

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. Our company contracts exclusively on the basis of these General Terms and Conditions.

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 individually 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 while drawing up the above contracts.

1.4 The basis of all orders is

a. the order itself,

b. these General Terms and Conditions,

c. the Terms and Conditions of Sale,

d. the Eckelt Quality handbook (available at www.eckelt.at) and the applicable Austrian Standards,

e. the glazing guidelines and cleaning recommendations available at 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 the 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 and Terms and Conditions of Sale require written confirmation in order to be valid.

2.3 Fax and email substitute for the written form.

2.4 Our delivery note and/or invoice issued by us 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, is only authoritative if it has been included in a written contract and/or expressly referred to 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 generally be our factory or our warehouse.

4.2 If insurance is taken out at the buyer's request/instruction, we act solely as an intermediary agent under exclusion of all responsibility and/or liability.

4.3 If goods are delivered on reusable transport racks (MWTG), the framework conditions, fees and obligations set out in the Eckelt Terms and Conditions of Sale (available at www.eckelt.at/agb) shall apply.

4.4 All other packaging materials (e.g. crates, boxes and filling materials) must be disposed of by the customer at their own expense. If the customer requests assistance with unloading (including unloading equipment), onward transport or installation contrary to the contractual agreements, this must be notified in advance and will incur an additional charge. Waiting times will be charged in accordance with the carrier's invoice.

4.5 As a rule, no structural assessments or certifications are available for crate packaging.

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 deliveries and advance 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 circum-stance, 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 8 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.

The claim for damages shall be limited in amount to reliance damages or to a lower damage resulting from non-performance or delay.

5.6 Delivery on a call-off basis shall apply only if expressly agreed in the written contract and identified as a call-off order in our order confirmation. The call-off period specified therein shall apply. Unless otherwise agreed in writing, this period shall commence upon notification of our readiness for dispatch. If no call-off period is specified, it shall be 2 weeks. The call-off must be made in writing at least 5 working days before the requested delivery date. The delivery date must fall within the call-off period. If the call-off is not made in due time or is not made in full within this period, the Customer shall be in default of acceptance in respect of the affected goods upon expiry of the call-off period. From that point, the risk of accidental loss or accidental deterioration shall pass to the Customer. We shall be entitled to make the purchase price due in accordance with the agreed payment terms and to charge a handling fee of EUR 500.00, the applicable storage costs in accordance with our Service Price List, as well as any additional costs actually incurred. If the call-off is not made even after expiry of an additional 14-day period, we shall be entitled to withdraw from the contract in respect of the goods not accepted.

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 shall be deemed exonerating events if they occur after conclusion of the contract and prevent its performance: labour disputes and all circumstances beyond the control of the parties, including but not limited to fire, mobilisation, seizure, embargo, prohibition of currency transfers, uprising, lack of means of transport, general shortage of supplies, restrictions on energy consumption, as well as technical difficulties inherent in the nature of the order which make its execution by us or by our suppliers impossible or unreasonable, or which lead to defects impairing the services owed.

Such circumstances are outside our sphere of responsibility; therefore, their consequences shall not be attributable to us.

8. Payment

8.1 Payments 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 buyer are first deemed to have been made at the time in which they are received in our business account.

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

8.3 Cash discount agreements will be completely negated as soon as a default in payments 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 grace 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 set off any counterclaims, on whatever legal grounds, against our claims (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 retain title to the goods delivered or manufactured by us until all financial obligations of the Buyer have been fulfilled in full. The Buyer shall comply with all formal requirements necessary to preserve our retention of title.

In the event of seizure, attachment or any other claim or action by third parties, the Buyer shall assert our ownership rights and notify us without delay.

9.2 The buyer is entitled to resell and process the products retained within the context of proper business practices.

Other dispositions, 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 buyer 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 undertake not to collect the claims assigned to us as long as the Buyer duly fulfils its payment obligations. Upon our request, the Buyer shall demonstrably notify its debtors of the assignment of claims, provide all information required for the collection of such claims and submit to us all related documents. The Buyer further undertakes to perform all acts and make all declarations necessary for the validity and effectiveness of the assignment of claims. Upon our request, the Buyer shall provide evidence of compliance with the required formalities.

Any processing or transformation of goods subject to retention of title, or their installation, shall always be carried out by the Buyer for us. If such goods are processed, inseparably mixed or installed together with items not owned by us, we shall acquire co-ownership of the new item in proportion to the value of our goods compared with the other items.

If our goods are combined with other movable items to form a single item and such item is to be regarded as the principal item, it is agreed that the Buyer shall transfer to us proportionate co-ownership to the extent that the principal item belongs to the Buyer. The Buyer shall hold such ownership or co-ownership for us.

9.5 Upon acceptance of the order, we shall take out credit insurance for the amount of the order. If credit insurance cannot be obtained, the Buyer shall, upon our request, provide other suitable security. If this results in any delay in the processing of the order, we shall not incur any liability whatsoever, and any resulting delay shall be taken into account when calculating delivery periods and delivery dates. If no security can be provided, we shall be entitled to withdraw from any contract that may have been concluded, without being liable for any costs or consequences arising therefrom.

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 receipt of the goods, 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 7 days with a detailed description and complete documentation (including delivery documents with a note of the complaint).

10.3 With regard to determining whether a defect for which we are responsible exists, the burden of proof shall lie with the Buyer. As a minimum requirement, suitable photographs and suitable documentation must be provided as evidence, from which a defect for which we are responsible can be identified beyond doubt. We reserve the right either to acknowledge the complaint or to require proof by means of an expert opinion and/or, for the purpose of determining the cause of the damage or the party responsible for the damage, at our discretion, to require the return of the goods complained about or to carry out an inspection on site.

Required replacement panes shall be ordered by the Customer. A credit note shall only be issued if the defect is acknowledged by us.

10.4 In the case of acknowledged defects, we shall provide warranty, at our discretion, by repair, replacement or price reduction. If we manufacture a product on the basis of dimensions, drawings or samples provided by the Buyer, our warranty shall be limited to the fact that the product has been manufactured in accordance with the Buyer's instructions.

For customer-supplied materials and contract processing services, the customer is responsible for the condition, dimensional accuracy, suitability and process compatibility of the supplied materials and products. We do not carry out any separate material or suitability inspections. Material-related risks, additional costs and claims for damages to our equipment and other products are governed by our Terms of Sales (available at www.eckelt.at/agb).

10.5 We shall be entitled to a reasonable period of time to fulfil our warranty obligations. The Customer shall only be entitled to have defects remedied by third parties and/or to reimbursement of the costs associated therewith if, after the defect has been acknowledged by Eckelt and after expiry of the reasonable period for remedying the defect, a further grace period of 14 days set by the Customer by registered letter, together with simultaneous notification of the third-party costs, expires without result.

10.6 Warranty shall be excluded in the following cases:

a. in the event of non-compliance with installation, operating or maintenance instructions, in particular in the event of improper or non-intended use, insufficient maintenance or non-compliance with the glazing guidelines and cleaning recommendations referred to in Section 1,

b. in the event of wear and tear which is unavoidable even with intended and proper use (natural wear and tear), in particular with regard to wear parts such as fittings, rollers and similar components,

c. in the event of repairs, modifications or alterations not carried out by us or carried out without our consent,

d. in the event of glass breakage.

10.7 Claims for damages shall become time-barred two years after handover. Compensation for damages shall generally be excluded in the cases set out in Section 10.6 a) to 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 acting as 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

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 conflict-of-law rules/provisions are expressly excluded.

11.2 The registered seat 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 arising from the contract shall be the court having subject-matter jurisdiction at the registered seat of our company.

11.4 The contract language is German.