

## GENERAL TERMS OF THE AGC GLASS EUROPE GROUP

***Les présentes conditions générales sont disponibles en français sur simple demande ainsi que sur le site Web <http://www.agc-yourglass.com>. En cas de contradiction entre la traduction en français et la version anglaise des présentes conditions générales, la version anglaise prévaudra.***

***Las presentes condiciones generales también se encuentran a su disposición en español mediante solicitud, así como en la página Web <http://www.agc-yourglass.com>. En caso de que exista alguna diferencia entre la versión en inglés y la versión en español, la versión en inglés prevalecerá.***

***The present general terms are also available in other languages upon simple request or on the website <http://www.agc-yourglass.com>. In case of discrepancy between the English original version and a translation thereof, the English version shall prevail.***

### **1. Identity of the seller**

For the application of these general terms, for any given sale, the term “seller” refers to the company belonging to the AGC Glass Europe group<sup>1</sup> which provides the buyer with the order confirmation and the invoice for the products ordered or the services requested, considering that the seller may provide from time to time technical advice to the buyer as requested by the buyer and that logistic and administrative services regarding the processing of any order may be carried out by the relevant customer care center of the AGC Glass Europe group on behalf of the seller.

### **2. Content and interpretation of the contract**

All orders, order confirmations, sales contracts, services and, to the extent relevant, all price offers and quotations are subject to these general terms. No modification, derogation or addition by the buyer to these general terms of the seller can be considered contractually valid without prior express and written acceptance of the seller.

Unless the seller has accepted the buyer’s general or particular terms expressly and in writing, those terms are explicitly excluded.

The terms “EXW” and “DAP” are defined as per the Incoterms® 2010 published by the International Chamber of Commerce. All other terms are interpreted according to the applicable law as determined in Clause 12 of these general terms.

Catalogues and/or price lists sent out by any company belonging to the AGC Glass Europe group are exclusively intended to inform, and do not constitute an offer, unless otherwise expressly stipulated in writing by the seller.

### **3. Formation of the contract**

The contract is formed by the acceptance by the seller of the order from the buyer, or as the case may be, the service requested by the buyer, or through the performance of the order or service by the seller. The parties agree that the above acceptance by the seller may be validly communicated to the buyer by electronic means. The order shall include the precise description of the product or products and quantities ordered and the prices of those products.

Negotiation of the general terms is only possible before the buyer’s order is accepted by the seller and may result in change to any price earlier provided to the buyer.

Any modification or cancellation of an order placed by the buyer will be taken into consideration only if it has reached the relevant customer care center which is acting for the seller and is taking care of the order before the relevant event defined in subparagraphs (i) or (ii) below and without guaranteeing acceptance of that modification (including without limitation the extension of the delivery time) or cancellation by the seller: (i) in the case of any modification or cancellation of an order placed by the

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<sup>1</sup> For the purpose of these general terms, the AGC Glass Europe group means (1) AGC Glass Europe SA/NV (with registered offices at 4, Avenue Jean Monnet, B-1348 Louvain-La-Neuve, Belgium, registered with the register of legal entities (Nivelles) under No. 0413.638.187) and (2) any (directly or indirectly) “controlled undertaking” as defined under Article 2.1(f) of European Directive 2004/109/EC, i.e. any undertaking (i) in which AGC Glass Europe SA/NV has a majority of the voting rights; or (ii) of which AGC Glass Europe SA/NV has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or (iii) of which AGC Glass Europe SA/NV is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights, respectively, pursuant to an agreement entered into with other shareholders or members of the undertaking in question; or (iv) over which AGC Glass Europe SA/NV has the power to exercise, or actually exercises, dominant influence or control.

buyer with respect to *processed products* or with respect to *unprocessed products in non standard measures*, the buyer's request will be taken into consideration only if it has reached the relevant customer care center before the order confirmation is sent; (ii) in the case of any modification or cancellation of an order placed by the buyer with respect to *unprocessed products in standard measures*, the buyer's request will be taken into consideration only if it has reached the relevant customer care center before 12:00 AM local time of the customer care center the day before the products should leave the seller's premises.

#### **4. Delivery terms**

Unless expressly agreed otherwise in writing by the seller, the products are sold "Delivered at place of destination" named in the order confirmation (Incoterms® 2010 "DAP").

Any time specified for delivery is given as an indication only and shall not constitute a contractual obligation, unless otherwise expressly agreed in writing by the seller. Failure to comply with such delivery time shall not give rise to any right to claim any loss or damage unless such failure is a result of wilful misconduct or gross negligence on the part of the seller. If a delivery time is expressly agreed in writing by the seller, such delivery time shall be without prejudice to force majeure, which will automatically allow the seller to suspend deliveries without compensation of any kind to the buyer.

On arrival of the products at the place of delivery, the buyer will provide at the specified delivery time (of which the seller has given the buyer reasonable notice) unloading facilities and unload the products promptly. Any assistance given by the seller or its sub-contractor in respect of any unloading is entirely at buyer's risk. Failure from the buyer to take prompt delivery shall entitle the seller to recover any and all costs and expenses as a result thereof and either cancel all or part of the sale, or have the products deposited with a third party of its own choice. In case of delivery EXW, any assistance given by the seller or its sub-contractor in respect of any loading is entirely at buyer's risk. If the seller delivers to the buyer a quantity of products up to 5% percent less than the quantity ordered by the buyer, the buyer shall not be entitled to reject the products delivered by reason of the shortfall. The seller shall deliver the missing quantities as soon as possible following the buyer's written notification of the shortfall.

As from delivery of the products, the buyer is fully and exclusively liable for the products, including without limitation in relation to compliance with standards imposed by the law on environmental protection, packaging and packaging materials.

When pallets and stillages are the property of the seller and returnable, they must be returned to the seller. Any re-use of such equipment by the buyer is not permitted and as a consequence is made entirely at the buyer's own risk.

#### **5. Approval and reception of the products**

The approval and/or reception of the products is presumed to be unconditional if no written complaint is made to the seller within 48 hours of delivery and confirmed by registered letter within five working days from the delivery date. Hidden defects shall immediately be notified by registered letter to the registered offices of the seller as soon as they are discovered. The buyer will lose its right to claim for the relevant defect upon any breach of the provisions of this article 5 or the provisions on apparent/hidden defects.

#### **6. Warranty – standards and liability claims**

The seller warrants to the buyer that the products shall conform to appropriate product and industry standards as approved or defined by the European Committee for Standardisation.

All terms, conditions and warranties, other than those expressly set out in these general terms and in the seller's particular terms of sale (the "contract") or in any specific written warranty issued by the seller or as otherwise specifically agreed in writing by the seller, are excluded.

The seller reserves the right to modify the characteristics and presentation of its products and to stop manufacturing any product at any time.

Samples of products are provided exclusively for information and entail no commitment from the seller, unless otherwise explicitly stipulated in writing by the seller.

Optical, dimensional or other physical properties and colour of products are subject to the seller's manufacturing specifications, tolerances and/or standards, details of which are available on request. The colour of products may reasonably differ and vary from one production campaign to another. The colour of products must be inspected by the buyer in open air and before installation.

Any liability of the seller is excluded in the event of implementation, in any way, use, handling, cutting or alteration of the products by the buyer or a third party, save in respect of hidden defects that could not have been discovered prior to the above events.

The buyer shall be responsible for the correct implementation, in any way, use, storage, transport, handling, cutting or alteration of the products as laid down or referred to in the seller's current technical literature on the products, recognized industry standards and rules of the art. The buyer is responsible for requesting the most recent edition of the product literature as well as the seller's opinion when it envisages using the product in a different way from that which is recommended by the seller. As the duration of use of a product depends, to a large extent, on the conditions of usage and on the maintenance of the support or supports on which the product is placed, the seller does not ensure the duration of use that may be mentioned in the technical literature unless expressly stipulated otherwise in writing by the seller. The buyer is responsible for informing third-party users or dealers about the conditions for use and implementation of the products and to make the literature and necessary information available to them.

The seller shall not be liable for hidden or apparent defects resulting from failure to adhere to recommendations and guidelines laid down in the seller's current technical literature on the products, recognized industry standards and rules of the art.

The buyer is presumed to be informed of such recognized industry standards and of any recommendations and guidelines from the seller and is presumed to have transmitted the same to its own clients.

Except in case of death or personal injury resulting from the seller's negligence or fraud, the liability of the seller shall, in any event, be limited to the delivery of replacing glass products, free of charge, and with no other compensation, unless otherwise agreed or guaranteed in writing by the seller or unless the damages were a result of wilful misconduct or gross negligence on the part of the seller. The seller shall not be liable to the buyer for any other direct or indirect, or consequential loss or damage (whether for loss of profit or otherwise) which results from the supply of the products or their use or resale by the buyer.

Upon request from the buyer, the seller shall do its best efforts to provide the buyer with specific advice. To the extent permitted by applicable law, the seller will not be responsible for any costs and/or damages resulting from or in relation to the content of such advice, unless the damages were a result of wilful misconduct or gross negligence on the part of the seller.

## **7. Retention of title of ownership**

**The products delivered remain the exclusive and unalienable property of the seller until full and unconditional payment of the price and accessory costs.**

**Until full payment, the seller maintains the right to recover the products at the buyer's cost regardless of whoever may be holding them. From the time of delivery, the buyer shall see that the products remain easily identifiable up to the full, unconditional payment of the price. The buyer shall bear all risks including without limitation in case of total or partial loss or deterioration of the products. The buyer shall not transfer title to the products to any third party up to the full, unconditional payment of the price.**

**If the validity of this clause of retention of title of ownership is subject to legal forms in the country of the buyer or to particular preliminary conditions, the buyer shall so inform the seller and shall meet those conditions.**

**[Applicable for Italy only: Pursuant to Article 11 No. 3 of Legislative Decree 231/2002 on the retention of title, to ensure enforceability against third parties, the retention of title will be expressly mentioned on each invoice for each single supply.]**

## **8. Price and terms of payment**

Prices are understood not to include duties or taxes of any kind. Unless otherwise agreed in writing by the seller, invoices are payable in cash without rebate at the registered offices of the seller, or to an account indicated by the seller, all duties, taxes and banking or exchange costs of any kind being borne by the buyer. Any rebate is calculated on the price, i.e. excluding any tax. In case of the use of SEPA Direct Debit B2B, purchaser and seller agree on a pre-notification of at least one day.

In case of deliveries ex-works (Incoterms® 2010 "EXW") within the European Union (or exports organised by the buyer) on which no local VAT was charged upon request of the buyer, the buyer will provide the seller, at first request, with all evidence showing that the products were delivered outside the Member State where the products were loaded (or outside the European Union). If the buyer fails to provide such evidence, any VAT penalties (including but not limited to the local VAT amount due, fines and late payment interest) levied by any tax authorities will be recharged to the buyer.

Invoice and credit or debit notes are issued on paper, except where the buyer expressly accepted the receipt of electronic invoices and credit or debit notes. The seller may require payment by accepted bill

of exchange, all collection costs being borne by the buyer. Cash discounts will not apply until full payment of any overdue invoice and all costs and interests related thereto.

Without prejudice to any other rights of the seller, including but not limited to the right to claim further compensation for the actual damage suffered by the seller, in case any payment is not settled when due, the buyer shall pay a lump sum amount corresponding to fifteen percent of the amount due covering without limitation administrative expenses, pre-procedural costs and incasso-costs resulting from the buyer's delay in payment. In addition, the buyer shall automatically and without prior notice owe and pay an interest for overdue payment at the rate of seven percent above the interest rate applied by the European Central Bank (European Directive 2000/35/EC) or such higher rate required in writing prior to the sale, the interest accruing for the entire month for any portion of a month. The due date is always calculated as from the invoice date. In addition, the buyer agrees that in case of unsettled payment, the seller may suspend or cancel the sale and/or any current order (including confirmed orders), such suspension or cancellation not giving rise to any claim for compensation or damage by the buyer and without prejudice to the seller's claim for compensation or damage suffered as a result of such suspension or cancellation. Failure to make timely payment, even partially, of any single invoice for any delivery, makes all amounts due by the buyer to the seller in any capacity whatsoever immediately and automatically payable.

In case of unsettled payment or any other event possibly jeopardizing payment, the seller shall have the right to communicate the buyer's details to the seller's credit insurance company and to perform a compensation (set-off) between the amount due by the seller to the buyer and any amount, whatever the origin, due by the buyer to the seller.

The seller reserves the right to refuse orders from the buyer if the buyer is in a weak financial condition, further to classification by the seller's credit insurance company or, even on payment in advance terms, if the buyer previously paid due amounts with delay and/or did not fulfil complete debt settlement (covering the principal amount, interests for overdue payment, compensation recovery costs or the above mentioned lump sum amount of fifteen percent) or is expected to be subject to a risk of default or bankruptcy.

## **9. Termination or suspension of the contract**

Without prejudice to any rights which may have accrued or which may accrue, the seller may, at its option: (i) require payment in advance for any and all prior, current and /or further deliveries, or (ii) request to establish guarantees sufficient to ensure the fulfilment of the buyer's commitments, and/or (iii) suspend execution or (iv) cancel all or part of the contract and/or any other contracts without prior formal notification:

- \* Should the buyer make default in any timely payment;
- \* Should the buyer fail to meet any one of its material contractual obligations;
- \* In the event of insolvency, bankruptcy, liquidation proceedings, transfer of registered offices or takeover of activity, transfer of enterprise or part thereof, cessation of payments or deterioration of credit of the buyer and similar events;
- \* In the event of seizure, placing of seals on the buyer's property and similar events; or
- \* Should the amount outstanding (overdue or not) exceed the buyer's credit limit, as communicated to the buyer.

## **10. Force majeure**

If the performance of any contract or any obligation thereunder is prevented by force majeure, the seller or buyer, as the case may be, shall be excused, provided that the affected party shall use reasonable endeavours to overcome or remedy its inability to perform as promptly as possible and shall cause performance without delay whenever such cause is removed.

Force majeure shall mean any event beyond the affected party's reasonable control and includes, without any limitation the foregoing: strikes (including strikes of suppliers or sub-contractors), other industrial action, fire, accident, embargo, failure to secure materials from the usual source of supply (except if such failure is caused by the negligence of the seller), failure in the production equipment (except if such failure is caused by lack of maintenance), war or civil war, earthquakes, exceptional weather conditions, flood, new laws or regulations.

**11. Confidentiality obligation**

The buyer undertakes not to disclose to third parties (with the exception of its own sales representatives and/or agents) the existence, the content and the conditions pertaining to the sales contracts already finalised or to be finalised with the seller and it also undertakes to use the information and the data acquired solely for the purposes of finalising the contract, unless it obtained the prior express written consent from the seller to use such information or data for specified other purposes.

The afore-mentioned commitment pertains to all the scientific and technical information related to the products sold under these general terms, as well as the commercial and financial information, in whatever form such information is provided.

Only information which is in the public domain at the time of its disclosure is excluded from this confidentiality obligation.

The buyer shall be held liable towards the seller for any and all breaches, on its part and/or on the part of its sales representatives or agents, of the confidentiality provisions and other provisions contained in these general terms.

**12. Applicable law – Jurisdiction clause**

**The contract is governed by the law of the jurisdiction in which the seller’s registered office is located. The United Nations Convention On Contracts For The International Sale Of Goods (1980) shall not be applicable to these general terms of sale nor to the sale contracts concluded on the basis of these terms. In the event of a dispute, except in case of urgency, the buyer and the seller shall seek an amicable solution before submitting their differences to the court.**

**Subject to mandatory laws, the court of the legal district where the seller’s registered office is located shall have sole jurisdiction to decide on any dispute save when the buyer is established in another country than the sellers’ country in which case the seller shall have the right to bring the dispute before the court of the buyer’s registered office.**

**13. Miscellaneous**

To the extent permitted by applicable law, if any of the clauses of these general terms should be declared void or not applicable, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the parties and all the other clauses shall nevertheless remain applicable, valid and enforceable.

Unless expressly agreed otherwise in writing by the seller, any contract or order may be assigned by the seller to any other company belonging to the AGC Glass Europe group or the seller may sub-contract the manufacture and/or supply of the products to any third party.

*The following paragraph is applicable for Italy only:* The buyer agrees with the content of these general terms of sale and, in particular, with Clauses 3 (“*Formation of the contract*”), 4 (“*Delivery terms*”), 5 (“*Approval and reception of the products*”), 6 (“*Warranty – standards and liability claims*”), 7 (“*Retention of title of ownership*”), 8 (“*Price and terms of payment*”), 10 (“*Force majeure*”) and 12 (“*Applicable law – Jurisdiction clause*”).

Signature of the buyer for approval:

Date:.....

*The following paragraph is applicable for Hungary only:* The buyer agrees with the content of these general terms of sale and, in particular, with Clauses 4, 5, 7 and 8.

Signature of the buyer for approval:

Date:.....

*The following paragraph is applicable for Romania only:* The buyer agrees with the content of these general terms of sale and, in particular explicitly agrees on the law applicable to these general terms of sale as indicated in Clause 10.

Signature of the buyer for approval:

Date:.....

***The following paragraph is applicable for France only:*** The buyer agrees with the content of these general terms of sale and in particular with Clauses 6 and 10.

Signature of the buyer for approval:

Date:.....

***The following paragraph is applicable for the Czech Republic only:*** The buyer agrees with the content of these general terms of sale.

Signature of the buyer for approval:

Date:.....