

General Conditions of Sale and Supply 2017

1. General

- 1.1 All offers, deliveries, contracts and other services of Pilkington Deutschland AG (hereinafter "Pilkington") in the course of business with non-consumers [§ 310 (1) German Civil Code (*Bürgerliches Gesetzbuch*)] shall be based on these General Conditions of Sale and Supply even if no explicit reference is made in future business relations or if Pilkington renders deliveries or services to the customer without reservation in the knowledge of terms of business of the customer that conflict with or differ from these General Terms of Sale and Supply. The customer acknowledges these General Conditions of Sale and Supply of Pilkington on acceptance of the goods at the latest. Any existing terms of business of the customer are hereby rejected. Such terms shall only be binding insofar as they have been expressly acknowledged by Pilkington in writing.
- 1.2 In addition to these **General Conditions of Sale and Supply**, the **special terms and conditions for fire protection glass Pilkington Pyrostop[®], Pilkington Pyrodur[®] and Pilkington Pyroclear[®]** respectively the technical information for the individual products in the **Pilkington Glass-Handbook** and the **technical manual fire-resistant glass** in the latest version as well as the technical information provided in the online-portal apply. The handling advices, especially the glazing guideline for fire protection glasses, which can be requested from Pilkington free of charge, have to be observed.
- 1.3 Offers of Pilkington shall always be subject to confirmation. Orders shall only be binding by Pilkington's confirmation in writing, by telephone or by electronic order confirmation. The same shall apply for alterations or ancillary agreements and for performance data. The content of the confirmation shall be authoritative for transaction processing.

2. Period of delivery and supply obligation

- 2.1 Pilkington shall be entitled to render partial deliveries or services.
- 2.2 Insofar as delivery dates have been specified, they shall always be non-binding and shall only be deemed to be approximations unless a transaction for delivery by a fixed date has been expressly agreed in writing.
- 2.3 If delivery deadlines agreed on a binding basis are exceeded for reasons Pilkington is responsible for, the customer may withdraw from the contract by written declaration after unsuccessful expiry of a reasonable additional period set by the customer.
- 2.4 Industrial disputes and cases of *force majeure* that impair capacity to supply, whether with Pilkington, suppliers or transport, especially unforeseeable plant interruptions, unforeseeable technical difficulties, disturbances in the supply of energy or raw materials, transport disruptions, sovereign measures or war shall exempt Pilkington from its duty of supply for the duration of the effects and for a reasonable recommencing period. In the case of ongoing impossibility, there shall be total exemption. If the above-mentioned

hindrances continue for more than three (3) months, the contracting parties shall be entitled, without any entitlement to compensation, to withdraw from the contract in respect of the part not yet fulfilled.

- 2.5 Without prejudice to other rights, Pilkington may withdraw from the contract if after conclusion of contract justified doubt about the credit standing of the customer arises, especially if the customer fails to pay a due claim after a period has been set with a warning of rejection, if insolvency proceedings are applied for in respect of his assets or insolvency proceedings are rejected due to lack of his assets or if he stops payments.
- 2.6 The customer shall be deemed to be in delay regarding acceptance and shall be liable to Pilkington for compensation if he does not take delivery or if he fails to take delivery at the correct time or if he fails to co-operate in any other way.
- 2.7 If delivery on call is agreed, the customer shall be required to call for delivery within a reasonable time, at the latest ten (10) working days after notification of readiness for call. If the call is not made or is not made at the correct time or is not made in full, Pilkington shall be entitled to store the goods at the cost and risk of the customer. Insofar as the customer does not call for the goods within a reasonable additional period set by Pilkington with notification of the legal consequences, the goods shall count as called for and delivered after expiry of the period. The customer shall then be required to make immediate payment.

3. Prices

The following regulations relating to prices shall be deemed to have been accepted at the latest on receipt of delivery by the customer. The day Pilkington notifies the readiness of the goods for call respectively the day Pilkington transfers the goods to the transport party is deemed to be the day of delivery.

- 3.1 The prices specified in the order confirmation plus the legally applicable VAT shall apply. The prices specified therein shall be valid exclusively on the day of order confirmation and they shall not be binding. Delivery shall be made at the prices valid on the day of delivery in accordance with the current price lists.
- 3.2 If the delivery deadline stated in the order confirmation is exceeded due to reasons that fall within the sphere of responsibility of the customer, the price may be modified accordingly if there is a change in the cost factors.
- 3.3 In principle the prices of Pilkington are per square meter listed in the price list, carriage free from twenty (20) tons per delivery, not insured, where applicable packed. Additional charges because of special wishes of the customer (f. e. breakdown crane) have to be paid by the customer.
- 3.4 Due to the existing road charge for trucks based on the „Road Charge Law for Heavy Commercial Vehicles on Freeways“ (*Gesetz über die Erhebung von streckenbezogenen Gebühren für die Benutzung von Bundesautobahnen mit schweren Nutzfahrzeugen*), the

„Road Charge Regulation for Heavy Commercial Vehicles“ (*Verordnung zur Erhebung, zum Nachweis der ordnungsgemäßen Entrichtung und zur Erstellung der Maut*) and the „Regulation for the Road Charge Rate“ (*Verordnung zur Festsetzung der Höhe der Autobahnmaut für schwere Nutzfahrzeuge*) Pilkington shall charge a lump sum road charge as stated in the order confirmation.

4. Dispatch, transfer of risk, transport and packing

- 4.1 Deliveries shall be made ex works insofar as nothing different has been agreed. The risk of accidental loss or destruction and of accidental deterioration of the goods shall pass to the customer after the goods have been made available for collection at the time of receipt of the communication stating that the goods are ready.
- 4.2 Dispatch of the goods shall be at the cost of the customer insofar as the real loading weight of the consignment is less than twenty (20) tons. The risk of accidental deterioration of the goods shall always pass to the customer when the goods are transferred to the transport party, irrespective of who has engaged the latter.
- 4.3 In order to ensure trouble-free dispatch from sites of Pilkington, deliveries shall be made by haulage contractors ordered by Pilkington. Where collection by the recipient or customer has been agreed, in individual cases freight credits may ensue.
- 4.4 General cargo consignments are not possible. Pilkington shall make additional charges for container loading. Other regulations in the special terms and conditions for fire protection glass **Pilkington Pyrostop®**, **Pilkington Pyrodur®** and **Pilkington Pyroclear®** have to be attended.
- 4.5 Concerning the package of the goods Pilkington refers to the obligation of the recipient and the customer to handle with care and to return the borrowed stands and reusable packaging according to the applicable law, supplemented by the particular special terms and conditions of the products. It is the sole duty and obligation of the customer to arrange appropriate unloading of the goods and to provide qualified manpower for the unloading.
- 4.6 Insofar as the delivery of goods is made with transport packing (*Transportverpackung*) or sales packing (*Verkaufsverpackung*) in accordance with the “Packing ordinance” (*Verpackungsverordnung*) on account of technical requirements relating to transport or production (e.g. wooden boxes, boxes divided into cells), the customer shall be required himself to fulfil the obligations of the packing ordinance that are incumbent on the manufacturer and/or seller or to have such obligations fulfilled by third parties. There shall be no reimbursement or contribution to costs by Pilkington. However, the customer may return packaging of Pilkington at the delivery plant at its own cost. The return can only be made during business hours. The returned packaging must be clean, free of extraneous substances and sorted according to different packaging types. Otherwise Pilkington shall be entitled to demand from the customer the additional costs incurred in disposal or use.

5. Retention of ownership

- 5.1 Pilkington shall retain ownership of the delivered goods until all claims from the business relationship have been settled. This shall apply even if individual amounts or all amounts are incorporated in the current account and the balance has been taken and acknowledged. Receipt of the equivalent amount by Pilkington shall count as payment.
- 5.2 In the case of conduct by the customer in breach of contract, especially delayed payment, Pilkington shall be entitled to take back the goods, identify them for this purpose and to enter the company premises of the recipient of the goods respectively of the customer. The fact that Pilkington takes back the goods delivered by Pilkington shall not constitute withdrawal from the contract unless Pilkington declares this expressly in writing.
- 5.3 Any processing or reworking of the goods is done by the customer for Pilkington without any obligations arising for Pilkington from this. In the case of reworking or combination with other objects not belonging to Pilkington, Pilkington shall acquire co-ownership of the new object at the ratio of the invoice value of the reserved goods to the other objects at the time of reworking or connection. If the customer acquires sole ownership of the connected object because the customer's object is to be regarded as the main object [§ 947 (2) German Civil Code (*Bürgerliches Gesetzbuch*)], the contracting parties agree that the customer grants Pilkington co-ownership of the new object at the above described ratio. The new object which the ordering party keeps for Pilkington without charge shall be reserved goods in terms of this regulation.
- 5.4 If the reserved goods are sold or used for construction, i.e. used for fulfilment of a contract for work and materials or a contract for work and services, the customer assigns to Pilkington already now the purchase money claims or work pay claims at the amount of the invoice value of the goods supplied by Pilkington, irrespective of whether the reserved goods are issued to one or more recipients without processing or after processing, alone or together with other objects. Subsidiary claims in connection with the reserved goods, especially insurance claims, are assigned in the same scope. Pilkington accepts this assignment.
- 5.5 The reserved goods may only be passed on in the course of proper business. Other dispositions, especially pledges or assignment as security, are not permitted. Resale must be done with retention of ownership.
- 5.6 In the case of attachments of property, seizures or other dispositions or interventions of third parties relating to the reserved goods, the customer must expressly indicate that the goods are reserved goods and they must notify Pilkington in writing immediately so that Pilkington can instigate third-party action against execution [§ 771 Code of Civil Procedure (*Zivilprozessordnung*)].
- 5.7 The customer shall remain entitled, within the framework of proper business operation, to collect the assigned claim provided he complies with his payment obligations to Pilkington. The authorisation for collection shall cease if the customer is in delay with payment or suffers deterioration of assets in any way. The customer shall not be entitled to agree an open account relationship for prohibition of assignment with regard to the assigned claim. If, however, an open account relationship has been agreed between the customer and his

purchaser, the claim assigned in advance shall also refer to the acknowledged balance and, in the case of insolvency of the customer, also to the available balance.

- 5.8 On request, the customer must prove to Pilkington individually his claims assigned to Pilkington and notify his debtors of the assignment made. Pilkington reserves the right to inform the customer's debtors and to collect the debts itself. As soon as Pilkington makes use of this right, the customer shall be required to notify Pilkington of all assigned claims and the debtors to which they relate and to supply Pilkington with all information necessary for debt collection and to issue to Pilkington the associated documentation.
- 5.9 If the realisable value of the security that exists in favour of Pilkington exceeds the claims altogether by more than 20%, Pilkington shall release the excess security on request by the customer.

6. Rights of the ordering party in the case of defects

Pilkington shall be liable for defects as follows:

- 6.1 In respect of the supplied goods, the customer shall have the normal commercial duty of inspection – including but not limited to damages because of humidity – and the requirement to register complaint in the case of defects [§ 377 German Commercial Code (*Handelsgesetzbuch*)] with the condition that obvious and/or recognisable defects must be notified within eight (8) calendar days, and before processing, reworking or combination.
- 6.2 All goods and services shall be, depending on the choice of Pilkington, improved without charge, newly supplied or newly rendered if a defect is shown within the expiry period provided its cause existed already at the time of risk transfer. For inspection the customer must provide to Pilkington immediately the goods to which the complaint relates. Pilkington shall be entitled to make a subsequent compliance dependent on immediate issue of the goods to which the complaint relates. Prior to recognition of the defect, replacement deliveries shall initially be charged by Pilkington. Pilkington shall issue credit notes only when it recognizes a defect of the rejected goods. Pilkington expressly reserves the right to have goods examined if a complaint is made about them. Insofar as the defect is not recognised by Pilkington, customer must collect the goods immediately. The returned units shall be disposed of at the latest four weeks after the checking of the units to which the complaint relates and notification of the result of the investigation.
- 6.3 Claims in respect of defects shall expire in 12 months. This shall not apply insofar as the law prescribes longer periods on a compulsory basis because of the normal use of an object for a construction [§ 438 (1) No. 2 German Civil Code (*Bürgerliches Gesetzbuch*)], right of recourse within the framework of consumer goods purchase [§ 479 (1) German Civil Code (*Bürgerliches Gesetzbuch*)] or a construction defect [§ 634 a German Civil Code (*Bürgerliches Gesetzbuch*)]. Expiry of the claims of the customer against Pilkington due to defective goods supplied by Pilkington shall occur in any case as soon as the claims of the contracting partner of the customer against the customer based on defects in the goods supplied by Pilkington to the customer have expired, but at the latest five years after the time Pilkington supplied the relevant goods to its customer.

- 6.4 In the case of complaints about defects, payments from the customer may only be withheld in reasonable proportion to the asserted defects. The customer may only withhold payments if a complaint about defects is asserted about which there can be no doubt. If the complaint about defects is not justified, Pilkington shall be entitled to demand compensation from the customer for the costs incurred by Pilkington.
- 6.5 If the attempt at subsequent rectification fails, the customer may, without prejudice to any claims for compensation, withdraw from the contract or reduce the remuneration. The customer cannot demand compensation for wasted expenses.
- 6.6 There shall be no claims for compensation in respect of defects where there is merely an insignificant deviation from the agreed quality, merely significant impairment of usability, in the case of natural wear and tear or damage that occurs after risk transfer due to incorrect or negligent treatment, excessive use, unsuitable operating facilities or cleaning materials, defective construction works, an unsuitable building site or due to specific external influences not provided for by this contract. The same shall apply for defects of any type in the case of used goods or goods that are agreed as downgraded. If alterations or repairs are carried out improperly by the customer or third parties, there shall likewise be no claims in respect of defects for these and the consequences of this. This shall also apply especially in the case of breaches of processing guidelines for individual products, cleaning instructions or other regulations customary in the industry.
- 6.7 Published function data and all measurement values are based on measurements of standard constructions and correspond to the relevant valid standards and the conditions of measurement specified therein. Properties for the individual product cannot be derived from this. Depending on the installation conditions of the goods, variances from the specified values are possible. They cannot, however, be the basis of a claim against Pilkington.
- 6.8 Claims of the customer based on expenses necessary for the purpose of subsequent fulfilment shall be excluded insofar as the expenses increase because the goods are taken to a location other than the place of delivery.
- 6.9 The customer's recourse against Pilkington shall exist insofar as the customer has not made any agreements with his purchaser beyond the statutory claims for defects. Furthermore, section 6.8 of these General Conditions of Sale and Supply shall apply correspondingly for the scope of the supplier's right of recourse.
- 6.10 In addition, section 8 of these General Conditions of Sale and Supply (other claims for compensation) shall apply for claims for compensation. Further claims of the customer against Pilkington and the vicarious agents of Pilkington due to defects or such claims other than those regulated in sections 6 shall be excluded.

7. Industrial property rights and copyrights; defect of title

- 7.1 Insofar as nothing different is agreed, Pilkington shall merely be required to effect delivery in the country of the location of delivery free of industrial property rights and copyrights of third parties (hereinafter referred to as protective rights). If a third party asserts claims

against the customer due to violation of protective rights due to goods supplied by Pilkington used in accordance with the contract, Pilkington shall be liable to the customer within the period specified in section 6.3 of these conditions as follows:

- a) Pilkington shall, depending on its own choice, at its own cost, obtain the right of use for the relevant delivered goods, alter them in such a way that the protective right is not violated or exchange them. If this is not possible for Pilkington under reasonable conditions, the customer shall have the statutory rights of withdrawal or reduction. The customer cannot demand compensation for wasted expenses.
- b) The duty of Pilkington to provide compensation shall be geared to section 8 of these General Conditions of Sale and Supply.
- c) The obligations of Pilkington stated above shall exist only insofar as the customer notifies Pilkington in writing immediately about the claims asserted by third parties, refrains from acknowledging a violation and insofar as Pilkington retains the right to take all counter-measures and engage in negotiations regarding settlement. If the customer stops the use of supplied goods in order to minimise loss or damage or for other important reasons, he shall be required to inform the third party that cessation of use does not entail recognition of the violation of protective rights.

7.2 Claims of the customer shall be excluded insofar as he is responsible for the violation of protective rights or insofar as the violation of protective rights is caused by special specifications of the customer, use not foreseeable by Pilkington or by the supplied goods being altered by the customer or by the goods being used in conjunction with products not supplied by Pilkington.

7.3 In the case of violations of protective rights, the provisions of sections 6.2, 6.4 and 6.8 of these conditions shall also apply correspondingly for the claims of the ordering party regulated in section 7.1 a).

7.4 In the case of other defects of title, the provisions of section 6 of these General Conditions of Sale and Supply shall apply correspondingly.

7.5 Further claims of the customer against Pilkington or vicarious agents of Pilkington due to a defect of title or such claims other than in section 7 shall be excluded.

8. Other claims for compensation

8.1 Claims for compensation by the customer, irrespective of the legal reason, especially on the basis of breach of duties from the obligatory relationship and from unlawful action, shall be excluded.

8.2 This shall not apply insofar as the law prescribes compulsory liability, e.g. under the Product Liability Act (*Produkthaftungsgesetz*), in cases of deliberate action, gross negligence, for bodily injury, due to provision of a guarantee for the existence of a quality or violation of important contractual duties. The compensation for breach of important contractual duties shall, however, be limited to the loss or damage that is typical for the contract and

foreseeable except where there is intentional action or gross negligence or where there is liability for bodily injury or due to provision of a guarantee for the existence of a quality. A change of the burden of proof to the detriment of the customer is not associated with the above regulations.

- 8.3 Insofar as the customer has claims for compensation pursuant to section 8, they shall expire at the end of the expiry period for claims for defects pursuant to section 6.3 of these General Conditions of Sale and Supply. In the case of claims for compensation under the Product Liability Act, the statutory regulations relating to expiry shall apply.

9. Terms of payment

- 9.1 Calculation shall be on the day of dispatch or readiness of the collection.
- 9.2 Invoices shall be, insofar as no other payment date is contractually agreed or stated in the invoice, payable within 14 days from the date of invoice without deduction. Checks and bills of exchange shall not be accepted.
- 9.3 If the payment date is exceeded and there is therefore delay, penalty interest shall be charged at eight (8) percentage points above the base rate prevailing on the day when delay begins [§§ 288 (2), 247 German Civil Code (*Bürgerliches Gesetzbuch*)] without prejudice to the assertion of further claims.
- 9.4 Pilkington is entitled to use incoming payments initially to settle older claims, then to settle costs and interests relating to the main goods or services and finally to the main goods or services itself. Rights of offsetting or rights of retention shall be due to the ordering party only if their counter claims have become *res judicata*, are not disputed by Pilkington or are recognised by Pilkington. Furthermore, the right of retention shall exist only if the counterclaim asserted is based on the same contracting relationship as the claim of Pilkington.
- 9.5 If the customer is in delay or if after a business transaction is concluded circumstances become known that call into doubt the solvency or creditworthiness of the customer (e.g. stopping payments, opening of insolvency proceedings), Pilkington shall be entitled to call due the entire remaining debt. Pilkington shall also be entitled to demand advance payments or provision of security.
- 9.6 In case of granting a direct debit mandate (SEPA-B2B debit mandate or SEPA-core debit) to Pilkington the pre-notification of the customer respectively the payer about the debit of his account will be provided one working day before the due date at the latest. The customer respectively the payer is obliged to take care of sufficient coverage of the bank account mentioned in the SEPA-mandate and to ensure that due amounts can be collected by Pilkington. This obligation also exists if the customer respectively the payer in individual cases did not receive or did not receive a pre-notification in time.

10. Measurements and specification of glass thickness

The stated gradations of measurements and glass thicknesses are transferable to the application of the products. The verification of the appropriate glass thickness and the static verification have to comply with the relevant valid statutory specifications. The glass thicknesses required with applications in high buildings are orientated to the static requirements and the statutory and normative specifications.

11. Place of performance, place of jurisdiction, other agreements

- 11.1 The place of performance for all deliveries shall be the main office of the delivering plant of Pilkington and for payment it shall be the main office of the delivering plant or Gelsenkirchen.
- 11.2 The exclusive place of jurisdiction for all legal actions from the supply contract shall be Gelsenkirchen unless compulsory statutory regulations prevent this. Pilkington shall have the right to bring legal action against the customer also at the latter's statutory place of jurisdiction.
- 11.3 The law of the Federal Republic of Germany shall apply exclusively, with exclusion of the law relating to the United Nations Convention on Contracts for the International Sale of Goods.

12. Additions to the contract

If one of the above provisions is or becomes ineffective or void or is excluded due to an individual contractual agreement or other reason, the validity of the other provisions shall not be affected by this. An ineffective or void provision shall be replaced by another provision, which is effective and not void, that comes as close as possible to it from the legal and commercial point of view.