

## **General Terms and Conditions and Delivery Specifications for Isolar Isolierglaserzeugung GmbH:**

### **Section 1 General, Scope**

**1.1.** Unless otherwise mutually agreed to in writing, our General Terms and Conditions apply to the contract on hand as well as all future contracts concluded in line with the business relationship, even if specific reference is not made in an individual case. The customer's terms and conditions are hereby expressly overridden, and in no case do they form a part of the contract. This also applies when they are not expressly overridden in a subsequent contractual document in which a contract partner is advised of the terms and conditions.

**1.2.** In the event that individual clauses of these Terms and Conditions are found to be ineffective or collide based on regulatory purpose and topic, the effectiveness of the remainder shall remain unaffected and so does the validity of the contract. In its place, an admissible provision which most closely resembles the provision intended by the ineffective clause in an economic sense will be inserted, besides dispositive law.

**1.3.** Supplements or changes to the contract and these General Terms and Conditions must be done in writing and must contain our signatures. Statements made by our employees are only binding if confirmed by us in writing.

**1.4.** Orders of any kind, in particular those orders that are taken by our representatives or are received verbally or by telephone will only be accepted subject to full acceptance of our General Terms and Conditions and Delivery Specifications.

**1.5.** Our contracts are generally determined according to the Austrian laws – with the exclusion of the UN convention on sales contracts (CISG) - governing contracts of sale, including instances where we manufacture or tailor products according to the customer's requirements. In the exceptional event of a production contract, the provisions of the ABGB (*Allgemeines Bürgerliches Gesetzbuch*; Austrian General Civil Code) also apply, if the customer is a merchant.

**1.6.** For consumers within the meaning of the Austrian Consumer Protection Act, these provisions only apply insofar as there are no compelling provisions under the law that override the provisions herein.

### **Section 2 Offer and Acceptance**

**2.1.** Our offers are subject to change and non-binding. The prices indicated in the order confirmation are only binding if the expected delivery or service periods do not exceed 4 months. If a longer period is indicated in the contract, the prices which are effective on the day of delivery are deemed to be agreed to.

**2.2.** A contract exists if we accept the customer's offer (order) in writing, otherwise through execution of the order. We are not obligated to examine our customer's offers with regards to the intended usage or a specific building project and in absence of a separate written agreement, we are not liable for specific compatibility or suitability of our products. The customer is obligated to immediately verify our declaration of acceptance or confirmation of order. Any deviations from the customer's order must be reported immediately. If this is not done, the content of the contract will be governed by the content of the declaration of acceptance or order confirmation. If a formal acceptance declaration or order confirmation does not take place, the preceding applies analogously for partial payment invoices, final invoices or delivery receipts accepted without objection. We are not responsible for deficient deliveries which occur as a result of hearing mistakes or misunderstandings for deliveries made on the basis of verbal orders or orders made by telephone.

**2.3.** We strive to take into account any subsequent requests for changes by the customer. However, no obligation exists in this respect. Once the work has begun (e.g. by cutting, processing or similar), such a consideration is no longer possible. If it is still done, however, it will result in additional costs.

**2.4.** In the event that the customer withdraws from or cancels the contract, he must pay at minimum the work costs accumulated to that point (e.g. cuts already carried out, etc.) along with an administrative fee of at least 5% of the net order amount.

**2.5.** Any plans, diagrams and other technical documents, as well as catalogues, samples, brochures, etc. that are provided by us remain our intellectual property at all times. Such documentation is protected by the respective statutory provisions with regards to copying, reproduction, competition, etc. Illustrations and information contained in our catalogues and brochures are not binding for the execution of works. We are not liable for any printing errors in our catalogues, pricing lists or other printed material.

**2.6.** Contestation of the contract by the customer for reasons of error, frustration of contract (Wegfall der Geschäftsgrundlage) or Laesio Enormis is hereby expressly excluded.

### **Section 3 Delivery and Services**

**3.1.** Information regarding lead times is always non-binding. Our deliveries as part of commercial trade are also carried out subject to proper and timely delivery of products used for own purposes, receipt of all required documents (drawings, measurements, templates, etc.) and the timely and complete provision of joint services by the customer (any required information, documentation, approvals and releases, adherence to payment obligations). Customer requests regarding the delivery date (see "requested delivery date") will be considered where possible, but are always non-binding. Damage compensation claims, penalties due to delay or similar that result from an ostensibly late delivery are excluded.

**3.2.** Acts of God release us from the obligation to deliver for their entire duration. Labor disputes of any kind are also considered Acts of God, regardless of whether Isolar, suppliers and/or freight companies which transport materials for Isolar are affected by them. Furthermore, we are released from delivery in the event that a delivering industry is in a position to assert grounds for release according to their sales terms, in the event of business and traffic interruptions as well as improper delivery by sub-suppliers. Non-fulfillment or delayed fulfillment of the contract does not entitle the ordering party to assert claims for penalties, compensation due to loss of profit or similar.

**3.3.** If we are at fault for a delivery delay, the contract partner may request that we carry out the delivery or establish in written form a reasonable – at minimum four week – period in which we can carry out our services, on pain of withdrawal from the contract. If the period expires without results and is deemed to be our fault, the contract partner may withdraw by registered mail from the contract with regards to all not yet delivered parts or those parts which have not yet been reported as ready for delivery, and with regards to those parts which have been delivered or reported as ready for delivery but which cannot be used by the replacement supplier. Claims for damage compensation of any kind by the ordering party are only admissible if the delay is the result of intentional action or extreme gross negligence. This also applies to information provided for materials and their use. Our liability is limited to an amount equivalent to 0.1% for each completed week in arrears and at most 5.0% of the net invoice sum – with regards to the parts comprised by the withdrawal – that may be claimed as damage compensation due to non-fulfillment. Partial deliveries that are not part of the withdrawal must be paid for at the agreed-upon price.

**3.4.** The tolerance levels in use at the supplier plants, in particular those regarding slight changes in color and texture, also apply to this contract.

**3.5.** If acceptance by the ordering party is delayed or if the ordering party refuses acceptance for reasons for which we are not responsible, we are entitled to demand either that the acceptance be carried out or have the option of withdrawing from the contract with a 14-day notice period. In both cases the risk passes to the customer and we are entitled to full damage compensation, with damage compensation on the grounds of non-fulfillment amounting to at least 30% of the net order amount plus compensation for works already performed, for used and/or processed materials, and for the use of or damage to items already delivered. To the extent that we continue to demand fulfillment, the ordering party is obligated to submit 20% of the net purchase price as damage compensation along with the fulfillment of the contract. We reserve the right to assert further claims for damage compensation in both cases.

**3.6.** We are not required to make deliveries as long as the customer is in arrears with payments, including payments for other orders. In the event of repeated payment arrears the delivery may be subject to payment of an invoice against a delivery or securing at least 20% of the net order amount.

#### **Section 4 Shipments**

**4.1.** We are entitled to select packaging at our own discretion, taking into consideration transport- and production-related aspects. Packaging yardage is always determined by the largest unit measurement.

**4.2.** Packaging, insurance and other shipping costs are not included in the price. If an insurance policy is taken out at the request of the customer, our only role is to act as an intermediary for the customer. Other than disposable packaging, all packaging material remains our property, to be returned immediately by the customer at their own expense and risk. If the customer is in arrears with his return obligation, we are entitled to demand utilization compensation in the amount of 1% of the purchase price per day. This also applies in particular to reusable racks. In the event of damage to or loss of parts (particularly grip bars) the customer – regardless of whether the damage was done by himself or by an assistant - must pay for all repair costs or for the replacement of lost parts at the replacement value.

**4.3.** We deliver ex factory or ex stock. For incoming shipments, transfer is deemed as carried out when the goods have been provided to the recipient on the trailer in front of the delivery location on a stable roadway. The unloading of goods is the responsibility of the customer. Along with the transfer of the goods to the transport manager, regardless of whether the transport manager is commissioned by the customer, supplier plant or us, the customer also assumes the hazard risk. This also applies to freight-prepaid deliveries. Acceptance of the delivery by the transport manager without objections is deemed as proof of the proper condition of the packaging and proper loading, unless the buyer can prove that the packaging was defective or the unloading was not carried out properly during the transfer of the delivery to the transport manager. In the event that the customer requests a full or partial unloading, transport or placement of the goods, we are entitled to separately invoice for the costs incurred. These services will be provided at the customer's own risk and at his own liability. Any employees who are retained for this purpose are deemed to be acting as assistants of the customer. It is the customer's responsibility to ensure proper unloading facilities and to provide the required labor for unloading.

**4.4.** To the extent that goods must be stored at our premises – even if due to default of acceptance - this is done at the customer's own expense and risk.

**4.5.** All loading materials (e.g. glass racks and tension bars) are borrowed materials and remain the exclusive property of Isolar. Loading materials must be handled with care and returned without defects. In the event that loading materials are returned in a defective state, Isolar is entitled to assert claims for reductions in value. All loading materials must be returned to Isolar within 14 days at the cost of the customer. If this is not the case, Isolar is entitled to invoice the customer for the loading materials – aside from a procurement fee calculated in days - whereby a minimum amount of EUR 550 net per rack may be assessed per loading material. The customer expressly agrees to the charges at these amounts.

#### **Section 5 Remuneration and Payment**

**5.1.** Unless a specific remuneration is agreed to, the remuneration requested by us on the day of delivery applies. If a specific remuneration is agreed to, we are entitled to undertake reasonable adjustments if the initial costs, in particular wages and material prices, change after the contract is concluded (this only applies to contracts with non-merchants if there is a time period of more than 2 months between contract conclusion and the time of contractual delivery). If the price increase exceeds 15%, the customer is entitled to withdraw from the contract. This right of withdrawal must be exercised by registered mail within 3 weeks from the receipt of notification regarding the increase in remuneration.

**5.2.** If in doubt, our invoices are due for payment immediately, without deductions. Drafts and check are only accepted for payment purposes. Settlement by draft may also require a separate agreement in advance. In this context, charges related to discounts or drafts and any other

charges shall be borne by the customer. Payments by bank transfer are considered completed on the day at which our bank account is credited with the amount. Credit notes in relation to drafts or checks are made less costs, and subject to receipt with valuation on the day on which we are in possession of the counter value. For payments using the direct debit process, we reserve the right to subsequently invoice and claim for interest, charges and other damages in the event of back postings. Any account statements and transmissions of open item lists are merely based on the current state of knowledge and are carried out subject to any applicable retroactive accounting for check return debits, back postings of direct debits, etc. as well as subject to any possible errors.

**5.3.** We are entitled to request installment payments at an appropriate level

**5.4.** The assertion of a right of retention in favor of the customer is hereby expressly excluded. Furthermore, the customer is not entitled to charge claims – whether out-of-court or court-based – against his payment obligations; this also expressly applies if we do not dispute the counter claims or if they have been determined legally valid by the courts.

**5.5.** Any agreed-to discounts do not apply if there are other outstanding invoices from our company at the time the discounted invoice amount is received. Discounts may never be applied to settlements by drafts.

**5.6.** Discounts are only granted for net amounts, and hence do not apply to costs, freight, etc.

**5.7.** Our employees are not entitled to receive payments without our prior written authorization.

**5.8.** If the customer does not submit payments (including installments), we may, by providing a reasonable notice period which in no case needs to be longer than 2 weeks, decline to carry out the order and claim damage compensation for non-fulfillment in an amount of at least 30% of the net order plus compensation for any work already carried out, for used and/or processed material as well as for the use of or damage to goods already delivered. The assertion of any further claims for compensation remains unaffected by this.

**5.9.** In the event of payment arrears the customer is obligated to pay all our expenses and interest for default at the level of our bank interest, but at minimum 10% p.a., and furthermore to reimburse us for all court-related and out-of-court standard reminder and collection costs (whether by a collection agency or lawyer). In the event of payment arrears, interest may be capitalized to the date of the suit being brought forward, in addition, interest may also be enforced outside of accessoriness to the principal debt and out-of-court collection costs may be charged to the capital. We are also entitled to charge compound interest. In the event that payments are not submitted within the allotted time period, we are also entitled – to the extent that we carry out the reminders ourselves – to charge the costs related to the reminders to the customer. They are: at minimum 5% for the first reminder, 10% for the second reminder and 15% of the shown invoice amount for the third reminder. The possibility to assert flat rate collection costs according to § 458 UGB stays unaffected.

**5.10.** All our claims are due immediately in the event of objections related to drafts by the customer, suspension of payments, and application for opening of insolvency proceedings against the assets of the customer, or if we gain knowledge of other circumstances which in our opinion reduce the customer's creditworthiness. Furthermore, if we gain knowledge of a significant deterioration in the asset situation of the customer, we are entitled to refuse services until the customer provides payment or security, or to withdraw from the contract and to claim full damage compensation for non-fulfillment in an amount of at least 30% of the net order plus compensation for any work already carried out, for used and/or processed material as well as for the use of or damage to goods already delivered. The assertion of any further claims for compensation remains unaffected by this.

**5.11.** In the event of payment arrears, the contract partner is also obligated, at our request, to provide us with security for all outstanding receivables including interest, expenses and reminder/collection costs, by assignment of outstanding or recoverable receivables, or grant liens for assets, or to provide security in another suitable manner.

**5.12.** If installments have been agreed upon, the entire outstanding amount becomes due when one installment is at default for payment. In addition, interest at the level of our bank interest, but at minimum 10% p.a., must also be paid.

**5.13.** The customer is not entitled to withhold payments on account of incomplete deliveries, claims for guaranties or warranties or other complaints.

**5.14.** Payments received by us are – even in cases where there are multiple open liabilities - used to first cover compound interest, interest and ancillary costs, as well as pre-court costs – such as costs related to hiring a lawyer or collection agency – and only then to cover the outstanding capital amount, beginning with the oldest amount.

## **Section 6 Warranties and Liabilities**

**6.1.** The customer is obligated to immediately inspect all deliveries, including partial deliveries. All defects (only the obvious for non-merchant transactions), wrong amounts or deliveries of wrong items must be reported by registered mail at the latest within two days, but in any case before processing or installation, otherwise the claims will not be recognized. The complaint must contain a detailed description of the defect and additionally which goods are affected, what the exact defect is (described in detail) and under which accompanying circumstances it surfaced. With multiple deliveries and partial deliveries it is required to also note the specifically affected delivery. If the customer fails to make an accurate and timely complaint at a partial delivery, the same following legal consequences apply to all of our deliveries, in as far as their defect can be deduced. Defects which were not noticeable despite a careful inspection must be reported by registered mail immediately after detection and subject to an immediate suspension of any further processing, or the derived claims will not be recognized. If there is reason to suspect that a defect especially in context of material incompatibility exists, it is the duty of the customer to hire the services of an expert. Independent of further usage, our customer is obligated to examine all goods and is further required to report to us within no more than 2 days defects which are not immediately recognizable and are reported from his customers,

which are then seen as his agents. If there is more than one defect, each and every single one needs to be reported. Other obligations according to Sections 377, 376 UGB (*Unternehmensgesetzbuch*; Business Enterprise Code) remain unaffected. All warranty claims are forfeited if items are processed or installed with knowledge of the complaint. Deviations in weight, content, thickness, weight and color tones as a result of production are permissible within the framework of normal industry tolerances. The same applies to cuts and processing. Additionally, production technical deviations, as far as they are described in our "Handbook Tolerances", are based upon the understanding that the delivery is free of defects. The handbook can be picked up on request and is also available online on our homepage <http://www.isolar.at> under the heading "downloads" in German, English, Italian and Slovenian in an up to date version and ready for download. The valid version pertaining to the contract with our customer – due to the fact, that printing of the handbook happens at certain intervals – is available online and determined by the timing of the contract.

**6.2.** For warranty instances, we are entitled to assign our warranty claims against our suppliers to the customer and therefore release ourselves from our warranty duty. However, our warranty duty again applies if the claims against our suppliers are not enforceable, whereby court assistance is not required.

**6.3.** For justified complaints we will undertake improvements (follow-up improvements or provision of missing parts) or replacement deliveries for goods delivered by us (without taking into account any further processing, installation and similar) within the confines of statutory warranty periods and at our discretion, under exclusion of further claims, to the extent that it can be proven that the defect has already been present at the time of out-shipment. § 924 ABGB (Allgemeines Bürgerliches Gesetzbuch, Austrian General Civil Code) is therefore not applicable. If we undertake a replacement delivery, it will be limited only to the replacement of defective goods. The reimbursement of any applicable refurbishment costs or consequential costs and similar is hereby excluded. Warranty offered for improvements or replacement deliveries which have been carried out are limited to the same scope that applied to the original delivery and services; it does not result in an extension of the warranty. Once a defect claimed by our customer has been resolved, the customer is obligated to examine the goods once again and file a complaint or else all further claims are forfeited. An attempt to repair a defect and/or exchange goods still represents that the objection of delayed defect indication is not waived. The same applies when one of our (field) staff comes to visit or if goods are shipped back on request for further examination. The customer may change the contract in form of a written statement by registered mail if the defect cannot be removed within a reasonable time period – which in any case must be at least 8 weeks – and if a replacement delivery is declined. In the event the contract is cancelled – also in the case of improvement attempts without success – we have a right to claim compensation for the services carried out in the amount of 30% of the remuneration to be paid by the contract partner. If a partial cancellation of the contract is possible, it is the only option open to the customer. However, claims for price reductions are excluded in any case.

**6.4.** If the contract partner receives warranty claims from his customer regarding products delivered by us, a right of recovery only exists within the confines of the warranty periods which exist between us and the contract partner. There is no additional right of recovery with a longer time period.

**6.5.** Characteristics which are related to production and materials, such as interference, double roller effects, multiple reflections, reflection distortions and anisotropies, cannot be avoided on a technical level and thus do not constitute a defect.

**6.6.** Liability on our part for damages sustained by the contract partner for any legal reason, including delays, non-feasibility, defective fulfillment, product liability and non-contract (tortuous) liability is hereby excluded by mutual agreement to the maximum extent permitted by law, unless it can be proven that we have caused the damages intentionally or through extreme gross negligence. This also applies to information provided for materials and their use. Liability for lost profits, in particular also in the event of intentional or grossly negligent action, is hereby excluded. In any event, we are not liable for consequential damages which are not typical or could not be foreseen even in the event of grossly negligent or intentional action. Unless otherwise agreed to in writing, Isolar's liability is limited to 40% of the net invoice amount for the goods.

**6.7.** The assertion of complaints for defects – including those that are justified – does not entitle the contract partner to a defense by reason of non-fulfillment of contract, to alter the payment terms and in particular not to a retention of payments in their entirety or partially; neither from the title of the warranty nor damage compensation. Repair of defects does not result in an extension of the warranty period.

**6.8.** We are not responsible for reimbursing the costs resulting from a repair of a defect which has been carried out by the customer unless we have provided our express advance approval in writing.

**6.9.** Glass items provided by the customer (e.g. artistic glazing, mirrors, etc.) may be processed subsequent to prior consultation with our office. We do not assume any guarantees regarding possible breakages due to processing or transport. These are the responsibility of the customer, except for cases of intentional or grossly negligent action.

**6.10.** To the extent that we supply installation services as part of a contract of sale, the provisions for service contracts apply accordingly.

**6.11.** This warranty provision does not affect rights related to the ISOLAR-GLAS guarantee.

**6.12.** We do not assume liability or warranty obligations for products, raw materials or components acquired by us. The manufacturers and suppliers of these products, raw materials and components are not considered our vicarious agents (Erfüllungsgehilfen) in relation to the customer. We will provide the names of the relevant supplier and manufacturer to the customer on request.

**6.13.** The customer must properly store and install the delivered glass according to the manufacturer's specifications. Storage and further processing and/or installation needs to happen exclusively based upon our specifications, in particular with regards to the updated list of material compatibility – ready for download at our homepage <http://www.isolar.at> under the heading "downloads" – as otherwise all claims

for warranties and damage compensation are no longer in effect. The customer loses all claims especially when using substances that are not specifically described as suitable or after chemical testing are described as incompatible.

#### **Section 7 Withdrawal**

In particular, we are entitled to withdraw from the contract:

- a) if we are unable to deliver the goods at the agreed-upon price or delivery date for reasons which are not our fault,
- b) if call-off contracts are not specified or called at the latest 10 days after having been requested to do so,
- c) if the customer does not possess or loses creditworthiness or is unable to pay, unless he makes advance payments or provides sufficient security,
- d) in the event of technical, non-foreseeable difficulties which are due to the nature of the order or which make execution unacceptable,
- e) in the event of energy or raw material shortages or other significant interruptions to operations either at our own or supplier facilities,
- f) in the event of Acts of God and other unforeseeable circumstances such as riots, business interruptions, strikes, and lockouts.

#### **Section 8 Retention of Title**

**8.1.** We reserve the right to title to products delivered by us until the customer has paid all obligations resulting from the business relationship, in particular also any applicable current account balances.

**8.2.** The customer may combine or mix the delivery that is subject to retention of title with products that are not our property in line with normal business operations. In this case, we obtain joint ownership proportionate to the value of our goods to those with which our goods are combined or mixed. The customer is furthermore entitled to process the goods for which we reserve retention of title in line with normal business operations. This is then done on our order, so that we obtain joint ownership in the new product proportionate to the value of our goods compared to the remaining goods. In all these cases the customer is deemed to store our property or jointly owned property on our behalf.

**8.3.** The customer hereby assigns to us all claims for remuneration with all ancillary rights against his purchaser which result from a sale of goods which are our property or jointly owned property. We hereby accept this assignment. The customer is obligated to note the assignment of claims in his business records. Furthermore, he is obligated to provide us with the names of his purchasers, authorise us to inspect his books and to provide us with the information and documents required for this purpose.

**8.4.** If the value of existing securities provided to us exceeds our receivables by more than 20% overall, we are obligated to release the securities, the selection of which is at our discretion, at the request of the contract partner.

**8.5.** The customer is entitled to collect the receivables assigned to us in a manner that is revocable at any time. He may not, however, dispose of such receivables by way of assignment. The customer is obligated to use the funds which he received from his purchaser as compensation for the goods delivered by us, for payment of our outstanding receivables. We on our part are entitled to disclose our retention of title or other property as well as advance assignments of purchase price claims, insofar as we have a justified interest, in particular if the customer does not pay according to contract, or sells goods at an unacceptably low price. In these cases, we are also entitled to take possession of the goods for which we have title and which are still at the customer's premises.

**8.6.** In the event of garnishment or other actions by third parties the customer must immediately notify us by providing the required documents.

**8.7.** The customer is obligated to store our goods that are subject to retention of title until our receivables have been paid, at no cost to us, without any resulting claims by the customer towards us. We are entitled to enter the operating premises and construction sites at any time and to mark our goods as our property or jointly owned property. The contract partner may only dispose of the goods subject to retention of title as part of normal business operations and as long as he is not in arrears with payments. He is not entitled to any other authorizations regarding these goods, in particular authorizations for pledging or transfer of security.

**8.8.** We are entitled to request the simultaneous fulfillment of the contract and handover of goods due to retention of title. For recovered goods that are subject to retention of title, we must provide a credit note in the amount of their value less any value reductions which may have occurred in the meantime or any applicable profit obtained by us through a sale of such goods to which we are entitled, and less all costs which have resulted or are likely to result from the assertion of the claim of retention and the disposal of the respective goods.

#### **Section 9 Data Use:**

**9.1.** We are entitled to store, transmit, edit and delete personal data of the contract partner in line with business operations.

#### **Section 10 Place of Execution, Place of Jurisdiction and Applicable Law:**

**10.1.** Place of execution is the registered domestic office of the company. Where delivery is made ex stock, the place of execution is our warehouse.

**10.2.** For all disputes which are the direct or indirect result of the contractual relationship, it is hereby agreed that the place of jurisdiction shall be the court in Klagenfurt which has subject matter jurisdiction.

**10.3.** The legal relationship between Isolar and the contract partner shall be exclusively governed by Austrian law, to the exclusion of its conflicts of law rules and the UN convention on sales contracts (CISG).