



## General Conditions of Sale and Delivery of Stölzle Glass Group

### 1. Application

These General Conditions of Sale and Delivery (the “Conditions”) shall be an integral part of all business transactions between the customer and Stölzle-Oberglas GmbH and/or companies affiliated to Stölzle Glass Group (each “STO”) which confer to the sale and supply of goods or the performance of other services by STO.

Any contractual conditions deviating from the Conditions shall only apply when and in so far as in the individual case expressly acknowledged in writing by STO and only in respect of such business transaction for which the customer’s contractual conditions or other provisions were accepted by STO. Confirmation of orders shall in no event be deemed acknowledgement of deviating contractual conditions or other provisions.

Business transactions with consumers in the meaning of the consumer protection laws applicable in the individual case shall be governed by the Conditions only in so far as they are not violating mandatory provisions of such laws.

### 2. Written Form, Offers and Conclusion of Contracts

Any statement, advice and conclusion of contract by STO shall be binding upon STO solely upon written confirmation. Statements of the customer pursuant to the Conditions shall only be valid if made writing.

Any price indication or other information whatsoever made by STO in the course of preparation of a business transaction shall only serve as a non binding estimate for the orientation of the customer and shall not oblige STO to enter into a contract.

All offers from STO shall always be non binding and shall only become binding upon issue by STO of a written order confirmation. STO shall be entitled to confirm or reject customer orders within a period of 30 days from receipt thereof. For this period the customer shall be bound to his order. Any order confirmation shall be deemed accepted by the customer unless rejected in writing within 3 days from receipt. Changes to an order accepted by STO may only be made with explicit written consent from STO.

### 3. Delivery Volumes

Due to certain technical production aspects of manufacture at STO the delivered volumes may vary from the ordered volumes by +/- 10% without the customer being entitled to reject, or deny payment of, the quantity delivered. STO may make deliveries in parts or in advance.

Delivery volumes validly agreed within frame delivery agreements must be taken in full by the customer; else the customer shall be obligated to pay to STO the entire agreed price together with any extraexpenditure that STO may suffer due to insufficient taking of the delivery.

### 4. Dispatch, Transfer of risk

Unless otherwise provided for in the order confirmation or in the delivery agreement, all deliveries shall be made ex respective works of STO. Dispatch shall be made at the customer’s cost and risk. Unless specifically otherwise instructed, STO shall determine the means of transport and the transport route as the customer’s agent. Deliveries shall be covered by transport insurance only upon the explicit instruction and at the expense of the customer.

Stölzle-Oberglas GmbH, Fabrikstraße 11, 8580 Köflach, Austria  
Phone: +43 - 3144 - 706, Fax: +43 - 3144 - 706 - 251, E-Mail: [office@stoelzle.com](mailto:office@stoelzle.com)

The risk of destruction, loss or damage of a delivery shall pass to the customer upon hand over of the delivery to the carrier or, if the delivery is made by STO or collected by the customer, when the delivery leaves the premises of STO. In the event of late acceptance of a delivery by the customer risk shall pass when the customer started to delay.

Where no particular packaging was explicitly agreed with the customer, packaging shall be of the type generally employed by STO in the trade. STO shall not be liable for damages caused by defective packaging as far as packaging complies with customer's instructions and else only in cases of malicious intent or gross negligence.

As a principle every delivery shall be deemed consigned in proper condition. Unless proven to the opposite any damages shall be considered as having occurred in course of transport. Where damage, due to agreed delivery conditions (INCOTERMS), occurred within the responsibility of STO, the customer, else losing all claims against STO, must enforce the remedies of STO against the forwarding agents, transporters and transport insurers.

## **5. Delivery Dates, Late Delivery, Acts of God**

Unless otherwise explicitly agreed, dates of delivery shall be approximate and non obligatory dates. STO shall be entitled to exceed agreed delivery dates by up to 8 business days upon written notice to the customer, without the customer being entitled to enforce any measures whatsoever as a result of the delay.

If delivery dates are exceeded for a period longer than stated hereinabove (late delivery), the customer - save for events due to Acts of God - may withdraw only from such part the contract as refers to the delayed delivery upon expiry of a reasonable notice period of at least 4 weeks. Further remedies of the customer against STO, in particular damages, shall be limited to cases of malicious intent and gross negligence and at the most to the net invoice value of the goods affected by the delayed delivery.

Deliveries reported ready for dispatch must be taken by the customer without delay, else STO may at its discretion store such deliveries at the customer's costs and risk and have them immediately invoiced.

Tool- and furnace break, late delivery or failure to deliver on the part of STO's suppliers, shortage of workers, energy or raw materials, strikes, lockouts, disruption to traffic, regulations or orders issued by public authorities and other events of Acts of God, for their duration and to the extent of their effect, shall release STO from the obligation to effect delivery. If delivery is such delayed by more than 2 months, the customer may withdraw from the contract upon reasonable notice period, but be obliged to accept delivery of any parts already completed so far at the agreed price. In such events any damages by the customer shall without exception be excluded.

If the customer delays fulfilment of his obligations, or if circumstances become known in connection with the customer which give rise to justified doubt as to whether the customer in future will fulfil his obligations in due time and in a proper manner, STO, without prejudice to further remedies, may immediately cease deliveries and demand all outstanding monies and other claims as being immediately due.

## **6. Change Control Management**

Changes with impact on the product quality (e.g.: Change in the production site, change in the glass composition) are handled according to an approved procedure. Depending on the agreement and the type of the change the customer is involved in the change procedure.

## 7. Warranty

All particulars of a delivery shall be determined by the order confirmation and the technical manufacturing possibilities at the premises of STO. Unless otherwise agreed in writing, customary defects of parts manufactured in mass production, within the limits for acceptance as determined by STO (Standard- AQL Parameters), shall not constitute a defect that needs to be remedied.

The warranty period for STO shall commence as of the date at which risk associated with the goods passes to the customer and shall end 6 months thereafter. With respect to defects of such parts of a delivery which STO sourced with third parties, STO shall only warrant within the limits of its own remedies against its respective suppliers.

The customer must immediately inspect every delivery for defects. Any recognisable defects must be reported in writing within 8 days after receipt of the delivery and other defects must be reported immediately upon discovery, but in any event within the warranty period, else any warranty claims shall be excluded. If the customer fails to issue such complaint, or if the items delivered are processed by the customer or mixed or combined with other goods, the delivery shall be deemed being accepted without complaint. Issue of a complaint neither releases the customer from his payment obligations, nor may the customer refuse further deliveries from the respective or another contract. In the event of inappropriate handling or processing of the delivery all remedies against STO shall be excluded. If a defect is acknowledged by STO, STO may either take back the delivery at the agreed price or provide for substitute delivery following return of the original goods or remedy the defect itself. Remedy of defects by the customer on his own shall only be reimbursed by STO if STO gave in advance written consent.

STO shall be liable for consequential damages caused by defects to persons or plant equipment (in particular damages as a result of interruption to operations), to the extent such damages comprise loss of profit or third party damages, only to the extent that the defect was caused by malicious intent or gross negligence; moreover the liability of STO as to such damages shall be limited to the net invoice value of the delivery affected by the defect.

The customer - else losing all warranty claims and indemnities against STO - shall at its own expense implement, maintain and upon request evidence to STO a traceability system that allows, with respect to all deliveries of product by STO to the customer, through the batch number as well as the pallets number and/or the handling unit number respectively determination of the production charge from which the product came as well as the pellet on which the product was placed for delivery to the customer.

## 8. Damages

Unless otherwise stated in the Conditions the liability of STO for damages caused by minor negligence and for all indirect damages shall be excluded and else be limited to the net order value.

## 9. Product liability

The liability of STO for damages to property resulting from a faulty product which the customer suffers as an entrepreneur shall be excluded. Claims of the customer for damages due to faulty products shall be limited to malicious intent and gross negligence. The customer, else being liable for damages, shall apply this exoneration clause in favour of STO also in respect of any of his customers. The limitation of product liability of STO shall apply on goods same as on packaging.

## 10. Intellectual Property Rights

Irrespective of the existence of legal protection rights all documentation, technical drawings and other works made by STO, and all techniques applied by STO to manufacture and design of the goods, preliminary to or upon processing of an order shall always remain sole intellectual property of STO. The customer may not use for own manufacturing purposes, even not upon further technical development, and may not disclose or make available in any manner whatsoever to third parties, any such know how which he gained access to by receipt from STO of constructions, deliveries, information on the manufacturing processes or likewise information. In the event of any violation by the customer of the obligations imposed hereby STO may enforce against the customer the rights provided to a patent owner by the Austrian Patent Act in case of an infringement of patent rights.

The customer shall fully indemnify, and hold harmless, STO from and against all claims of third parties due to infringements of patents or other intellectual property rights caused by component parts, group of component parts or other goods or services which were not developed by STO.

## 11. Advice on Use of Products

Any oral or written advice by STO as to the application of products shall be non-binding, also in relation to any third parties' protective rights, and shall not relieve the customer from his obligation to examine on his own any delivery in respect of its suitability for the intended process and/or purpose. Any liability of STO in that respect shall be limited to malicious intent and gross negligence, and be limited to the net invoice value of the delivery which caused the damages.

## 12. Retention of Title

Any delivery shall remain property of STO until full settlement of all payments relating to the delivery, including accessory payments such as interest and expenses. The customer shall store goods, which are subject to retention of title by STO, separately and in a proper manner and take out appropriate insurance cover for such goods.

The customer may further process or re-sell the goods, which are subject to retention of title by STO, in the normal course of business; provided, however, that pledging or protective conveyance of the goods may only be made upon prior written approval from STO. STO's retention of title shall also extend to such products as may result from further processing of the goods. If goods, which are subject to retention of title by STO, are further processed or joined to or mixed with other materials, STO shall obtain common ownership on the product which thus arises in the proportion of the value of the goods supplied by STO to the value of the other materials. In any such event the customer shall be deemed being a custodian of the goods and be obliged to participate in all measures which may be necessary or useful to protect ownership of STO. If third parties assert or intend to assert rights over the goods subject to retention of title, the customer, else being liable for all damages, shall without delay inform STO accordingly.

The customer hereby assigns to STO all receivables from the onward sale of goods, which are subject to retention of title by STO. The customer, upon demand, shall disclose to STO the names and addresses of his buyers as well as the accounts receivable and amounts due resulting from such sales. The customer shall in addition include the subject assignment in his accounts and, upon demand, deliver to STO respective evidence thereof. STO may any time inform the respective customers of such assignments. Unless revoked by STO and without prejudice to STO's sole title in the assigned receivables, the customer may collect the receivables assigned to STO in his own name, but for the account of STO. The customer may not assign to third parties receivables from the onward sale of goods, which are subject

to retention of title by STO. In relation to STO such assignment shall in any case be legally invalid.

Deliveries repossessed by STO pursuant to the assertion of the retention of title shall be taken back at their scrap value, whereby the costs of return transport shall be borne by the customer. The customer shall, however, be credited any gains from sales beyond the scrap value. Tools manufactured by STO for the purpose of producing the ordered goods shall remain property of STO even if the customer paid for the tools.

### **13. Prices**

The prices of STO shall be quoted in the currency contained in the offer or else in such currency as may apply at the respective delivering STO Group member and be net ex works.

The agreed prices are based upon the costs at the date of the written order confirmation. In the event of changes to material and energy prices, costs of labour, freight charges, customs, taxes or other price relevant costs, STO retains the right to adapt the prices to the cost structure at the delivery date. The prices shall only apply to the agreed number of pieces. For lower quantities supplements shall be charged.

If offers are made in other currencies than Euros, STO retains the right to modify prices to reflect exchange rate fluctuations which occur up to the delivery date (or, in the event of customer' delay, up to the payment date).

### **14. Payment**

Unless otherwise stated in the order confirmation or in the delivery agreement, all invoices shall be payable to STO, free of charges, within 8 days from the invoice date. STO retains the right to make delivery dependent on immediate payment upon acceptance of the goods. Payment by means of bill of exchange or cheque may be made only upon separate agreement, whereby all interest and costs are to be borne by the customer; in the event of payment by means of bill of exchange the customer may not make any deductions.

In the event of late payment interest shall be charged at the rates as provided for by § 352 of the Austrian Commercial Code. Any higher interest charges for which STO may become liable are to be reimbursed by the customer. In the event of late payment all reminder and collection costs shall be borne by the customer.

All fees for bank transfers, documents against payment or documentary credit shall be borne by the customer.

If tool costs are to be apportioned over the expected production volume, tool costs, not such covered for reason that the customer failed to take, or only part wise took, the volumes upon which amortization was based, shall be invoiced to the customer and be immediately due for payment.

Prohibitions on cession, if so imposed by the customer, shall be void for STO.

### **15. Place of Fulfilment, Governing Law, Legal Venue, Severability**

Place of fulfilment for all deliveries of goods and supply of services shall be the premises of the respective invoicing STO Group member, where all present and future claims arising from contracts with the customer are to be fulfilled.

All contracts and deliveries shall be governed by the laws of the country where the respective invoicing STO Group member is seated, without regard to its conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods.

All disputes arising out of or in connection with the contractual relation to the customer shall be referred to the competent courts at the legal seat of the respective invoicing STO Group member; provided, however, that STO may institute legal proceedings also with any another competent court.

If deliveries are made to countries outside the European Union, all disputes arising from or in connection with the contractual relation to the customer shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber by one or more Arbiters appointed in accordance with these rules. The language of the arbitration shall be German, the venue shall be Vienna. The customer waives the application of § 611 of the Austrian Civil Procedure Code.

In the event any provision of the Conditions shall be held to be entirely or part wise invalid, the validity of the remaining provisions of the Conditions and the Conditions as such shall remain unaltered in force.