

General Terms and Conditions of Trade for our deliveries and services, valid from 1<sup>st</sup> of June 2007

## 1. Basis of Orders

- 1.1. All agreements and offers underlie our general terms and conditions of trade [hereafter referred to as General Terms and Conditions of Trade]; 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. Insofar as individual conditions from this General Terms and Conditions of Trade should be or become wholly or partially ineffective, the validity of the other part of this General Terms and Conditions of Trade will not be affected.
- 1.4. The basis of all orders is a) the order itself, b) these General Terms of Conditions of Trade, c) the ECKELT Tolerance Handbook [available at [www.eckelt.at](http://www.eckelt.at)] and the applicable Austrian Standards, d) 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 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.

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### 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. If something to the contrary is not expressly agreed to in writing, our delivery will generally be made ex works or ex 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 returnable 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.

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## 5. Delivery Period, Acceptance

- 5.1. In the absence of an agreement to the contrary, the period of delivery begins at the latest of the following moments:
- Date of the order confirmation
  - Date of fulfilment of all technical, commercial and financial requirements on the part of the buyer
  - 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. The damage compensation claim is limited to the amount of damage to reputation and/or lower claim for non-fulfillment/lateness. Additional claims from possible contractual penalties are excluded in every case. Claims for delays in delivery other than those listed in this point are prohibited.
- 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.

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## 6. Prices

- 6.1. Our offer prices are not-binding.
- 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.

## 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.

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8.4. In the event of severe worsening of the pecuniary circumstances of significant breach of the payment goal [beginning at breaches of 2 weeks] for previous deliveries and services to the buyer, we are entitled to refuse to provide our deliveries and services until payment or provision of sufficient securities. If our delivery has already taken place, our entire payment is due immediately; this is particularly valid in the event of default in payment, bill protest, bounced check or the provision of an application to begin bankruptcy proceedings.

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

- a) Continuation of the fulfillment of the contract. We can delay our obligation until provision of the late payments or other services and/or make the remain sales price due immediately and bill default interest in the amount of 8% above the basic interest rate; 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.

8.6. The buyer is not allowed to make counterclaims, for any reason, against our demands.

8.7. 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.

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9.3. The buyer already cedes all payments due to them from the resale to their buyer including all securities provided for this purpose and we accept the cession. The buyer bears all fees resulting from this.

9.4. We agree not to collect the payments ceded to use as long as the buyer properly fulfills their payment obligations. Upon our request, the buyer must inform their debtor of the payment cession to us, provide all of 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 period of guarantee amounts to 24 months. The assumptions of § 924 of the Austrian Civil Code [AGB] is not applicable. The remedying of a defect by us has, in regards to parts of the delivery/service not affected by the defect and the duration of this period has no legal ramifications; the remedying of defects does not extend the period of each piece.

10.2. Possible defects must be specifically described in writing under a special time limitation for all replacement claims within 8 days of delivery/service in the event of obvious defects and/or within 8 days of discovery in the event of hidden defects.

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Upon provision of products, the products must be inspected by the buyer for breakage, externally determinable damage and completeness. Possible complaints must be made in writing and provided to us with a specific description and complete documentation [including delivery documents with reference to the complaint] within 8 days under a special time limitation affecting all compensation claims upon delivery, or before the countersigning of the delivery papers.

10.3. The burden of proof for determining whether we are responsible for a defect rests 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.

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- 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. A possible guarantee claim can only be made after complete payment for the products under the agreed upon payment conditions has been made.

10.8. The buyer's compensation expires 2 years after delivery, irregardless of knowledge of the defect or the cause. 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.

10.9. Our product liability is limited to those cases in which the Product Liability Law [German Civil Code 99/1988] urgently requires liability. All companies involved in the manufacturing and distributions are excluded from all liability for material damages suffered by one of the companies.

10.10. The ceding of guarantee and/or liability claims is only possible with our written approval. Claims for money in the sense of § 1296a General Terms and Conditions of Trade – unless subjects to another agreement – are excluded.

## 11. Place of Jurisdiction, Place of Fulfillment

11.1. Austrian jurisdiction and Austrian law has been expressly agreed to, whereas the application of the united Nations Convention on Contracts for the International Sales of Goods – CISG has been expressly prohibited.

11.2. The locations 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. We are entitled, however, to invoke a court responsible for the buyer as well.