

Nissink | Business Glass B.V.

Amazing glass creation

NISSINK BUSINESS GLASS

terms and conditions of sale 02/2020

1 VALIDITY

- a) These Terms and Conditions of Sale apply to all our offers and contracts with customers who are not consumers. They also apply to all future transactions with the customer.
- b) Any General Terms and Conditions of the customer shall apply only if explicitly accepted by us or if they have the same contents.

2 OFFERS, CONFIRMATION OF ORDER, SUBJECT MATTER OF CONTRACT, WRITTEN FORM, POWER OF ATTORNEY

- a) Our offers are without obligation and subject to change.
- b) The subject matter of the contract is based on our written confirmation of order. If our work is completed on schedule immediately after receipt of order, then our invoice shall be deemed to be the confirmation of order.
- c) If our offer refers to documents such as illustrations, drawings, weights or measurements, such documents shall become an integral part of the contract only if explicitly stated as binding in the offer.
- d) Statements concerning quality do not constitute a warranty pursuant unless explicitly otherwise agreed.
- e) All agreements made between the parties on conclusion of contract, any amendments to the contract and cancellation of the contract must be recorded in writing.
- f) Our sales staff and our commercial agents are not authorised to enter into any verbal agreements on our behalf. The foregoing written form requirement does not apply to verbal statements made by persons who are authorised to represent us pursuant to the details stated in the Register of Companies or by virtue of a specific written power of attorney granted in respect of the customer concerned.

3 PART DELIVERIES, DOWN PAYMENTS

Part deliveries are permissible to a reasonable extent. We are entitled to demand down payments for such deliveries for the value of the proven contractual performance in each case.

4 RISK, SHIPMENT, PACKAGING

- a) Risk passes to the customer when the goods leave our premises, also in the case of part deliveries. The foregoing also applies if, in exceptional cases, we are responsible for shipment, export or erection.
- b) If collection or shipment – if the latter is requested by the customer – is delayed at the customer's request, the goods shall be stored at the expense and risk of the customer. In that respect, notice that the goods are ready for collection/shipment shall be deemed equivalent to dispatch of the goods.

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- c) Unloading is the sole responsibility of the customer, who is also responsible for providing suitable unloading equipment and the necessary manpower. Separate charges shall be levied for any waiting periods.
- d) Consignments can be shipped and insured at the customer's request in accordance with the customer's wishes and at his expense.
- e) Packaging shall not be done on an item by item basis, but solely on the basis of transport and production considerations.
- f) Reusable packaging/glass transport racks remain our property. The customer is obliged to notify us in writing of the return of packaging units within two weeks of delivery and to make the packaging ready for collection. Failure to do so shall entitle us to charge a rental fee amounting to 10% of the purchase price per week as from the 3rd week (but a maximum of the full purchase price).
- g) No broken glass can be returned.

5 DELIVERY PERIODS

a) Delivery periods and dates are binding only if explicitly confirmed by us in writing. Delivery periods and dates are quoted ex works. Delivery periods commence on dispatch of the confirmation of order, but not before clarification of any technical questions which were unresolved at the time of conclusion of contract. Our obligation to comply with delivery periods and dates applies only if the customer has satisfied his obligations to cooperate punctually and properly (e.g. documents to be provided such as drawings and approval, down payments to be made pursuant to the contract, approval of production).

b) Delivery periods and dates shall be appropriately extended if our own suppliers and subcontractors fail to deliver the ordered performance, or fail to do so properly or punctually although we concluded a congruent cover transaction in due time. We shall notify the customer immediately if the purchased item is unavailable. The foregoing also applies in cases of force majeure, and any strikes, lockouts, breakdowns or supply shortages which are beyond our control.

6 PRICES, TERMS OF PAYMENT, SECURITY

a) Our prices are quoted exclusive of the statutory value added tax. If no fixed price has been agreed and more than four months elapse between conclusion of contract and delivery, we are entitled to demand a reasonable surcharge which corresponds to the increase in our costs within the scope of our due discretion pursuant.

b) Prices are quoted ex works; the customer is responsible for the costs of packaging, insurance and freight.

In case of default in payment and/or reasonable doubts in the customer's creditworthiness (e.g. in case of return or failure to honour direct debits, default in payment, cheque protest) we are entitled to make each individual delivery dependent on advance payment of the invoice amount.

7 RETENTION OF TITLE, ANTICIPATORY ASSIGNMENT, RESCISSION

a) The delivered goods remain our property (reserved goods) until we have received all payments due pursuant to the contract. If we are entitled to any other claims from our business relationship with the customer, the foregoing retention of title shall continue to apply until payment of these claims.

b) The customer is not entitled to combine reserved goods with other items which are subject to third-party rights. If reserved goods are nevertheless combined with other items to form part of a new (overall) item, we shall be directly entitled to co-ownership of the new item on a pro rata basis, even if the new item is regarded as the principal item. Our coownership share shall be calculated as the ratio between the objective value of the reserved goods and the objective value of the other processed items at the time of combination. Any combination of delivered goods with real estate shall be deemed only for temporary purposes until full payment has been made.

c) The customer is obliged to store reserved goods (pursuant to a) and/or newly formed items (pursuant to b) on our behalf free of charge and with the diligence of a prudent businessman.

d) We are entitled to inspect any reserved goods (pursuant to a) which have not yet been sold and/or newly formed items (pursuant to b) on the customer's premises during customary business hours, to take stock of such goods and mark them as our property. The customer is not entitled to exercise any rights of retention against such claims owing to claims of his own unless the customer's claims are undisputed or have been legally established.

e) The customer is entitled to resell reserved goods (pursuant to a) and/or newly formed items (pursuant to b) only within the ordinary course of business and only subject to the proviso that he has neither assigned his claims from the resale to third parties, nor pledged or otherwise encumbered them.

f) The customer assigns to us in advance as security all future claims (e.g. claims for payment, claims for repossession) against his own customers resulting from the resale of reserved goods (pursuant to a) and/or newly formed items (pursuant to b) up to the amount of our invoice for the reserved goods. We accept the foregoing assignment in advance.

g) As long as the customer is not in default of payment for the reserved goods, he is entitled to collect claims on

our behalf within the ordinary course of business. However, he is entitled to use the proceeds only to pay us for the reserved goods.

The customer is obliged to notify us in writing immediately of any attachment of the reserved goods or the claim assigned pursuant to f).

h) On request by the customer, we shall release securities at our discretion if and to the extent that the nominal value of the securities exceeds 110% of the nominal value of our outstanding claims against the customer.

i) The customer is obliged to insure the reserved goods against theft, breakage, fire and water damage for as long as our retention of title continues to apply.

j) If the customer defaults in payment, we are entitled to withdraw from the contract and/or demand that the customer returns any remaining reserved goods to us, even without cancellation of the contract, and to revoke the customer's right to process and/or resell the reserved goods and to collect any assigned claims on our behalf. The customer is obliged to provide us with all information and documents required to collect claims from third parties.

8 SCOPE OF PERFORMANCE

a) The due quality, durability and use of our performance are based solely on the specifications and/or product description as agreed in writing. Any statements made for advertising purposes or in the course of preliminary negotiations shall only become an integral part of the contract if specifically included in writing.

b) Unless separately agreed, the scope of our performance does not include structural calculations and analyses. Accordingly, we accept no liability for faults resulting from insufficiently dimensioned glass or the selection of a type of glass which is unsuitable for the intended purpose. The customer is obliged to specify the type of glass and thickness.

c) The customer is responsible for verifying that the ordered performance complies with the applicable public-law regulations for his building project. The customer is further responsible for obtaining any necessary public approval, in particular any consent required for an individual project.

d) If the customer requires the goods for a special purpose which is outside the scope of the customary range of application, he is obliged to check the suitability of the goods for that purpose and their compliance with all relevant technical, legal and/or public requirements prior to use. We shall accept no liability whatsoever for any damage sustained by the customer which could have been avoided by such precautionary measures.

If the delivered goods are exposed to special conditions, e.g. used as glazing in rooms with high humidity or glazing which is exposed to high thermal, structural or dynamic stress, and these conditions mean that special measures are required to maintain the durability of the glass, the customer is obliged to notify us of exact details of the relevant conditions. If the customer fails to supply such information, we shall not be liable for any damage resulting from failure to take appropriate precautionary measures to maintain the durability of the glass.

9 CLAIMS FOR FAULTS, COMPENSATION, DEFAULT DAMAGE

a) Complaints by the customer shall be accepted only if the customer has duly satisfied its obligations to inspect the goods and notify us of faults.

b) We guarantee that our performance is free of faults at the time of passing of risk. Minor deviations from the agreed quality or minor deteriorations in their fitness for use are, however, deemed irrelevant.

c) Deviations in measurement, substance, thickness, weight and colour resulting from the production process are permissible within the customary tolerances for the glass industry.

In response to complaints, we shall be entitled at our discretion to remedy faults or deliver replacement goods which are free of faults. If we refuse or are unable to do so, or if such measures are unsuccessful, the customer shall be entitled to reduce the purchase price or cancel the contract.

- d) The customer shall bear any additional expense required for supplementary performance as above resulting from transfer of the goods to a place other than the agreed place of performance after delivery.
- e) Our liability for simple negligence is limited to claims resulting from injury to life, body or health, claims based on the Product Liability Act, claims based on the assumption of a warranty or claims based on culpable infringement of material contractual obligations, the faulty or non-discharge of which jeopardises fulfilment of the contractual purpose. Material contractual obligations are defined as obligations which protect the customer's legal position in respect of central elements of the contract and to which the customer is fundamentally entitled pursuant to the contents and object of the contract; material contractual obligations are further defined as obligations the discharge of which is essential to permit due and proper execution of the contract and where the customer regularly trusts and is entitled to trust in compliance with such obligations; our liability for the infringement of such material contractual obligations based on simple negligence is limited to the level of the typical and foreseeable damage at the time of conclusion of contract.
- f) Any claims filed against us for faults shall become statute barred after five years in the case of goods which have been used in a building structure in accordance with their customary purpose and which have caused faults in that structure. Claims filed against us for faults shall otherwise become statute barred one year after delivery to the customer, unless the parties have agreed on a shorter period.
- g) Claims based on the infringement of secondary obligations and/or claims for compensation for damage to property or pecuniary damage which does not affect the goods themselves shall become statute barred one year after delivery. The foregoing provisions shall not affect any longer period of limitation prescribed by law for personal injury, damage caused by intent or gross negligence, or damage resulting from the infringement of a material contractual obligation.
- h) We are not bound by any manufacturers' warranty declarations which go beyond the scope of our own liability for faults.
- i) In case of damage caused by delayed performance, our liability in case of simple negligence is limited to 5% of the value of our performance for compensation in addition to performance and to 10% of the value of our performance for compensation in lieu of performance.

10 RISK OF BREAKAGE, PHYSICAL PROPERTIES, EXCLUSION OF LIABILITY

- a) Customers are advised that owing to the physical properties of thermally treated glass (toughened safety glass and heat-strengthened glass) and laminated glass panes made from such glass, there is a risk of anisotropy (irisation) which cannot be avoided despite the exercise of all due care during the production process.
- b) Customers are advised that there is a risk of spontaneous breakage owing to the inclusion of nickel sulphides in toughened glass (toughened safety glass) and laminated glass panes made from such glass. To avoid such damage, we recommend that customers conduct a heat soak test or have such a test conducted by a third party.
- c) According to current best practice, the risk of spontaneous breakage cannot be completely ruled out even if heat soak tests are conducted.
- d) Customers who nevertheless order toughened glass consent to these material properties. We shall accept no liability for spontaneous breakage owing to nickel sulphide inclusions or anisotropy.

11 ASSIGNMENT, SET-OFF, WITHHOLDING PAYMENT

- a) The customer is entitled to assign claims resulting from the contractual relationship to third parties only subject to our written consent. We are not entitled to withhold that consent without good reason.
- b) The customer is entitled to set-off or withhold payments only in the case of counterclaims which are undisputed or which have been legally established.

12 INDUSTRIAL PROPERTY RIGHTS, CONFIDENTIALITY

- a) We retain title and all industrial property rights and copyright to our designs, samples, illustrations, films, technical specifications, cost estimates or offers, even if the customer has borne the cost of design etc. The customer is entitled to use our designs etc. only in the manner agreed with us. The customer is not entitled to produce the delivered goods himself or have them produced by third parties without our consent
- b) If we deliver goods made according to designs prescribed by the customer, the customer warrants that the manufacture and delivery of such goods is not in violation of industrial property rights or any other third-party rights. The customer shall recompense us for any damage resulting from such violation.
- c) The customer shall not disclose to third parties any non-public knowledge which he has obtained from the business relationship with us.

13 DATA CAPTURE

We are entitled to store all relevant data for performance of the contract using electronic equipment.

14 PLACE OF PERFORMANCE, LEGAL VENUE, CHOICE OF LAW

- a) Place of performance is Zwolle.
- b) Zwolle is agreed as legal venue. We are, however, also entitled to sue the customer at his own business domicile.
- c) All contracts shall be governed by Dutch substantive law, excluding the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

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Nissink Business Glass B.V. | Spoorstraat 56 | 8271 RH IJsselmuiden | The Netherlands
[T +31 \(0\)38 - 333 33 43](tel:+312038333343) | [E sales@nissink.com](mailto:sales@nissink.com) | [I www.nissinkglass.com](http://www.nissinkglass.com)
