

General Terms and Conditions

of DECO-GLAS GmbH as of July 15th, 2021

§1 Scope of these GTC, General

1. Our General Terms and Conditions (“GTC”) shall only apply to corporations, corporate bodies regulated by public law or fund assets governed by public law in the meaning of § 310 Abs.1 BGB German Civil Code (Bürgerliches Gesetzbuch (BGB)).
2. The following GTC apply to all our contracts, supplies of goods and services unless they are amended or excluded with our express written consent. General terms and conditions of our contractual partner shall only apply if we confirm them in writing. Our GTC apply even if we supply a good or service without reservation despite being aware of deviating terms and conditions of our contractual partner.
3. Any agreements with the Customer made on a case-by-case basis shall prevail over these GTC in any event. Any agreements made between us and the Customer that amend a contract or are made in fulfilment of a contract shall be made in writing to serve as evidence.
4. Our own GTC shall also apply for any future business transactions with the Customer.

§2 Offer and contract conclusion; written form

1. Our offers shall be subject to change and are non-binding unless they are expressly identified as binding offers. We may accept an offer to enter into a contract from our Customer within two weeks. Our Customer is bound by its offer until the expiry of this period.
2. A contract between us and the Customer shall be deemed concluded in case we have submitted a written order acknowledgement following the receipt of the Customer’s purchase order, or if we have started executing the order.
3. The conclusion of the contract shall be subject to ourself obtaining delivery (Selbstlieferungsvorbehalt).
4. All agreements between us and our Customer must be recorded in writing when the contract is concluded. Agreements made between our employees or representatives and our Customer during or after conclusion of the contract require our written confirmation in order to be valid; the power of representation of our employees and representatives is limited to such an extent.
5. Insofar as these GTC are based on a written form requirement, text form within the meaning of §126 BGB is sufficient to satisfy the written form requirement.

§3 Prices; Price increases and payment

1. All our prices are stated in EUR without statutory VAT which we invoice separately as of day of our invoice or the day when our actual service(s) is (are) rendered. A cash discount must be agreed in advance in writing, on a case-by-case basis.
2. The basis of all prices shall be “ex works” and include the agreed or customary packaging.
3. “Ex works” means that we make our delivery or service available to our Customer on our premises (e.g. warehouse, factory, production plant). Therefore, our prices do not include costs for freight, transport, storage, insurance, customs duties or other export costs and other ancillary transport costs. These costs shall be borne by the Customer.
4. We are entitled to charge the Customer €150.00 per pallet for the costs incurred by us due to the disposal of the Customer’s old stock, collapsed pallets or similar caused by the Customer.

5. The statutory regulations with respect to the prerequisites and consequences of default in payment apply. We shall be entitled to charge interest rates of 9% above the respective base interest rate from the due date without further reminder. This is without prejudice to additional claims, including without limitation delay on the part of our Customer. If a Customer defaults in payment we shall be entitled to carry out any further deliveries – also partial deliveries – to such Customer against payment in advance only.
6. In the event that the Customer experiences a lasting adverse development of their financial position or if default in payment with respect to a significant amount of receivables from the supply relationship (amounts in excess of €5,000.00 shall be deemed to be significant) occurs, we shall be entitled to withhold deliverables to be delivered under the contract or cancel the contract with respect to the deliverables not yet delivered until payment of any overdue payables has been made by the Customer in full.
7. The Customer shall be entitled to any set-off or retention rights only to such extent that its claims have been ascertained finally and conclusively or are undisputed.

§4 Delivery and passing of risk

1. Unless provided otherwise in the order acknowledgement, delivery “ex works” shall be deemed agreed. In such case, we will keep available the goods at our premises, packed and ready for collection through the Customer. The costs of transport and unloading shall be borne by the Customer. The place of performance for all supplies of goods and services as well as payments shall be Montabaur, Germany.
2. If delivery is made ex works the risk shall pass to the Customer with the handing over of the goods to the Customer or the carrier. Delivery shall be deemed made in the event that the Customer is in default of acceptance.
3. If, at the Customer’s request, the goods are shipped to the Customer, the risk of accidental loss or accidental deterioration shall pass to the Customer with the goods’ delivery to the forwarding agent, carrier or other person that was instructed to carry out the shipment – even if such person is our employee – or at the time they leave our site or warehouse, whichever is earlier, and irrespective of who will bear the shipping costs.
4. Free domicile delivery is only owed by us if this was expressly agreed in writing. In that case, the risk of accidental loss or accidental deterioration shall pass to the Customer with delivery of the goods to the Customer at the specified delivery address. Delivery shall be deemed made if the Customer is in default of acceptance.

§5 Delivery time

1. Any statement of delivery dates or periods shall generally be non-binding. A simple or absolute transaction, where time is of the essence, or a scheme of just-in-time delivery must be expressly agreed in writing; the mere agreement of a fixed delivery date shall not be sufficient in this respect.
2. To an extent that is reasonable for the Customer, we shall be entitled to make partial deliveries within the delivery periods and to invoice them separately. A delivery period or delivery date shall be deemed to have been met if the goods have been dispatched by us by the end of the period or, in cases in which the goods cannot or are not be dispatched, we have given notice of our readiness to deliver by the end of the period.
3. Any delivery times or periods shall be extended appropriately – also within a period of default in delivery – in the event of force majeure or other unforeseen obstacles that could not be prevented by us despite our reasonable efforts under the circumstances, for example interruption of operation, fire, interventions by authorities, difficulties with energy supply, delays in

the supply of critical raw materials and pandemics. We shall be obligated to inform the Customer about such obstacles immediately.

4. Delivery periods shall be extended by the period in which our Customer is in default with its obligations – within the scope of an ongoing business relationship this includes obligations under contracts – or does not create the prerequisites for the commencement or continuation of the work to be carried out by it, in particular if it does not provide necessary documents, plans or other specifications. The burden of proof that it has created the necessary prerequisites and provided the necessary documents, plans or specifications shall be borne by our Customer.

§6 Acceptance obligations of the Customer

1. In any event, the obligation to accept delivery shall be a primary obligation of the Customer. If our Customer defaults on the acceptance of our goods and services in whole or in part, we shall be entitled, after the effectless expiry of a reasonable grace period – containing the threat that we will refuse acceptance of our services by the Customer in the event that such grace period unsuccessfully expires to either withdraw from the contract or claim compensation for damages in lieu of performance, but only with regard to the part of the contract we have not yet performed. Our statutory rights due to default in acceptance remain unaffected.
2. The Customer shall reimburse us for our storage costs, storage rent and insurance. The maximum storage time of goods at our site, be it naked glass or be it decorated material, before and after production, is one month. In case of storage of the goods with us, costs in the amount of € 9.00 per pallet and month are to be paid.
3. The Customer is free to prove that the actual costs incurred were lower; and we shall be free to prove that the actual costs in an individual case were higher.
4. This does not affect our rights to assert any further statutory or contractual rights or claims resulting from the Customer's default in acceptance or a culpable violation of their acceptance obligation.

§7 Customer's duty to cooperate, violation of duty to cooperate

1. If the Customer has a contractual duty to cooperate in fulfilment of the contract, such duty to cooperate shall be a primary obligation if it is required for the fulfilment of the contract. This includes (but is not limited to) the timely presentation of all required technical documents, data, and instructions (for example, prepress or detailed colour information), the timely supply of products or materials for processing, in proper condition, and detailed information about the design, colour, or similar conditions of the deliverable as provided in § 375 para 1 German Commercial Code (Handelsgesetzbuch (HGB)).
2. The Customer shall provide the cooperation required at its own risk and expense, unless otherwise agreed for the individual case.
3. If the Customer culpably violates its duty to cooperate, we shall be entitled to all rights and claims provided under the relevant statutory provisions, including but not limited to those set out in the BGB and HGB. Subject to the prerequisites of § 642 BGB, the Customer shall be liable to pay compensation in the amount of € 500.00 per hour of production downtime. The Customer is free to prove that a lower amount of compensation is appropriate; and we shall be free to prove that the actual damage in an individual case is higher.
4. The Customer shall guarantee the quality and suitability of the materials provided by it, the products to be processed, as well as the correctness and required accuracy of the instructions, processing instructions, templates or other processing specifications provided.

5. Insofar as the materials provided by the Customer or the products to be processed are not suitable, in whole or in part, for further processing as intended, we may, at our reasonable discretion, sort out the unsuitable materials/products ourselves at the Customer's expense and return them, in whole or in part, to the Customer at the Customer's expense.

§8 Quality Assurance

1. Unless otherwise expressly agreed, we are not obligated towards the Customer to carry out certain quality measures.
2. Any quality controls that we may carry out in accordance with our own quality assurance guidelines shall not release the Customer from their obligation to carry out their own quality controls.

§9 Samples, drawings, documentation, tools, preformed parts

1. Preliminary work, such as the creation of drafts, drawings or samples requested by the Customer, shall be subject to remuneration, unless otherwise expressly agreed in writing in advance.
2. Any samples or images presented to the Customer by us shall be informational only. Unless expressly agreed otherwise, the conditions and features of samples or images shall not be deemed agreed quality conditions or features; the applicability of § 454 BGB BGB shall be excluded.
3. We reserve the right of ownership and copyright to the samples, images, drawings, calculations, and other technical and commercial documentation we have provided to the Customer. Such documents/samples must not be made available to third parties if this is not in fulfilment of the contract. Above all, they must not be used in dealings with third parties that are not involved in the contract, including but not limited to competitors, for acquisition or other purposes that are not related to the contract.
4. Unless expressly agreed otherwise, the costs of production, procurement, change, repair, or provision of production dies/moulds or tools shall be borne by the Customer if such are exclusively or predominantly used for Customer-specific processing operations. The moulds, dies, or tools produced by us shall remain our property even though that the production costs were borne by the Customer.

§10 Proprietary rights and third party claims

1. The Customer shall be responsible for ensuring that the execution of the order placed by it on the basis of its own specifications for shapes, colors, sizes, weights, etc. does not infringe the property rights of third parties. In the event of any claims asserted against us by a third party due to the infringement of property rights, the Customer shall indemnify us against such claims and shall compensate us for any damage (including expenses and costs) incurred as a result. In relation to the Customer, we shall only be held responsible for positive knowledge or grossly negligent ignorance.
2. If a third party asserts claims against us, based on defective products or defects in supplied materials or processed products of the Customer, the Customer shall hold us harmless and indemnify us from any damage incurred thereby (including costs and expenses), to the extent that such defective products or defects cannot be proven to be attributable to a faulty processing step contributed by us. Moreover, the Customer undertakes to support us in any recourse proceedings instituted by a third party by supplying the necessary information or making available suitable pieces of proof in a way that is just and reasonable.

§11 Production and use of photographs/product samples

1. We shall be entitled to produce or have produced photographs of the products that are produced as a result of our business relations with the Customer. The Customer grants us the royalty-free, non-transferable and unlimited – with respect to time and territory – right to use these photographs in full or in part for our own information and advertising purposes and to publish them in any medium we may choose (for example, at exhibitions, informational events, in presentations, informational correspondence, brochures, catalogues, or our own domains). This includes (but is not limited to) digital usage. This right of use shall also and particularly include photographs that show the Customer’s trademarks, commercial designations and/or company symbols. We shall ensure that the use of such photographs for information or advertising purposes does not purport any untrue connections or relations with the Customer in terms of company law.
2. Subject to the above right of use, we shall also be entitled to use or have used product samples resulting from our business relations with the Customer in our own advertising for ourselves. The provisions that apply to photographs shall apply accordingly in this respect.

§12 Liability for defects**1. Customer’s inspection and reporting obligations**

1. Claims for warranty by the Customer shall require that the Customer has duly complied with its obligations to inspect and give notice of defects pursuant to §§377, 381 para 2 HGB, whereby the notice of defect must be given in writing without undue delay. If the Customer fails to duly give notice of defects in time, the Customer shall no longer be entitled to assert claims concerning the circumstances subject to the notice unless we acted with intention to deceive.
2. The period relevant for the reporting of defects shall begin with the delivery of the goods in compliance with the contract. Any interim storage of the goods by the Customer, at a third party, or, in the event of a direct delivery to a third party at the request of the Customer, shall not postpone the start of the period.

2. Definition of defect

1. Due to the technical conditions regarding the materials to be processed and the processes to be used, minor, unavoidable deviations in color, shape or similar parameters may occur in the production process. These variations shall not constitute a violation of obligations or defects insofar as they cannot be avoided with economically reasonable effort and are within the scope of the usual standard in the industry.
2. Production-related deviations or deviations that are due to technological advances shall not be deemed defects to the extent that they do not impair the Customer’s intended use of the finished products.
3. Warranty claims of the Customer shall be excluded to the extent that any defects result from the defectiveness or incompleteness of the parts, materials, or instructions supplied by the Customer.

3. Customer’s rights in the event of defects

1. In the event of a defect – taking into consideration section 12 para 1 and 2 above – we shall be entitled, in our own discretion, to subsequent fulfillment, either by removing the defect or subsequent delivery.

2. In the event that subsequent fulfillment fails, is unreasonable or refused by us, the Customer shall be entitled – in their own discretion – to withdraw from the contract or demand a reduction of the purchase price.
In the event of only minor defects, the Customer shall not be entitled to a right to withdraw from the contract.

4. Right to compensation

The Customer's right to claim damages or to claim compensation of expenses incurred shall be subject to item 13 (limitation of liability) and shall otherwise be excluded.

5. Delivery recourse

1. The provisions on delivery recourse as set out under §§ 478, 479 BGB shall not be affected by any limitations of liability – except for the provisions below – to the extent we are a supplier of a defective finished product within a supply chain based on a sales contract as set out in §§ 478, 479 BGB.
2. If the Customer does not, in accordance with §§ 377, 381 para. 2 of the HGB, notify us immediately of a case of recourse within the meaning of § 478 BGB, but at the latest within seven (7) working days of becoming aware of it, our liability under §§ 478, 479 of the BGB shall be excluded.
3. With respect to any compensation to be paid by us in accordance with § 478 BGB, such costs shall be excluded that would have not been incurred if the Customer had exercised the required care with respect to any subsequent fulfillment claims for which they were responsible.
4. We shall be entitled to issue an appropriate product credit note instead of the reimbursement of expenses to be paid in accordance with §§ 478, 479 BGB.

§ 13 Limitation of liability

1. Unless provided otherwise in these GTC, including the following provisions, we shall be liable for any violation of contractual or non-contractual obligations in accordance with the statutory provisions.
2. We shall be liable for damages - irrespective of the legal grounds - within the scope of fault liability in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to a more indulgent standard of liability (e.g. for care in own affairs), in accordance with statutory provisions only
 1. for damages resulting from injury to life, body or health, and
 2. for damages arising from the not inconsiderable breach of a material contractual obligation (an obligation the fulfillment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.
3. The limitations of liability set out under section 13 para 2 shall also apply in the event of violations of obligations by persons whose faults we are liable for in accordance with the statutory provisions. They shall not apply in the event of malicious nondisclosure of any defects or to Customers' claims in tort or to Customers' claims based on the provisions of the product liability law.

§ 14 Period of limitation

1. The limitation period for claims for defects is 12 months, starting from the passing of risk. If we have fraudulently concealed a defect or assumed a guarantee, the Customer's claims based thereon shall become statute-barred in accordance with the statutory provisions.

2. The statutory limitation period in case of delivery recourse under §§ 478, 479 BGB shall remain unaffected.
3. The statutory limitation period shall apply to claims arising from damage due to willful or grossly negligent actions, from injury to life, body or health, from tortious acts and claims under the Product Liability Act.

§ 15 Jurisdiction and applicable law

1. The exclusive place of jurisdiction for all supplies of goods and services as well as payments, including actions based on cheques and bills of exchange, as well as all disputes arising between the parties, shall be Koblenz; however, we shall also have the right to lodge an action against our Customer at the respective place of jurisdiction in accordance with §§ 12 et seq. of the German Code of Civil Procedure (Zivilprozessordnung (ZPO)).
2. The relations between the contractual parties will be regulated exclusively in accordance with the laws applying in the Federal Republic of Germany with exclusion of international commercial law, in particular the United Nations Convention on Contracts for the International Sale of Goods ("CISG") and other international agreements for the standardization of commercial law.

§ 16 Severability clause

1. Should one or more provisions of these GTC be or become invalid, this does not affect the validity of the remaining provisions. To the extent that a provision contained in the individual part of the contract is invalid, the parties to the contract shall agree to a valid provision to replace the invalid one which comes as close as possible to the intent of the cancelled provision. The same applies to any lacuna that may be contained in the part of the contract the parties individually agreed upon.

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