

# ARBUCOMP UG (HAFTUNGSBESCHRÄNKT)

## SALES TERMS AND CONDITIONS

October 2017

### 1. General conditions

1.1 (Scope) These General Terms and Conditions are only intended for use in business with entrepreneurs.

1.2 (Contractual language) The language of the contract is English.

1.3 (Conflicting business conditions, confirmation in writing) The only terms and conditions for this contract shall be these terms and conditions and the additional terms in the “product info texts” relevant to the type of glass ordered as well as further customer information and the “Cleaning Instruction for arbucomp Glass Products”.

We will not accept any conflicting general business terms, whether or not expressly rejected by us. Any modifications or additional agreements must be confirmed in writing by us.

1.4 (Offers, right to make modifications, electronic data storage) Initial Quotations are made free of obligation. We reserve the right to make technical improvements and modifications of products without prior notification. We may store and process contract information in data processing systems.

1.5 ( Offsetting, withholding) Unless the customer has undisputed counterclaims, he shall neither be entitled to offset nor to withhold payments for deliveries received.

1.6 (Court of jurisdiction, governing law) For all disputes arising out of the contract, including tortious liability and summary payment enforcement proceedings of cheques and bills the courts

of jurisdiction shall be D- 97877 Wertheim / D- 74821 Mosbach as competent courts of our registered office. We can also take legal action against the customer at his registered office . All contracts shall be construed and interpreted in accordance with the laws of the Federal Republic of Germany with exception of the 'UN Convention on the International Sale of Goods' (CISG).

## **2. Delivery and risk**

2.1 Place of performance for delivery is our works. The risk shall be transferred to the customer when the goods leave our works. This shall apply also when we have agreed to provide additional services such as freight forwarding, packing or exportation.

2.2 The customer shall bear all packing, transport and insurance costs to the place of delivery unless otherwise agreed.

2.3. The goods are packed according to our transport and production-specific demands.

## **3. Delivery period, delay**

3.1 Delivery periods are ex works. Delivery times or periods shall commence only after settlement of all technical questions and after we have received all documents, permits or releases required from the customer or from authorities as well as any advance payments requested. Subject to correct and punctual internal delivery. We shall inform the customer without delay of the non-availability of the delivery products.

3.2 In the manufacturing process of high quality glass for the construction industry it is unavoidable that units are lost due to breakage and quality defects. With increasing numbers of processing steps and transportation from one manufacturer to the other, the danger of loss is increased. With softcoated glass we are often dependent on one manufacturer only offering the specific coating. Rare coatings may be run in intervals of up to three months. The coating plants are very sensitive. Production stops are common. Delayed deliveries or failure of delivery by our suppliers shall extend our delivery period accordingly.

Delivery times will also be extended due to modification of products or services requested by the customer.

3.3 Acts of God, strikes, lockouts, operating breakdowns, shortages of raw materials or means of production for which we are not responsible shall extend the delivery period accordingly and/or shall release us from our obligation to deliver if delivery becomes impossible as a result.

3.4 In any case the customer has to send us a reminder setting a reasonable period of grace before claiming default of delivery.

3.5 In the event of compensation for damages caused by late deliveries, our liability for compensation besides performance shall be limited to 5 % and for compensation instead of performance to 10 % of the value of our delivery. This limit shall not apply in cases of intent, gross negligence and/or injury to life, body or health.

#### **4. Conditions of payment**

4.1 Invoices are due immediately and shall be paid in full, without deductions, to our account in the Federal Republic of Germany, in EURO (€).

4.2 Prices quoted shall be EXW (ex-works). Charges for packaging, freight and insurance shall be at the customer's expense. If applicable, VAT will be added.

4.3 In case of any delays in payment, we shall be released from any obligations to effect any further deliveries resulting from any contract. Furthermore we reserve the right to require payment in advance in any such case or if we have reason to believe that there could be a delay or failure of the customer to fulfil his paying obligation.

#### **5. Reservation of proprietary rights**

5.1 The delivered products shall remain our property and title shall not pass to the customer until all open liabilities of the customer have been fully paid for.

5.2 The customer may resell products in the normal course of business provided the claims arising from the resale have not been assigned, pledged, attached or otherwise encumbered.

5.4 The customer assigns to us in advance any claims arising from the resale of the delivered products up to the amount of our invoice. Any and all revenue received by the

customer relating to the resale shall be used exclusively for paying any amounts due to us.

5.5 In case of delayed payment all outstanding payments of the customer become due immediately. We are entitled to withdraw from the contract and/or, even without withdrawal, to demand that reserved goods still available at the customer be handed over to us and to collect the assigned claims ourselves. The customer is required to immediately inform us of any attachments, confiscation or any other disposition of a third party with regard to products delivered.

## **6. Liability for defects**

6.1 We are liable that our products are free of defects at the transfer of risk. Immaterial deviations from the agreed quality or non-essential restrictions in usability are, however, of no significance. Qualities, performance or other features shall only be binding if we have expressly agreed on them in writing to the customer. Details in advertisements and instructions for use or reference to industrial standards shall not constitute agreed qualities or the taking-on of particular obligations.

6.2. Deviations with regards to dimensions, contents, thickness, weights and colours are permissible within the scope of tolerances customary in the glass trade.

6.3 We take for granted that the client knows about the behaviour and characteristics of glass, especially when transformed, e.g. to insulating glass. If this is not the case, the client is obliged to inform us accordingly.

6.4 If the customer requires the products for special purposes which exceed the agreed or anticipated use, he must check before use if the products are suitable for such purposes - including all aspects pertaining to product safety - and customer is required to ensure that products comply with all relevant technical, legal and official regulations and requirements. We are not liable for any damages caused to the customer and/or to his property or any subsequent user if such proper verification has not been performed by the customer and proper written authorization was not obtained from us.

If the products are subject to extraordinary demands for example glazing in rooms with high humidity or glazing exposed to high thermal, static or dynamic strains which call for

special measures to preserve the longevity of the insulating glass, these demands must be made known to us in writing. If this information is not supplied by the customer, we are not liable for any damages caused by the omission of the special measures to preserve the longevity of the insulating glass.

The use and/or transport of insulating glass to sites higher than 1000 m above sea level demand appropriate pressure equalization measures. The customer must inform us in detail on the site of installation and shipping route in writing. If this information is not supplied, we are not liable for any damages caused by a lack of pressure equalization.

6.5 The customer has to inspect the products as to quantity and defects immediately on receipt and has to notify any apparent defects without undue delay. Hidden defects are to be notified immediately after being discovered. Transportation damages have to be notified at once to the forwarder. Failure to meet these obligations excludes any and all potential claims for these defects.

6.6 In case of a defect the customer has to set us a reasonable period of time to enable us to eliminate the defect either - subject to our discretion – by repairing the product or supplying a product free from defects (subsequent performance according to § 439 BGB – German Civil Code ). In the event of rejection, impossibility or failure of subsequent performance, the customer has the right to demand a reduction of the purchase price or - provided the performance in question is not construction work - to withdraw from the contract.

In case that additional expenses to repair or replace the products arise because the customer has transferred the products after delivery to another place than the agreed place of performance the customer has to bear the additional costs.

6.7 Our liability for slight negligence is restricted to claims based on injury to life, body or health, to claims arising from the Product Liability Law and to claims arising from the culpable infringement of essential contractual obligations, with said infringement putting the purpose of the contract at risk. Our liability for the slightly negligent infringement of essential contractual obligations is restricted to typically occurring damage foreseeable by us at the time the contract was signed.

6.8 We are further not liable for any damages following improper use or handling. This also applies to damages occurring due to chemical or thermal impact as well as to non-compliance with our technical conditions (item 1.3).

6.9 Claims against us based on defects of goods which have been used according to their customary application for a building and have caused the defectiveness of the building ( § 438 I Nr. 2 b) BGB - German Civil Code ) are subject to a statute of limitations of five year as of the delivery of the goods to the customer.

In other respects, claims against us are subject to a statute of limitations of one year as of the delivery of the goods to the customer. The same shall apply accordingly to claims for damages, for whatever legal reason.

6.10 Manufacturer´s warranties are not binding us.

## **7. Industrial proprietary rights, secrecy**

7.1 We reserve ownership in any moulds, samples, diagrams, commercial or technical documents provided by us as well as all copyrights, proprietary and intellectual property rights in any such item. This applies also if the customer has partly or wholly borne their costs. The customer may use all such items only in formats approved by us in writing, he is neither entitled to manufacture these items nor to have them manufactured on his behalf.

7.2 The customer is responsible that the use of drawings, models, samples, or instructions as provided to us by the customer shall not infringe industrial property rights or other rights of third parties. The customer shall be liable for payment of all expenses, awards, damages, and other compensation to outside parties and all cash and non-cash expenses in defending any allegation of such infringement.

7.3 All information acquired through the business relationship which is not deemed to be public knowledge shall be deemed proprietary and may not be disclosed to any third parties.