

# GENERAL DELIVERY AND SALES TERMS AND CONDITIONS

## JAUCH QUARTZ GMBH

### INTRODUCTION

Our delivery terms and services are subject to the following conditions, even if they are not referred to specifically in individual cases. A full or partial exemption from these terms and conditions is applicable only when there is an expressed written agreement or contract. These conditions also apply to sales on the basis of trade agreement, of Incoterms in particular. General business conditions, especially purchasing conditions named by the purchaser, are not valid reasons for exemptions from our terms. We are not obliged to accept these. If we do not object to them specifically in individual cases, we object herewith. Our General Delivery and Sales Terms and Conditions are considered to be accepted once the goods are received and accepted.

### I. DELIVERY DUTIES

1. Our offers are without obligation, even if made on the purchaser's request. A contractual relationship with the purchaser is only legally binding when we have confirmed the offer in writing, which can be done by fax or by computer document without a signature; the same requirement applies to contract changes or amendments.

The extent, kind and time of delivery are determined by our written confirmation of the contract.

2. We reserve the right to make constructional changes of our products. Our catalogues are continuously revised. Any diagrams and drawings contained therein are without obligation, do not serve as an assurance of certain characteristics and do not guarantee durability or the nature of the goods.
3. Any documentation related to the offer, such as drawings, data sheets, diagrams, plans etc., are only valid with reservations if they have not been expressly marked as valid.
4. Blanket orders must be called up and accepted on time and in agreed quantities. In the case of blanket orders without agreement about delivery acceptance dates, we can demand a binding agreement of no later than 3 months after confirmation of the order. Should the purchaser fail to react to this demand within 3 weeks, we have the right to allow a further two-week grace period. If the customer does not respond during this period, we are entitled to withdraw from the contract or to refuse delivery and demand payment of damages.

If the order quantity is exceeded due to separate consignments, then we are entitled to deliver the excess, but we are not required to do so. The excess will be calculated at the prices valid at the time of the call-up or delivery.

### II. PRICES

1. Prices are quoted in EURO. Value Added Tax is calculated at the respective rate and set out separately in the invoice.
2. In domestic business the prices are valid ex works, uninsured and excluding packaging, in export business free German frontier or fob German air- or seaport including export packaging and transport insurance.
3. Surcharges and subsequent charges to the agreed payment are permitted if circumstances such as material costs, wages or increases in energy costs or public expenditure etc. make this unavoidable and if the delivery or service is to take place later than 4 months after the signing of the contract. In the case of other price increases the purchaser has the right to withdraw from the contract if the list price has increased above that of the general cost of living. Deliveries resulting

out of additions to an order and which are made after the time of price changes are calculated at the new prices and the purchaser does not have the right to withdraw from the contract.

### **III. DELIVERY**

1. The delivery date is calculated from the posting date of the confirmation of the order, but not before clarification of all details concerning the execution of the order and not before an agreement for advance payment has been reached. The delivery date has been adhered to if the object to be delivered has been dispatched or collected within the agreed time, or if readiness to deliver has been made known to the purchaser, in case the goods were not dispatched without our fault.
2. Acts of God and other events which are not our fault but make the smooth completion of an order doubtful, especially delivery delays from our own suppliers, transport and operational interruptions, strikes, shortages of materials or energy, entitle us to withdraw from the contract wholly or partly or to delay the delivery without any rights of the purchaser to demand damages. The purchaser can give us the option to withdraw from the contract or to deliver within a reasonable time. If we do not respond to explain the circumstances, then the purchaser can withdraw from the contract.

We cannot either be held responsible for the events or circumstances stated above even if they occur during a delivery delay.

3. If delivery delay has been caused by us, a reasonable grace period must be granted. After this period of time the purchaser is entitled to claim damages or withdraw from the contract on the grounds that no notice has been given to state the readiness of the goods or if the goods have not been dispatched.
4. The purchaser is only entitled to claims for damages instead of the agreed service if the cause of the damage is deliberate on our part or due to gross neglect. This does not apply in the case of an order fixed on a special date.
5. Delivery duties and delivery times are frozen as long as the purchaser delays the acceptance of the goods or is in arrears with other duties without our rights being affected by the purchaser's delay, or without exceeding the credit limit granted by us. In such cases any risk of accidental decline or deterioration is transferred to the purchaser at the moment of time he is in arrears.
6. The initially agreed delivery date is cancelled when the order is changed with our written agreement.
7. Partial deliveries and plus or minus variations (max. +/- 10 %) are acceptable as long as these can be considered as reasonable in the interest of the purchaser.
8. Our determined weights and number of pieces of goods are decisive.

### **IV. DISPATCH**

1. The purchaser carries the costs and risks for the dispatch of the goods from a location determined by us.
2. We shall choose the packaging, the type of delivery and the means of transport, if the purchaser has not stated any special requirements. Extra costs for special requirements by the purchaser are to be paid by the purchaser. We are not obliged to choose the least expensive method of transport.
3. Should the dispatch or delivery be delayed at the purchaser's request, we are then entitled to set a reasonable time limit for acceptance of the goods; if the customer does not respond within this period, we can demand immediate acceptance and compensation for damages due to the delay.

## **V. CONDITIONS OF PAYMENT**

1. Payment is subject to our conditions as set out in our confirmation of order.
2. The purchaser carries the costs for payment, especially all kinds of banking charges and expenses.
3. Cheques are only accepted with the usual reservation, bank drafts only if previously agreed. Discount charges are paid by purchaser. They have to be paid by purchaser at negotiation of the draft in a lump sum payment to a discount rate of 10%. The day of settlement is the day on which the amount is available to us; this applies to all types of payment.
4. If the payment date is extended or if payment is made later than agreed, for this interim time interest is payable at a rate of 8 percentage points above the respective base interest rate of the European Central Bank, without a reminder. We reserve the right to claim further damages for delay. The purchaser would have to prove a lower value of damages for any delay.
5. The purchaser is not entitled to make counter claims, unless his demands were recognised by us, are irrefutable or have been confirmed as lawful.

In the case of refuted counter claims the purchaser has no right of retention.

6. All our demands are to be fulfilled instantly if the conditions for payment are not met or circumstances become known to us which lead us to suspect that the credit worthiness of the purchaser is not what it appeared to be. In this case we would be entitled to make still outstanding deliveries only against advance payment or adequate securities, or to withdraw from the contract after a reasonable additional time of grace, or to claim damages. In addition we can refuse permission for re-sale and working with the delivered goods and demand return or transfer of the goods in temporary possession at the purchaser's cost and revoke the direct debit instruction in accordance with Section IX. 7. The purchaser agrees to our entitlement here and now to enter his company premises - should any of the named cases occur - and to remove the delivered goods.
7. Payments are on principle calculated with respect to the oldest due invoice. As long as an older invoice has not been paid, the purchaser is not entitled to discount on later invoices.

## **VI. COMPLAINTS AND NOTICE OF DEFECTS**

1. Complaints due to incomplete and/or incorrect deliveries or notice of recognisable defects must be made known to us in writing immediately, but at the latest within 2 weeks after receipt of the goods. Other defects must be made known to us in writing immediately, but at the latest within 2 weeks after discovery of same.

If we are not notified of faults or defects of the above named nature, no warranty can be given. If we were notified in time, we would be obliged to grant compensation in accordance with Section VII.

2. In the case of damages caused in transit, the purchaser would need to submit an assessment of damages by the haulage company.
3. If only parts of the delivered goods are faulty, the purchaser is not entitled to make a claim for the whole consignment, unless a part consignment is of no interest to the purchaser.

## **VII. WARRANTY**

1. In the case of faulty goods we must be notified within a warranty period of 12 months, so that we alternatively can rectify the faults or make a replacement delivery. When the faults have been rectified we shall carry the cost for all necessary items, in particular transport, labour and material

costs, as long as these are not increased through delivery to a location other than the original destination.

2. The purchaser must grant us the necessary time and opportunity for the removal of the faults. Any parts replaced by us will become our property.
3. Should the second attempt at fulfilling the contract not be successful, or should we not deliver within a reasonable period of time or not rectify the faults, or should the subsequent fulfilling of the contract be impossible or refused by us, then the purchaser has the right to withdraw or reduce payment just as he would be able to if we did not fulfil the contract during the period of grace.
4. Our warranty does not refer to damages caused by natural wear and tear, nor to damages due to erroneous or negligent handling, excessive use, unsuitable use, wrong handling etc. or such influences which have not been pre-empted in the contract, as long as such damages are not our fault.
5. Any rights to warranty cannot be transferred to third parties without our consent.
6. Should the purchaser or the third party have made inappropriate changes to the product and/or inadequate repairs, we shall not be held responsible for resulting faults.
7. In the case of substantial quantities of products not made in house, our liability will be restricted to warranty rights which we have against the vendor/courier of the foreign products, unless satisfaction out of the transferred right is not met or the transferred rights cannot be honoured for other reasons.
8. No matter for what lawful reasons the purchaser has no further rights against us, unless they are set out in the following; in particular rights to replacement of damages which have not occurred/or occur on the delivered goods themselves (for example lost profits, subsequent damages, other damages to property or assets). This disclaimer clause does not apply to cases of deliberate damage or gross negligence or where we have not supplied promised features.

If we have violated essential contractual duties in a negligent way, but it is not grossly negligent or deliberate, our liability is limited to replacement of typical foreseeable damages.

9. The above mentioned points refer to items other than the actual contract goods.

## **VIII. LIABILITY, LIMITATION**

1. The exclusion and the limitation of our duty to recover damages, as set out in Section VII. 8, also apply in all cases of indemnity obligations as a result of neglect of duties from lawful business debts or similar debts and of unlawful dealings. Not included are claims in accordance with §§ 1 and 4 (german) Produkthaftungsgesetz, obstruction at the time of contract fulfilment or justified impossibility. Neither does the clause apply in cases of injury of life, body or health and absence of promised features if and as far as assurance was given for the purpose of protecting the partner against damages which have not occurred on the delivered goods themselves.
2. If our indemnity obligation is exclusive or limited, this also applies to personal liability of our organisation, employees and other staff involved in work leading to the fulfilment of the contract.
3. The demands by the purchaser mentioned in Section 1 become statute-barred on principle after 24 months, calculated from the end of the year in which the risk elapsed. If the lawful limitation period is shorter than 24 months, then this limit is applicable for the respective demand by the purchaser. The shorter limitation period does not apply to demands from unlawful dealings or product liability.
4. Any lawful stipulations for proof are not included.

## **IX. RESERVATION OF TITLE**

1. All delivered goods remain in our ownership until all demands are met, in particular the respective balance payments which are due to us from the business relationship with the purchaser. This also applies when payments are to be made for specific demands.
2. Our ownership is extended to any goods being in connection with those for which we reserve right to ownership in relation to the value of these goods to each other. Once our ownership through connection expires, the purchaser transfers here and now his ownership rights for the new goods to the extent of the value of the goods under reserved ownership and stores these for us without charge. The thus created part-ownership is then regarded as for goods with reserved ownership in the sense of Section I. We accept the transfer herewith.
3. The purchaser may only pass on to third parties the goods with reserved ownership in the course of general business transactions, on his business terms, if they contain a comprehensive reservation of title, and as long as he is not in delay. On condition that any rights resulting from sale are transferred to us in accordance with Sections 4 and 6. He is not entitled to other actions connected with the goods with reserved ownership. His right to action in connection with the goods with reserved ownership is cancelled if an insolvency process relating to the purchaser's assets has been filed or if a business liquidation process has been invoked.
4. Any demands by the purchaser resulting from the sale of the goods with reserved rights are herewith transferred to us. These serve as security to the same extent as the goods with reserved rights. We accept the transfer herewith.
5. If the goods with reserved rights are sold together with other goods which were not sold by us, then the transfer of demands in a sale is limited to the value of the goods with reserved rights. If goods with our part-ownership according to Section 2 are sold, the transfer of entitlement is equal to the amount of this part-ownership.
6. If the goods with reserved rights are used by the purchaser for the fulfilment of a contract of manufacture or a contract of delivery and manufacture, then the entitlement is according to Sections 4 and 5 of this contract respectively.
7. The purchaser has the right to demands relating to the sale in accordance with Sections 3, 5 and 6 up to cancellation from our side to which we are entitled at any time. We shall make use of our entitlement of cancellation only in cases relating to Section 3 as well as Section V. 5. The purchaser does not have the right to transfer for any other purpose. On our request he has the duty to inform his purchasers immediately of his transfer of rights to us - if we do not take such action ourselves - and to pass on to us any information and documentation which may be necessary for the retrieval. The purchaser may not pawn the goods with reserved rights or transfer these as securities.
8. Our reservation of rights will be transferred to the purchaser in full as soon as full payment for all demands has been made. If the value of securities exceeds the secured entitlement as a whole by more than 20 %, we then have the duty to release securities of our choice on the purchaser's request. The calculation of the value of securities is based on the actual trade value.
9. The purchaser is obliged to notify us immediately if our ownership or entitlements are at risk in any way, if they are liable to pawning or other impairment through third parties; any pawning protocols or other documents must be submitted to us and the purchaser must undertake everything necessary in order to secure our rights.
10. We have the right to enter the purchaser's business premises at any time for the purpose of removal, selection or marking of the goods with reserved ownership. On our request the purchaser must provide all necessary information about the goods with reserved ownership and make documentation available. The purchaser has the duty to secure the goods with reserved rights adequately at his own cost to our advantage and to make proof of insurance available to us

on request. He transfers all resulting insurance rights to us here and now; we accept the transfer herewith.

11. Any claim in connection with our reserved ownership is not to be regarded as withdrawal from the contract. The purchaser's ownership of the goods with reserved rights expires when he does not meet his obligations from this or any other contract. We are then entitled to arrange for possession of the goods with reserved rights and to sell or auction these to the best possible value without affecting payment and other obligations by the purchaser towards us. The utilization revenue, less costs, will be credited to the purchaser against his payables. A possible surplus is to be paid to him.
12. If reserved ownership or the lawful transfer is not possible with regard to the whereabouts of the goods, then the agreed securities take effect. Should the purchaser have to be involved, he would be obliged to take all measures necessary to prove and retain such rights.

## **XI OTHER CONDITIONS**

1. Place of delivery and – if the purchaser is a businessman – legal proceedings for both parties is Villingen-Schwenningen, Germany; this also applies to the issuing of cheques. We are also entitled to take the purchaser to court at his own place for legal proceedings.
2. All court actions between us and the purchaser are subject to the Laws of the German Federal Republic. Agreements of the United Nations for contracts concerning International Purchases of Goods (CISG) do not apply.
3. Should individual terms and conditions and contract items become invalid, then the validity of the remaining stipulations will not be affected. The invalid stipulations will be revised so that the intended lawful and economic purpose can still be met. The same applies if during execution of the contract the need for an amendment becomes obvious. The contract partners accept the duty to replace the invalid stipulations immediately by lawful agreements or to make the necessary amendment.
4. Any data relating to the purchaser will be recorded within the framework and purpose of the contractual relationship.