the lack of pressure equalization.

- 6.5 The customer must carefully inspect the delivery goods immediately after receipt – also for product safety – and immediately object to the obvious and/or detected defects in writing, and to hidden defects immediately upon discovery. The customer must immediately report transportation damages to the transport supplier. In either case, the written notice of defects of the customer must occur before the installation or processing of the delivered goods. Damage claims of the customer will not be recognized if the duties of inspection and objection/reporting are not complied with.
- 6.6 At our option, supplementary performance will be the remediation of the defects or the delivery of defect-free goods. Upon rejection, impossibility or failure of the supplementary performance, the customer shall have the right to reduce or – to the extent that construction works is not involved – to withdraw from the contract, at his option. If the preceding supply through a supplier of ours is necessary for supplementary performance by us, the reasonable grace periods set by us shall be extended until we are independently capable under normal production processes after delivery by our suppliers. In addition, numbers 3.2 and 3.3. shall also apply in this case.
- Any further claims of the customer, in particular due to consequential harm caused by a defect, are - as a matter of principle - excluded. Also excluded is the compensation of expenditures of the customer or from buyers of the customer that arise in the course of subsequent

improvements, namely supply and disposal costs of the defective glass or the costs of adding additional panes of glass.

The customer shall bear increased expenditures for subsequent performance, which arise in that the delivered goods were placed at a location after delivery different than the stipulated place of fulfillment.

- 6.7 Our liability for slight negligence is limited to claims due to an injury to life, limb and health, to claims under the product liability law, as well as claims from culpable breach of material contract obligations, through which the contractual purpose is jeopardized. In addition, our liability for slightly negligent breach of material contractual obligations is limited to damages typical and foreseeable by use at the conclusion of the contract.
- 6.8 Furthermore, we shall not be liable for the consequences of faulty handling, inappropriate or improper application, faulty assembly or repair of the delivered goods by the customer or third parties, as well as normal wear and tear. This applies also in respect to the consequences of chemical, electrical or thermal influences, as well as violations of our technical terms and conditions (clause 1.2).
- 6.9 Warranty claims against us become time-barred in five years for items that are used in conformity with their usual method of use for a building whose defectiveness they have caused. In addition, warranty claims against us become time-barred within one year after delivery to the customer.

Claims from the breach of secondary obligations and/or for property or financial losses not arising on the delivered goods themselves become time-barred within one year after delivery.

- 6.10 Written guaranties of manufacturers that exceed our own liability for defects shall not obligate us.

## **7. Industrial property rights, non-disclosure**

- 7.1 We reserve the ownership and all industrial property rights and copyrights for our designs, samples, illustrations, technical documents, quotations or offers, even if the customer has assumed the costs thereof. The customer may only use the designs in the manner agreed upon with us. He may not produce the delivered goods himself without our written consent or cause them to be produced by third parties.
- 7.2 To the extent that we deliver goods according to designs prescribed by the customer, he is liable to us that the industrial property rights and other rights of third parties are not infringed upon through their manufacture and delivery. He must compensate us for all damages resulting from such infringements.
- 7.3 The customer shall keep secret all knowledge in respect to third parties acquired from the business relationship that is not public.