

INTERPANE Glas Deutschland GmbH, Sülzetal/OT Osterweddingen
Interpane General Terms and Conditions (AGB)
General Sales and Delivery Terms and Conditions
 (Status as of July 2009)

Section 1 - General, application

- (1) These General Terms and Conditions apply to all our quotations and agreements for deliveries and services and consultancy services in business transactions with non-consumers in the terms of section 310 sub-section 1 BGB (German Civil Code). Any Terms and Conditions of the Party Ordering are only binding if they have been confirmed by us in writing. Any Purchase Terms and Conditions of the Party Ordering are discounted. Our quotations, price lists, brochures and other documents are subject to change with respect to the prices and possibilities of delivery.
- (2) Orders shall only be binding for us if they have been confirmed by us in writing. The Party Ordering is obliged to check our confirmation of order without delay, i.e. it shall be regarded as having been recognised if he does not reject it in writing without delay.
- (3) Each conclusion of agreement, as also the delivery itself, shall take place with the reservation of correct self-delivery in good time by our supplier provided that non-delivery is not our responsibility. The Party Ordering shall be informed immediately about the non-availability of performance. Any counter performance shall be refunded.
- (4) In addition to these General Terms and Conditions, the Interpane glazing guidelines, the instructions in the Interpane manual „Designing with Glass“ and other technical sets of rules shall apply in the currently valid version.
- (5) Rights from the contractual relationship are not transferable on the part of the Party Ordering without our written approval.

Section 2 - Technical information concerning the condition

- (1) Information in catalogues, sales documents, sketches, drawings, price lists, the Internet etc. have only been determined approximately, however as well as possible. Specimens and samples shall be regarded as being of average quality as also the dimensions and their calculation, weights, utility value, tolerances etc. Interpane reserves the title or copyright for all quotations or cost estimates submitted, as well as for any drawings, illustrations, calculations, brochures, catalogues, models etc. provided.
- (2) Knowledge about the physical behaviour and the properties of glass or insulating glass units and the use of these products in accordance with the state of the art is presupposed as far as the Party Ordering is concerned.
- (3) In placing his order, the Party Ordering shall take the technical information in accordance with the state of the art, the statutory and technical sets of rules and, if relevant, any individual legal agreements into consideration.
- (4) The following guidelines shall apply in the assessment of the visual quality of glass in the construction industry:
 - Guideline for the assessment of the visual quality of glass for the construction industry
 - Guideline for the assessment of the visual quality of enamelled and silk-screened glasses
 - VFF Guide Specifications (VFF = „Verband der Fenster- und Fassadenhersteller e.V.“ = National Association of the German Fenestration Industry) - colour uniformity of transparent glasses in the construction industry
- (5) It is known to the Party Ordering that materials used in the manufacture of glass have their own colours conditioned by the raw materials which become more marked with increasing thickness. Coated glass has its own colour, which is differently recognisable in its transparency and/or aspect. Fluctuation in the colour is therefore possible, e.g. due to the ferric oxide content of the glass, the coating processes, the coating itself, through a change in the thickness of the glass or the structure of the panes etc. The glass thicknesses shall be specified by the Party Ordering. Glass thicknesses determined at Interpane are based on the valid guidelines and norms, and the specifications of the Party Ordering. The glass thickness determined is a recommendation and to be checked by the Party Ordering. This also concerns certain selected loads such as wind, snow etc. which form the basis of the calculation.

Section 3 - Norms, Technical Sales Terms and Conditions

Our deliveries and services take place according to the stipulations of the EN/DIN norms or in accordance with characteristic strengths and figures drawn from past experience. Consequently, the stated functional values, e.g. noise insulation (R_w, C and C_{tr} values), warmth insulation (U_g value), sun protection (g value) etc. which are determined by measurement and/or calculation refer to the marginal conditions and the specifications of the norm applied. In the case of marginal conditions deviating from this, such as, for example, the size of the pane, the structure of the pane, temperatures etc. deviations from the functional value determined according to the norm can arise. The Interpane processing guidelines shall apply in particular also the “Processing of coated basis glass to warm glass and sun protection glass (Processing Guideline)” and the “Processing of coated, temperable basis glass (Processing Guideline)” as well as the “Processing of coated basis glass iplus HT (Processing Guideline)”.

Section 4 - Instructions for glazing customers

Interpane’s currently valid glazing guidelines, instructions in the Interpane manual “De-

signing with Glass“ and the appropriate norms and guidelines, e.g. from ift Rosenheim, the Glazer Trade Hadamar shall be observed in glazing. Execution and the materials use may not impair the function of the glazing unit.

The materials used in glazing such as, for example, glazing jointing compounds, glazing offsets shall be compatible with the materials of the glazing unit coming into contact with them such as, for example, insulating glass edge composites, interim layers of laminated glasses, in order not to impair the durability, the optics of the glazing unit etc.

Section 5 Payment conditions

- (1) On placing the order, the Party Ordering confirms his liquidity and credit worthiness.
- (2) If facts become known to us after conclusion of the agreement which imply that the claim to payment is endangered for the lack of financial solvency on the part of the Party Ordering, we are entitled, setting a reasonable period, to demand advance payments or appropriate bank guarantees from the Party Ordering. In the case of refusal, we can withdraw from the agreement whereby invoices for partial deliveries, which have already taken place and / or have been completed or are not yet delivered shall become immediately due. Not yet delivered part deliveries shall be delivered after payment. Already purchased and ordered goods, as also parts of goods, which are already in the production process, are the responsibility of the Party Ordering inasmuch as this is not sufficiently covered by another provision concerning damages.
- (3) Payments are due without deduction, at the latest, 30 days after the date of invoice. Interpane is entitled to demand down payments for partial deliveries which have already taken place or for deliveries/services on hand.
- (4) The regulation of invoices by way of cheque or draft shall only take place subject to being honoured.
- (5) In the case of default in payment, we shall calculate default interest of 8% above the current base rate of interest. We reserve the right to verify and assert higher default damage.
- (6) The Party Ordering can only set-off undisputed or legally effective counter demands. A right of retention from earlier or other transactions of the current business connection cannot be asserted. Otherwise, the payment may only be retained due to defects or other objections on the basis of a complaint received by us in writing and within the agreed scope.
- (7) Any sureties agreed can be redeemed by us from the net amounts through bonds.

Section 6 Delivery

- (1) Interpane is entitled to make partial deliveries and provide partial services if the partial deliveries/partial services can be used by the Party Ordering within the framework of the intended contractual purpose.
- (2) The delivery periods stated shall be observed as far as possible. Minor delays are permitted. After expiry of the delivery period, the Party Ordering is entitled to grant a reasonable period of grace in which case our interests and those of the Party Ordering shall be taken into consideration. Should Interpane come into delay with a delivery or a service, Interpane’s liability shall be limited to damages in accordance with the stipulation of section 8 - General Liability Limitation. Even if a delivery is in delay, the delivery period shall be extended if hindrances occur after conclusion of the agreement for which we are not responsible. These can be, for example, operational disturbances, strike, lock-out, disturbances in traffic routes, technical difficulties which relate to the type of the order making its execution impossible or unreasonable for us or for our suppliers, fire damage, a lack of raw material or a lack of power. This shall also apply if these circumstances occur at our suppliers. We shall notify the Party Ordering of the beginning and end of such hindrances. The Party Ordering can demand a declaration from us as to whether we shall withdraw or wish to deliver within a reasonable period. If we do not make an immediate declaration, the Party Ordering can withdraw from the agreement. In these cases, claims for damages are ruled out.
- (3) Our deliveries take place ex works. The risk is transferred to the Party Ordering on transfer of the goods to the carrier. This also applies to transport with our vehicles. The transfer of the object of delivery/service is the commencement of the loading process. If shipping or transfer is delayed as a result of a circumstance the cause of which lies with the Party Ordering, the risk shall be transferred to the Party Ordering from the day on which Interpane is ready to ship and has notified the Party Ordering to this effect. The transport shall only be insured by Interpane at the expressed wish of the Party Ordering, and at the expense of the Party Ordering, against theft, breakage, transport, fire and water damage or other insurable risks.
- (4) As a rule, the delivery of our products takes place on our own transport racks. The Party Ordering undertakes to keep a record of the whereabouts of returnable and hire racks. From 21st day after delivery and in case of non-return, we shall charge 10.00 EUR per rack and day, a maximum, however, of the re-procurement value of the frame. In case of loss or damage to the rack, we shall charge the corresponding costs.

Section 7 - Notice of defects, limitation period for quality defects

- (1) In the case of a quality defect, we have the right to eliminate the defect or to deliver goods free of defects according to our choice.
The prerequisite for the existence of a quality defect is that the technical guidelines, the recognised rules of technology and the Interpane processing guidelines have been adhered to by the Party Ordering; in the case of the installation of insulating glass units, in addition, that the Interpane glazing guidelines have been observed.
Inappreciable defects, with respect to deviations from the agreed condition or inappreciable impairment of the usability, do not grant the Party Ordering any subsequent performance claim.
- (2) The Party Ordering is obliged to check the deliveries and services without delay, section 377 HGB (German Commercial Code). All obvious and/or recognised defects shall be reprovved without delay, at any rate before processing or installation, in writing to Interpane. This also applies to defects which are recognisable after removing the packaging on the construction site.
Any deviations in dimensions, content, thicknesses, weights, coloration due to manufacture are permitted within the tolerances customary in the sector inasmuch as there is no other guarantee of condition in the terms of section 443 BGB.
- (3) Withdrawal is only possible after unsuccessful lapse of a period of grace of four weeks. The period of grace shall be granted in writing qualifying the defects. This also applies for any assertion of damages and compensation for expenditure in reliance of performance. Otherwise section 8 of these General Terms and Conditions (General Liability Limitation) shall apply to claims for damages. Further-reaching claims or claims of the Party Ordering other than those regulated in this section against Interpane and our vicarious agents due to quality defects are ruled out.
- (4) Claims of the Party Ordering, due to the expenditure necessary for the purpose of subsequent performance, in particular transport, route, work and material costs, are ruled out inasmuch as the expenditure has increased because the goods had to be brought subsequently to a place other than the domicile of the Party Ordering unless such transport corresponds to the intended use.
- (5) Quality defect claims are subject to a limitation period of 12 months calculated from transfer of the delivery/service. This shall not apply if statutes envisage longer periods.
- (6) Deviating from statutory regulations, a limitation period of two years shall apply inasmuch as the Party Ordering has used items delivered by Interpane for the fulfilment of agreements in which the VOB/B has been included in its completeness. In this case, the limitation period shall arise at the earliest two months after the point of time at which the Party Ordering has fulfilled the applications from the defectiveness of the building which was caused by the item delivered by Interpane, towards his contractual partner unless the Party Ordering has been able to refer successfully to the defence of limitation towards his customer. The period of limitation with respect to the claims of the Party Ordering against Interpane due to defective goods delivered by Interpane shall arise as soon as the claims of the customer of the Party Ordering against the Party Ordering due to defects in the goods delivered by us to the Party Ordering have become statute-barred.
- (7) Recourse claims of the Party Ordering against Interpane exist inasmuch as the Party Ordering has concluded no agreements with his Purchaser over and beyond the statutory claims for defects. The above no. (4) of these terms and conditions shall apply correspondingly for the scope of the recourse claims of the Party Ordering against Interpane.
- (8) In the case of defects in the components of other manufacturers which the Seller cannot eliminate for legal licence or actual reasons, the Seller shall optionally assert his warranty claims against the manufacturer and suppliers for account of the Client or assign these to the Client. In the case of such defects, there are warranty claims against the Seller under the other prerequisites and in accordance with the stipulations of these General Delivery Terms and Conditions only if court assertion of the aforementioned claims against the manufacturer and suppliers has been unsuccessful or, for example, there is no reasonable chance due to insolvency. For the duration of the legal dispute, the limitation of period of the warranty claims concerned of the Client against the Seller shall be suspended.

Section 8 - General liability limitation

- (1) The liability of the Seller for damages, no matter for which legal reason, in particular for impossibility, delay, defective or incorrect delivery, breach of contract, breach of duty in case of contractual negotiations or an unlawful act is, inasmuch as it depends on blame, is limited in accordance with the stipulation of this section 8.
- (2) The Seller is not liable
 - a) in the case of simple negligence of his bodies, statutory representatives, employees or other vicarious agents;
 - b) in the case of gross negligence of non-senior executives or other vicarious agents; inasmuch as it does not concern a breach of duties which are significant for the agreement.
- (3) Inasmuch as the Seller is basically liable for damages in accordance with section 8 (2), such liability is limited to damage which the Seller has predicted on concluding the agreement as possible consequence of a breach of contract or, taking into consideration the circumstances which were known to him or of which he should have known, he should have been able to predict if exercising customary caution. Indirect damage and follow-up damage, which is the result of defects in the object of delivery, is, apart from this, only eligible for compensation if such damage is to be typically expected if the object of delivery is used in accordance with its intention.
- (4) In the case of liability for simple negligence, the Seller's obligation for compensation for material damage or personal injury is limited to the amount of EUR 5 million per case of damage (in accordance with the present cover of his product liability insurance or liability insurance) even if it concerns a breach of significant contractual obligations.

Section 9 - Condition and durability warranty for Interpane insulation glass

- (1) For the use of our insulation glass in buildings for a term of 5 years after delivery ex works, we accept the condition and durability warranty towards our direct contractual partner that, under normal conditions, the surface of the panes do not fog up in the space between the insulation glass units of the panes.
- (2) Inasmuch as the initial purchaser or a further purchaser exports the insulating glass units, our warranty shall only apply if it has been confirmed previously by us in writing.
- (3) Our warranty entitles us to subsequent improvement and obligates us, if relevant, to a compensation delivery.
- (4) Defects which are recognisable within the warranty period shall be asserted without delay after recognition/perceptibility in writing.

Section 10 - Reservation of title

- (1) The following, agreed reservation of title is intended to secure all existing present and future demands of the Seller against the Purchaser from the delivery relationship existing between the contractual partners including all net claims under trade credit terms limited to this delivery relationship.
- (2) The goods delivered by the Seller to the Purchaser shall remain the property of the Seller until full payment of all secured demands. The goods and the goods covered by the reservation of title arising in their place in accordance with this clause are hereinafter referred to as the „goods subject to reservation of title“.
- (3) The Purchaser shall keep custody of the goods subject to reservation of title for the Seller at no cost.
- (4) The Purchaser is entitled to process and sell the goods subject to reservation of title until the event of realisation (section 9) as part of normal business operations. No pledge or transfer by way of security is permitted.
- (5) If the goods subject to reservation of title are processed by the Purchaser, it is agreed that the processing takes place in the name of and for account of the Seller as the manufacturer and that the Seller directly acquires the ownership or - if the processing takes place from the materials of several owners or the value of the processed item is higher than the value of the goods subject to reservation of title - the co-ownership (fractional ownership) in the newly created item in the ratio of the value of the goods subject to reservation of title to the value of the newly created item. For the case that no such acquisition of ownership should occur for the Seller, the Purchaser shall transfer now his future ownership or - in the aforementioned ratio - his co-ownership in the newly created items to the Seller for reasons of security. If the goods subject to reservation are bonded to other items to one uniform or are inseparably mixed and if one of the other items is to be regarded as the main item, the Seller shall, inasmuch as the main item belongs to him, transfer the co-ownership in the uniform item proportionally to the Purchaser in the ratio stated in sentence 1.
- (6) In the case of resale of the goods subject to reservation of title, the Purchaser shall assign now for reasons of security the demand against the Acquirer arising from this - in the case of co-ownership of the Seller in the goods subject to reservation proportionally in accordance with the share of co-ownership - to the Seller. The same applies to other demands arise in the place of the goods subject to reservation of title or which arise otherwise with respect to the goods subject to reservation of title such as, for example, insurance claims or claims from unlawful acts in the case of loss or destruction. The Seller revocably authorises the Purchaser to collect the demands assigned to the Seller in his own name but for account of the Seller. The Seller may only revoke this authorisation for collection in case of realisation.
- (7) If third parties seize the goods subject to reservation of title, in particular by way of pledge, the Purchaser shall refer without delay to the ownership of the Seller and inform the Seller to enable him to assert his rights of ownership. Inasmuch as the third party is not in a position to refund the Seller any court or out-of-court costs arising in this connection, the Purchaser shall be liable towards the Seller.
- (8) The Seller shall release the goods subject to reservation of title and any items or demands arising in their place on demand according to his own choice inasmuch as their value exceeds the amount of the secured demands by more than 50%.
- (9) If the Seller withdraws from the agreement (case of realisation) in the event of non-contractual behaviour on the part of the Purchaser - in particular on account of delay in payment - he is entitled to demand surrender of the goods subject to reservation of title.

Section 11 - Place of performance, place of jurisdiction, applicable law

The place of performance and the exclusive place of jurisdiction for delivery and payment (including action for cheques and drafts) and all disputes arising is the seat of our company. We are, however, entitled to take action against the Party Ordering at his place of jurisdiction. The contractual relationships shall be regulated exclusively in accordance with the law valid in the Federal Republic of Germany excluding the CISG (CISG = United Nations Convention on Contracts for the International Sale of Goods).

Section 12 - Escape clause

If individual provisions of the agreement with the Party Ordering including these General Terms and Conditions are or become fully or partly ineffective, the validity of the remaining provisions remains unaffected. The fully or partly ineffective regulation shall be replaced by a regulation whose economic success as far as possible most closely approaches the ineffective one.

Section 13 - Data protection

The Client shall take note of the fact that the Seller stores data from the contractual relationship in accordance with section 28 Federal Data Protection Act for the purpose of data processing, and reserves the right to transmit the data, inasmuch as for the performance of the agreement necessary, to third parties (e.g. insurances).