

## General Terms & Conditions | GTC

### 1. basis of orders

1.1 All agreements, offers and orders underlie our general terms and conditions of trade (here-after referred to as General Terms and Conditions of Trade) and Terms and Conditions of Sales; they will be recognized via written order or acceptance of delivery.

1.2 Our General Terms and Conditions of Trade will be valid insofar as the contractual parties have not expressly agreed to something to the contrary in writing. Conditions contradicting or varying from our General Terms and Conditions of Trade on the part of the buyer will not be recognized unless we have expressly agreed to these in writing.

1.3 Should individual provisions of these General Terms and Conditions be invalid in whole or in part, this shall not affect the validity of the remaining provisions. These shall remain valid. The invalid provisions shall be replaced by valid and enforceable provisions that come as close as possible to the economic result. The same applies to errors and omissions in the course of drawing up the above contracts.

1.4 The basis of all orders is

- a. the order itself,
- b. these General Terms of Conditions of Trade,
- c. the Eckelt Quality handbook (available at [www.eckelt.at](http://www.eckelt.at)) and the applicable Austrian Standards,
- d. Terms and Conditions of Sales
- e. the glazing guidelines and cleaning recommendations available at [www.eckelt.at](http://www.eckelt.at). In the event of conflicts, the listed sequences of contractual components are authoritative.

### 2. conclusion of the contract

2.1 The contract is deemed to have been concluded when we have sent a written order confirmation after receiving a written order or if the order has been confirmed in another manner, in writing.

2.2 Changes or supplements to the contract and/or General Terms and Conditions of Trade and Terms and Conditions of Sales require written confirmation in order to be valid.

2.3 Fax and email substitute for the written form.

2.4 Our delivery certificate and/or final invoice are also valid as order confirmations.

### 3. plans and documents

3.1 The information regarding size, weight, color, services and so forth contained in our catalogs, prospectuses, newsletters, illustrations, price lists, offers, or other printed matter produced by or on behalf of Eckelt is only authoritative if it has been included in a written contract and/or expressly references in our order confirmation.

3.2 Plans, drawings and other technical information and documents always remain our intellectual property just as do samples, catalogs, prospectuses, illustrations and so forth. Any use, duplication, distribution, publishing and presentation may only take place with our express approval.

### 4. sending and packing

4.1 Unless expressly agreed otherwise in writing, the place of delivery shall always be our factory or our warehouse.

4.2 If insurance on the order is concluded on the part of the buyer, we function solely as an agent under exclusion of all responsibility and/or liability.

4.3 Should goods be delivered on return-able stillages, the customer will be invoiced for a security fee. The stillages remain our property and are to be kept by the customers at his own risk and cost and are to be used only in the contractually agreed manner. Written notice from the customers that the stillages are ready for collection from the delivery point within 6 weeks of delivery will cause the full invoiced amount to be credited back to the customers. Should collection be possible only after this time, we will credit the amount back but a charge for fair rent will be deducted.

Should stillages be returned damaged, the customer will be credited but the loss in value and eventual rental charge will be deducted. All other packaging e.g. crates, fill material etc. are to be disposed of at the customers cost and risk.

### 5. delivery period, acceptance

5.1 Unless otherwise agreed, the delivery period shall commence no later than the following dates:

- a. Date of the order confirmation
- b. Date of fulfilment of all technical, commercial and financial requirements on the part of the buyer
- c. The date on which we have received payment prior to delivery of the products and/or letter of credit to our benefit has been opened.

5.2 Delivery dates given in our order confirmations and/or other written correspondence are estimated delivery dates and non-binding.

5.3 We are entitled to conduct partial and pre-deliveries

5.4 Expressly agreed upon delivery dates and periods will be complied with if possible; in the event that these are not met, the buyer must provide us with a reasonable extension period of at least two weeks, in writing. Should a delivery be delayed due to a circumstance occurring on our side which presents an exoneration in the sense of point 7, the agreed upon delivery date and/or period will be extended for the duration of the circumstance and the buyer must, after alleviation of the circumstance, set a reasonable extension period.

5.5 If we have not made and/or offered fulfillment within the extension period delineated in point 5.4, the buyer can withdraw from the contract for the services still to be provided within 3 days, calculated from the time of the expiration of the extension period named in point 5.4.

Damage compensation claims for non-fulfillment and/or late fulfillment will only be met in cases of deliberate intent and gross negligence.

However, the passing on of any penalties and contractual penalties resulting from another contractual relationship is excluded in all cases. Claims arising from delivery delays other than those listed under this point are excluded.

5.6 If delivery upon request is agreed to with the buyer, the request, in the absence of a varying express agreement in writing, must take place within 2 months of the possible delivery date provided to us. Upon expiration of this 2-month period, in the event of a request per expressly agreed upon, written deadline and/or in the absence of a written agreement all risks [e.g. risk of breakage, ...] will transfer to the buyer and they will be charged a reasonable holding and/ or storage fee. In addition, we are entitled to invoice additional costs accrued due to this, particularly increased transportation and energy costs.

In addition, in the event of default of acceptance, we shall be entitled to withdraw from the contract after setting a reasonable 14-day grace period.

## 6. prices

6.1 Our quoted prices are subject to change and are subject to certain variable surcharges listed in the terms and conditions of sale.

6.2 Prices, if not expressly agreed upon to the contrary, refer to shipment from our factory and/or warehouse; without packing, insurance and shipping costs.

6.3 Our price calculation assumes the positions of our offer have remained unchanged. Our offers are based upon the description of goods from the buyer without knowledge of the local conditions.

## 7. reasons for exculpation

7.1 The following circumstances are valid as reasons for exculpations if they have occurred after the conclusion of the contract and prevent its fulfillment: work conflicts and all circumstances contrary to the will of the parties, such as fires, mobilization, seizure, embargo, prohibition of currency exchanges, lack of transportation means, general lack of supply, limitations to energy consumptions as well as technical difficulties making the order and its execution for us or our suppliers impossible or infeasible or leading to difficulties which influence the service due.

Such circumstances are beyond our control, meaning that we are not responsible for their consequences.

## 8. Payment

8.1 Payment are to be made as per the agreed upon payment conditions.

If these are not specially arranged, payment must be provided within 30 days of the invoice date without deduction. Deductions of discounts require a special agreement. Payments from the buyers are first deemed to have been made at the time in which they are received in our business account.

8.2 Should commitments exist from earlier deliveries; these will be paid in the order of their accrual.

8.3 Discount agreements will be completely negated as soon as a default in payment occurs [also in the case of partial payments] and/or if all other already due payments have not been made by the time of receipt of the discounted invoice, at the latest.

8.4 If the buyer is in default for an agreed upon service or payment, the following options are available to us:

a. Continue to insist on fulfillment of the contract. We may defer our obligations until the outstanding payments or other services have been made and/or demand payment of the entire outstanding purchase price and charge default interest in accordance with § 456 UGB (Austrian Commercial Code) from the due date; or

b. Provide written declaration of withdrawal from the contract with a 14-day extension period. In this event, the buyer must return products already delivered to us upon request and provide compensation for any reduction in value as well as reimburse us for all expenses which we incurred during the implementation of the contract. In addition, the buyer must provide damage compensation.

8.5 The buyer is not allowed to make counterclaims, for any reason, against our demands (prohibition of offsetting).

8.6 Complaints which have not yet been concluded are no grounds for a delay in payment.

## 9. retention of proprietary rights, credit insurance

9.1 We maintain the proprietary rights to the objects delivered or manufactured by us until the complete fulfillment of all financial obligations by the buyers.

9.2 The buyer is entitled to resell and modify the products retained within the context of proper business practices. Other regulatory practices, such as pawning or using as security are not allowed. Resales may only take place with the retention of proprietary rights unless it takes place with immediate payment upon receipt wherein the proceeds made by the buyer must at least amount to our sales price and extend our retention of proprietary rights to the amount received for the goods received in the amount of our sales price.

9.3 The purchaser hereby assigns to us free of charge all claims to which it is entitled against its customers from the resale, including the securities granted for this purpose, and we accept the assignment. The purchaser shall bear any fees incurred in this connection.

9.4 We agree not to collect the payments ceded to use if the buyer properly fulfills their payment obligations. Upon our request, the buyer must inform their debtor of the payment cession to us, provide all the information necessary for their payment and provide us with all relevant documents. In addition, the buyer obligates themselves to undertake all negotiations and provide all declarations necessary the effectiveness of this ceded claim. Upon our request, the buyer must prove their compliance with the form regulations. The processing or modification of the retained products or their installation will always be performed for us by the buyer. If these products are treated with other objects not belonging to us or inseparable mixed and/or installed with such, we acquire co-ownership of the new objects in relation to the value of our goods to the others.

If our products are combined with other moving objects to form an integrated object and is seen as a principle object, it is agreed that the buyer will transfer proportions of the joint ownership to us insofar as the principle object belongs to them. They will hold ownership or co-ownership for us

9.5 We will conclude a credit insurance in amount of the order upon acceptance of the order. Should an insurance not be possible, the buyer, upon our request, must provide a different suitable form of security; if delays in the processing of the order result from this, we assume no liability of any kind and/or a corresponding delay in the delivery period and/or dates should be assumed. If no security can be arranged, we are entitled to withdraw from a possible concluded contract without bearing liability for costs or consequences resulting from this.

## 10. guarantee, liability

10.1 The warranty period is 24 months. The presumption rule of § 924 ABGB (Austrian Civil Code) does not apply. Our customer must therefore provide evidence that a defect existed at the time of delivery. Any rectification of defects by us has no legal effect with regard to those parts of our delivery/service that are not affected by the defect in view of the duration of this period; in particular, the period is not extended with regard to those parts as a result of the rectification of defects.

10.2 Defects and claims for compensation relating to defects must be reported immediately in writing, providing a specific description of the nature of the defect.

Upon provision of products, the products must be inspected by the buyer for breakage, externally determinable damage and completeness. Any complaints must be recorded in writing upon delivery, but in any case before signing the delivery documents, and must be submitted to us within 8 days with a detailed description and complete documentation (including delivery documents with a note of the complaint).

10.3 The burden of proof for determining whether we are responsible for a defect rest with the buyer. The minimum requirements for proof are suitable photographs and suitable documentation by which a defect caused by us is recognizable without a doubt.

We reserve the right to validate these complaints or request these complaints or request a demonstration by means of a reference and/or the cause of damage and/or determination of the causer of the damage as we choose after return delivery of the contested products or to undertake an inspection on site. Required replacement panes must be ordered by the customer; a credit will only be provided if the defect is acknowledged by us.

10.4 In the event of acknowledged defects, we provide a guarantee in the form of our choice of repair, exchange or price reduction. If we manufacture a product on the basis of size requirements, drawings or samples from the buyer, our guarantee is limited to execution on the basis of the instructions of the buyer. An inspection of the information provided by the buyer and/or an inspection of services/products of the buyer's supplies will not be conducted by us and/or we assume no kind of responsibility and/or liabilities for the information and/or services/products of the buyer and the resulting effects. In the event of infringement on the protected rights of third parties in such cases, the buyer must hold us blameless.

10.5 A reasonable period will be provided to us for the fulfillment of guarantee obligations. A claim by the consumer only exists after acknowledgement of the defect by Eckelt and only, after the reasonable period set in writing plus an extension period of 14 days has expired.

10.6 The guarantee is excluded in the following situations:

a. Noncompliance with the installation, operation or maintenance instructions; particularly improper usage or usage contrary to the conditions, faulty maintenance or noncompliance with the glazing guidelines and cleaning recommendations listed in point 1.

b. Wear and tear that is unavoidable even with conditional and proper usage [natural wear and tear]; this is particularly valid for expendable parts such as fittings, casters and so forth.

c. Improvements or changes not conducted or approved by us.

d. Broken glass.

10.7 Claims for damages shall become time-barred within two years of delivery. Compensation is generally excluded in the case of points 10.6 a) through d). All liability is excluded in the case of faulty instructions and/or information provided by the buyer in the sense of point 10.4. In every case, Eckelt is liable for damage compensation only in the event of deliberate misconduct or gross negligence. Eckelt is exempt from liability for unforeseeable damages.

10.8 Liability for consequential damage and pure financial loss resulting from acts of slight negligence is hereby excluded vis-à-vis the customer, who is an entrepreneur. The reason for this is that our company manufactures products based on information, specifications, and plans provided by the customer without having any knowledge of the intended place of use, the environmental conditions, or accessibility. Consequential damages or pure financial losses are therefore not foreseeable for us at the time the order is placed, and we cannot calculate this risk. For these reasons, we cannot accept any liability for consequential damages or pure financial losses attributable to slight negligence.

Any liability for incorrect instructions or information provided by the customer within the meaning of Section 10.4 is also excluded. In all cases, Eckelt shall only be liable for damages in cases of intent or gross negligence. In general, Eckelt's liability for unforeseeable damages is excluded.

10.9 Our product liability is limited to those cases in which the Product Liability Act (Federal Law Gazette 99/1988) mandatorily provides for liability. Any liability on the part of all companies involved in the manufacture and distribution of the product is excluded for property damage suffered by an entrepreneur.

10.10 The assignment of warranty or liability claims is only possible with our written consent. Unless otherwise agreed, this does not apply to monetary claims within the meaning of § 1396a ABGB (Austrian Civil Code).

10.11 Our customer is not entitled to offset our company's claims against its own claims unless these have been confirmed by us in writing.

## 11. place of jurisdiction, place of fulfillment, final provisions

11.1 Austrian jurisdiction and the application of Austrian law are expressly agreed, whereby the application of the UN Convention on Contracts for the International Sale of Goods and international referral rules are expressly excluded.

11.2 The location of our company is valid as the place of fulfillment for deliveries and payments even if the delivery of the products or the provision of the services takes place in another location.

11.3 The place of jurisdiction for all disputes is the responsible court for location of our company.

11.4 The contract language is German.