

# General Purchasing Conditions of AGC GLASS EUROPE NV/S.A. ("AGC") and its subsidiaries established in Europe (in force as from November 2013)

## **1. DEFINITION OF PARTIES AND APPLICATION SCOPE**

The present general purchasing conditions are applicable between the following parties:

- AGC, whose headquarters are in Belgium, at Avenue Jean Monnet 4, 1348 Louvain-la-Neuve, acting on its own behalf and/or on behalf of any other company indicated in the specifications and special conditions of the Contract or Order and/or in the stipulations contained in its appendices; or

- any of the subsidiaries of AGC established in Europe (excluding Russia), acting on their own behalf and/or on behalf of any other company indicated in the specifications and special conditions of the Contract or Order and/or in the stipulations contained in its appendices,

hereinafter referred to as "The Buyer", AND

- any supplier of products and/or services agreed or ordered with or by the Buyer,

hereinafter referred to as "The Supplier".

The present general purchasing conditions apply to any contract of purchase, service provision and/or price ("the Contract") concluded between the Buyer and the Supplier, and to any order, delivery request or services order ("the Order") made by the Buyer to the Supplier for the purpose of delivery of products or provision of services ("the Supply") by the Supplier for the benefit of the Buyer, unless otherwise specified in the specifications and special conditions mentioned in the Contract or Order and/or in the stipulations contained in the appendices attached by the Buyer. Each and every one of these general conditions form an integral part of the Contract or Order of which they constitute essential and decisive elements, and exclude all other conditions to which the Supplier might intend to subject his relations with the Buyer, unless agreed to the contrary beforehand, expressly and in writing. However, the nullity or ineffectiveness of one or more of these conditions shall not affect the validity of the Contract or Order.

## **2. CONTRACTS, ORDERS AND THEIR ACCEPTANCE**

Save for exceptional circumstances (for example: an order made by telephone for reasons of urgency), the Contracts and Orders emanating from the Buyer shall be exclusively addressed to the Supplier in writing and on paper, electronic medium or fax identifying the establishment from which they emanate. These Contracts and Orders, together with the documents appended thereto, commit the Buyer only if they are issued by persons authorised to do so. The same applies to any modification made to a Contract or to an Order originating therefrom. The Supplier is invited to return a copy of each Contract or Order, duly dated and signed under the words "*pour accord*" ("So agreed") by a person authorised to do so, within eight business days of its communication by the Buyer. Electronic signatures shall have the same validity as handwritten ones.

The Contract or Order shall only finally commit the Buyer on receipt, within the period indicated above, of its acceptance in writing and without reservation or modification by the Supplier. Failing receipt of any written response on the proposed Contract or Order by the Supplier within the said period, the Buyer shall have the option to consider either that its proposal embedded in the Contract or Order is revoked and no Contract or Order exists, or that the Supplier has accepted it without reservation, in all of its specifications, conditions and stipulations and thus to demand performance of the Contract or Order. This choice may be exercised by the Buyer at any time and without notice of default or prior procedure of any kind.<sup>i</sup>

## **3. OBLIGATION TO INFORM THE BUYER**

Before his acceptance of the Contract or Order, the Supplier shall provide the Buyer with complete and accurate details of his Supply. In particular, he must give precise details regarding technical properties, safety and other matters, as well as any insufficiencies, bearing in mind the usage to which the Buyer will put the said Supply, and on the subject of which he will have to ask the Buyer for the appropriate information beforehand, if necessary. This obligation persists throughout the execution of the Contract or Order, as it does after delivery. The Supplier shall also be obliged to answer any question concerning the Supply submitted to him by the Buyer, to advise the latter without delay of any modification or new information relating to the properties, usage or insufficiencies of the Supply, as well as any need for exceptional transport for the purpose of complying with the delivery deadlines agreed, and to authorise any inspection such as to enable the Buyer to be assured of the proper execution of the Supply and of the scrupulous compliance with the specifications, conditions and stipulations of the Contract or Order.

## **4. DEADLINES, LOCATIONS, DAYS AND/OR TIMES OF DELIVERY AND DELIVERY SLIP**

The deadlines, locations, days and/or times stated in the specifications and special conditions of the Contract or Order and/or in the stipulations contained in its appendices constitute essential and decisive elements for the Buyer's consent. The Supplier is imperatively obliged to comply therewith and furthermore to make sure he provides the Buyer with a delivery slip stating, besides the location, date and time of the delivery, the references of the Contract or Order and its status of execution (number, line number, item and volume, quantity, dimensions or weight delivered). The Supplier shall not invoke any slight variation for the purpose of attenuating the strictness of the delivery modalities described above.

## **5. FORCE MAJEURE**

In case of civil unrest, fire, earthquake, flood, strikes or other social conflicts, as in all other cases of *force majeure* rendering execution of the Contract or Order impossible, the Buyer and the Supplier are absolved from their obligations. The Buyer may, in particular, refuse a Supply which is late or incomplete. The Supplier may only invoke these circumstances if he has immediately notified the Buyer thereof and has confirmed such notification to the Buyer within two working days by registered letter.

## **6. CONFORMITY AND GUARANTEES**

The Supplier guarantees that the delivery of a Supply shall be free of any defect generally of any kind and that it shall strictly conform to the specifications and special conditions of the Contract or Order and/or to the stipulations contained in its appendices, bearing in mind particularly the usage to which the Buyer will put the Supply, as well as to the legal, regulatory or usage standards that apply, taking account particularly of the nature of the Supply (e.g., the laws and regulations applicable to matters of hygiene and safety, respect for the environment, management of waste products, intellectual and/or industrial property, etc.). In no case shall receipt of a Supply imply acceptance and/or approval thereof, the Buyer reserving the right in particular to check at any time their conformity and content, and to submit it to any test required. Any supply that is late, defective, does not conform or is incomplete may be refused by the Buyer at any time. A Supply which is refused shall immediately be sent back to the Supplier, or be kept in the Buyer's premises for a maximum of 15 days, until the Supplier collects it on pain of it being sent back to the Supplier, entirely at the discretion of the Buyer and at the risk and expense of the Supplier.

The Supplier also guarantees that his Supply shall function perfectly and/or be in good condition throughout the legitimately expected duration of its use.

Finally, the Supplier shall take responsibility for the Buyer and guarantee him against any court sentence pronounced against him because of any violation of intellectual and/or industrial property rights and/or of honest commercial practices that might be committed during the execution of the Contract or Order.

In the event of non-compliance by the Supplier with all or part of these obligations with regard to delivery, conformity or warranty, the Buyer shall have the right, without any notice of default or prior procedure whatsoever, to cancel the Contract or to revoke the Order, whether entirely or only that part which was not executed, badly executed and/or remaining to be executed. The Buyer shall, moreover, have the right either to contract or place the order with a third party, the Supplier being responsible for reimbursing the Buyer for any additional cost, or to demand replacement of the Supply by the Supplier as soon as possible, without extra cost or surcharge for the Buyer, all without prejudice to any indemnity to compensate for the damage suffered.

No clause of any kind whatsoever exonerating or limiting the obligations of delivery, conformity or warranty incumbent upon the Supplier, nor any ceiling or fixed amount of indemnity shall be imposed upon the Buyer. Any penalty that might be stated by the Buyer in the specifications and special conditions of the Contract or Order and/or in the stipulations contained in its appendices would in this respect have only a minimal indemnity value, unless expressly provided otherwise.

## **7. PRICES, CHARGES, CUSTOMS CLEARANCE, TRANSFER OF OWNERSHIP AND RISKS**

The prices indicated in the Contract or Order are firm, definitive and shall not be revised, and include, unless expressly provided otherwise in the specifications and special conditions and/or the stipulations contained in its appendices, all charges (transport, packaging, insurance, administration, etc.) and taxes. Any charges or taxes not specified shall not be accepted by the Buyer and shall remain the exclusive responsibility of the Supplier. The same shall apply to charges for any exceptional transport incurred by the Supplier for the purpose of complying to the delivery deadlines agreed, even though the need for such transport may have been indicated to the Buyer in accordance with point 3 of the present General Conditions.

Customs duties shall be paid by the Supplier, but in the name of the Buyer.

In the absence of Incoterms or provisions to the contrary appearing in the specifications and special conditions and/or the stipulations contained in its appendices, the transfer of ownership and risks to the Buyer shall only come into effect at the time of the satisfactory delivery of the Supply at the designated location and, as the case may be, after it has been unloaded, even when the charges for transport and/or insurance are borne by the Buyer. Any reference to the Incoterms that might appear in the specifications and special conditions and/or the stipulations contained in its appendices, refers to the Incoterms of the International Chamber of Commerce in force on the date of the Contract or Order.

## **8. INVOICES AND PAYMENTS**

Under no circumstances shall an invoice be issued for a Supply prior to its delivery, though it must follow thereupon immediately. The Supplier shall send the invoice referring thereto, in duplicate, to the address indicated by the Buyer in the specifications and special conditions, and to state therein the references in the Contract or Order to which it applies (date, number, line number, references of the item being delivered, unit price, volume, quantity, dimensions or weight delivered, location and date of delivery, any advance payments made, VAT and other charges or taxes agreed) on the one hand, and on the other hand the delivery slip referring thereto. Failing this, the Supplier will run the risk of having invoice returned or late payment and, as the case may be, without compensation or interest of any kind.

Invoices shall be paid within sixty days end of month, from date of invoice,<sup>ii</sup> without prejudice however to any delay as mentioned above or to the possibility for the Buyer to invoke any exception that would exempt him from all or part of his obligation to pay, or that would entitle him to suspend payment, it being understood that in case of bankruptcy, composition or liquidation – whether by court order or amicably – of the Supplier, the Buyer will only have to pay the outstanding balance due after the final closure of all existing accounts between them.

## **9. NON-TERMINABILITY, CONFIDENTIALITY AND OWNERSHIP**

Unless otherwise expressly provided in writing and in advance by the Buyer, the Contract or Order shall not be subcontracted by the Supplier with a third party. Furthermore, the latter shall be obliged to inform the Buyer, in advance and in writing, of any form of subcontracting to which he might have recourse for the execution of the Supply. Claims arising from the Supply shall not be transferred by the Supplier and Buyer shall be exclusively bound to the Supplier, thereby making offsets between Supplier and Buyer.

The Supplier undertakes not to reveal to anyone, save for the proper execution of the Supply, any information he might have received or gathered from the Buyer on the occasion of the Contract or Order. On the other hand, the technical specifications, plans, drawings and any other documents (technical or other), as well as parts, models and tools entrusted by the Buyer to the Supplier or produced by the Supplier for the Buyer within the framework of the Contract or Order, are strictly confidential, are for use strictly limited to the Contract or Order, remain the exclusive property of the Buyer, may under no circumstances be re-copied or reproduced, nor be transmitted or communicated to third parties without the express, prior and written permission of the Buyer; they must be used and preserved by the Supplier with the utmost diligence and must be returned to the Buyer at the time of delivery of the Supply at the latest.

Finally, the Supplier undertakes to inform the Buyer without delay of any violation of intellectual and/or industrial property rights and/or the interests of the Buyer with regard to honest commercial practices which might come to his attention at any time whatsoever.

If the Supplier fails to adhere to the preceding provisions scrupulously, and/or to ensure that any person he might engage for the execution of the Supply also adheres scrupulously thereto, all the Contracts and/or all the Orders in progress may immediately be cancelled by the Buyer without any compensation, notice of default or prior procedure of any kind, and without prejudice to any damages and interest that the Buyer might be entitled to claim.

## **10. APPLICABLE LAW AND ASSIGNMENT OF JURISDICTION**

The Contract or Order is exclusively subject to the law of the country where the Buyer has its registered seat, even if one of the parties is of foreign nationality and/or if the Supply has to be or has been executed, entirely or in part, in another country. Any dispute arising with regard to the validity, execution or interpretation of the Contract or Order shall come under the exclusive jurisdiction of the courts in the local of the Buyer's registered seat. The applicability of the United Nations Convention for the international Sale of Goods (CISG) signed in Vienna on April 11th, 1980 is excluded. The Buyer reserves the right, however, to lay the dispute before the courts in the area of the operating centre where the Supply was delivered or the domicile of the Supplier.

<sup>i</sup> The provisions in italics are not applicable in the Czech Republic and Poland.

<sup>ii</sup> For France only: Invoices shall be paid within 45 days end of month or 60 days from date of invoice.