

Irlbacher Blickpunkt Glas GmbH, Josef-Irlbacher-Straße 1, D-92539 Schönsee

General Terms and Conditions

of

Irlbacher Blickpunkt Glas GmbH, Josef-Irlbacher-Str. 1, 92539 Schönsee, Germany

1. Scope

1. All supplies and services by Irlbacher Blickpunkt Glas GmbH (in the following: Irlbacher) are subject exclusively to the following terms and conditions. Our general conditions of purchase shall apply in business with companies.
- 1.2 Terms and conditions of commercial partners are not accepted. We herewith expressly reject any such terms and conditions. Our General Terms and Conditions shall apply in place of any general terms and conditions of the customer such as conditions of purchase - also where these conditions of purchase stipulate that acceptance of an order is deemed to be the unconditional acknowledgement of the general terms and conditions.

2. Offers, quotations, bids

- 2.1 All offers, quotations and bids are subject to change and non-binding. Agreements shall come into effect by Irlbacher's written order confirmation.
- 2.2. The correctness of technical data and other information concerning the possible suitability for use of the goods supplied shall be neither guaranteed nor warranted.

3. Deliveries by Irlbacher

- 3.1 Any delivery dates or deadlines that are not expressly agreed as binding shall be exclusively non-binding. In case a binding delivery date has been agreed and we fail to meet the agreed delivery date for reasons for which we are not responsible (non-availability of performance) we will, without undue delay, inform the Customer thereof together with the expected new delivery date.
- 3.2. Partial performance or partial delivery shall be permitted.
- 3.3. Delivery shall be effected ex warehouse and at the customer's account and risk.
- 3.4 Irlbacher reserves the right to withdraw from the agreement in the event of any unreasonable increase in purchasing costs which shall be deemed to be a discontinuation of the basis of the transaction.
- 3.5 The risk for ex works shipments shall pass to the customer or orderer as soon as the consignment is handed over to the carrier or the haulage contractor selected by Irlbacher. Any complaints concerning loss of or damage to goods shall be communicated to the carrier pursuant to section 438 of the German Commercial Code (§ 438 HGB). Irlbacher shall be entitled to claim losses incl. additional expenses (e.g. storage costs).
- 3.6 In the event that shipment of goods is delayed at the counterparty's request or due to its default, storage of the goods shall be at the customer's expense and risk. Notification of readiness for shipment shall be equivalent to shipment. The invoice shall become immediately due and payable on storage of the goods.

Irlbacher Blickpunkt Glas GmbH, Josef-Irlbacher-Straße 1, D-92539 Schönsee

3.7 Should a delivery on call be agreed, the Buyer shall be obliged to call for delivery within ten weeks. Should the buyer not call for delivery after two weeks of grace he automatically falls in default of acceptance.

3.8 We are not liable for damage caused in transit, insofar as we have not undertaken the transportation. From the moment of dispatch, the buyer takes over the full responsibility.

4. Defence of uncertainty

In the event that it comes to the knowledge of Irlbacher after the signing of the agreement that its claims under the agreement are threatened due to the counterparty's insufficient performance ability due to circumstances which suggest after reasonable commercial judgement that the claim of Irlbacher to receive the purchase price is threatened, Irlbacher shall be entitled, following determination of a reasonable deadline, to demand that the counterparty effect reasonable advance payment or furnish security and, should the counterparty reject such demand, to withdraw from the agreement without any right to claim damages from Irlbacher.

5. Toll processing

5.1 In the event that Irlbacher processes any goods by way of toll processing (such as prestressing), the client shall bear the risk of glass breakage as well as the liability for the finished product. The quantity delivered shall be charged as processed.

5.2 We shall be liable to the maximum pro rate order value (processing value) of the affected part for defects, loss or processing faults caused by us to material supplied by customers. We shall therefore take over the replacement at no charge with a new supplied part for parts of the supplied goods that are defective through our fault, if such a part is still available. There shall not be any right to replacement for any affected parts or reimbursement of the value of the material.

5.3 To compensate for waste and unavoidable losses on machining a material allowance must be taken into account for all material items, so that in the end the set quantities of the assemblies can be produced. The allowance will be negotiated with the customer.

6. Returning goods

6.1. Any returns of goods of any kind whatsoever shall be subject to prior agreement in writing. In the event that any goods are returned without any request to this effect, Irlbacher shall be entitled to refuse acceptance of the consignment.

6.2. Any agreed acceptance of returned goods shall be generally performed at the expense of Irlbacher. In the event that costs increase because the goods purchased were transported after delivery to a place other than the recipient's place of business, the customer shall bear such costs. In the event that any returned goods are damaged during transit, the consignor shall be liable therefor.

7. Recalls

In the event that the supplier to Irlbacher or Irlbacher itself recalls any goods sold, the orderer shall immediately discontinue any further sale of the goods subject to recall.

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8. Prices/delivery dates/delay

- 8.1 All prices quoted by Irlbacher shall be non-binding and shall be understood ex place of delivery and/or performance, plus value added tax, packaging and insurance. As a result of the contractually reserved right to change prices, Irlbacher shall be entitled to determine a new purchase price other than the original non-binding price in line with its own cost increase due to an increase in purchase prices.
- 8.2 Irlbacher grants a 2 percent cash discount for payment within 10 days. Otherwise payments shall become due and payable without any deduction within 30 days. Payments shall generally be applied to settle the oldest open amount plus interest on arrears, if any. No cash discount shall be granted as long as payments for earlier shipments are overdue.
- 8.3 No cash discount shall be granted on invoices by Irlbacher for toll processing operations.
- 8.4 In the event that a payment deadline is exceeded, all consequences of default as foreseen by law shall become effective without the need for a separate reminder. Furthermore, the client/customer shall pay interest at a rate of 10 percent above the base lending rate. This means that the client/customer shall pay damages if Irlbacher proves that it is exposed to a higher interest burden.
- 8.5 The client/customer shall only set off any amounts, which are not disputed or which are final and non-appealable, against any amounts payable.
- 8.6 No right of retention due to any defect or nonconformity shall be permitted if such defect or nonconformity concerns up to 10 percent of the order sum.
Beyond such amount, any right of retention shall be limited to the value of the expected defect or nonconformity.

9. Warranty/notice of defects or nonconformity

- 9.1 The customer's claims for defects are subject to compliance with the customer's statutory duty to inspect the goods and give notice of defects (§ 377, 381 HGB – German Commercial Code). Regardless of the aforesaid duty to inspect and give notice of defects, the customer must give written notice of obvious defects (including delivery of other goods than those ordered - "Falschlieferung" and short delivery) within one week from delivery whereby timely dispatch of the notice of defect is deemed sufficient. If the customer fails to duly inspect the goods and/or give due notice of defect, the liability of is precluded.
- 9.2 The warranty period for products supplied by Irlbacher shall total 12 months. The period shall commence on delivery of the article purchased. In case the delivered good is typically used in the construction of a building (building material), the limitation period comes to five years after delivery according to the statutory provisions of § 438 I Nr.2 BGB (German Civil Code).
- 9.3 The rights of the customer in the case of a defect in quality or title are governed by the statutory regulations unless stipulated otherwise hereinafter.
- 9.3 The quality agreements made with the customer on the basis of the products specifications constitute the basis for the liability for defects. Any surplus or shortfall quantities of up to 10 percent of the quantity ordered shall be deemed to be approved.

Irlbacher Blickpunkt Glas GmbH, Josef-Irlbacher-Straße 1, D-92539 Schönsee

- 9.5 If and to the extent that no agreements were made as to quality, it must be assessed in accordance with the statutory regulations whether a defect exists or not (§ 434 I clause 2 and 3 BGB – German Civil Code).
- 9.6 If the goods supplied are defective, we shall first select whether we provide supplementary performance by correcting the defect (rework) or by delivery of goods free from defects (replacement). Our right to refuse the selected type of supplementary performance under the legal requirements shall remain unaffected.
- 9.7 We shall be entitled to predicate the owed implementation of supplementary performance on the buyer's payment of the outstanding purchase price. However, the Buyer shall have the right to retain an appropriate part of the purchase price in proportion to the defect.
- 9.8 The Buyer shall grant us the required time and opportunity to fulfill the owed supplementary performance; in particular, he shall hand over the objected goods to us for inspection purposes. In the case of replacement, the Buyer shall return the defective goods to us according to the statutory regulations.
- 9.9 Claims of the buyer owing to the expenses which are required or the purpose of subsequent performance, in particular transport, route, work and material costs are excluded insofar as the expenses are increased, because the object of the delivery has been subsequently taken to another location than the branch of the buyer, unless the relocation corresponds with its use as intended.
- 9.10 Such recourse claims shall exist only to the extent that the buyer has not entered into any agreements with its customers that go beyond the statutory claims for defects. Art. 9.9 applies respectively to the scope of the claim for legal recourse of the buyer.
- 9.11 As far as any products or goods were delivered by Irlbacher as part of a series or a longer-term delivery agreement, no further spare parts inventories shall be kept after expiration of the contract term or discontinuation of the series and expiration of the warrant period unless the customer has entered into a separate agreement regarding such inventories and regarding the expiration of the warranty period. In such cases spare parts may be produced individually following expiration of the warranty period and the costs of such made-to order production shall be billed separately.

10. Liability

- 10.1 In case of intention or gross negligence – regardless of legal grounds – Irlbacher shall be held liable
- (a) for violation of life, limb or health
 - (b) for violation caused by the culpable breach of material contractual obligations; in the latter case liability shall be limited to the damage or loss typical for the contract that could reasonably be foreseen.
- 10.2 The statutory burden-of-proof provisions shall remain unaffected by the foregoing.
- 10.3 Unless anything to the contrary has been agreed on, contractual claims in conjunction with the delivery of goods shall become time-barred one year after delivery of the goods. Such period shall also apply to products which, in line with their customary use, are used for buildings and have caused the buildings to be defective or non-compliant.

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11. Returnable packaging

Returnable packaging shall be made available to the counterparty on lease only and shall be made available for collection within 60 days. In the event of failure to comply herewith, Irlbacher shall be entitled from the 61st day onwards to demand a lending charge of €10.00 per day up to a maximum of the purchase costs of the packaging or, should such costs be higher, to demand the current replacement costs.

12. Reservation of title

- 12.1 Pending full payment of all our receivables, including future ones, Irlbacher reserves the title to the goods no matter whether individual or all of our receivables were included in a current invoice and whether the balance has been drawn and accepted.
- 12.2 The customer shall be entitled to process and sell the goods subject to the following provisions. The customer shall otherwise not be entitled to dispose of goods subject to reservation of title in any other manner.
- 12.3 In as far as the goods are processed further or converted by the customer, Irlbacher shall be deemed to be the manufacturer within the meaning of section 950 of the German Civil Code (§ 950 BGB) and shall become the beneficial owner of any intermediate and individual products. The processor shall merely keep such goods in custody.
- 12.4 In the event that the goods subject to reservation of title are connected to or processed with other objects not owned by Irlbacher, Irlbacher shall become the joint owner of the newly manufactured goods on a pro-rata basis corresponding to the ratio between the goods subject to reservation of title and the other objects.
- 12.5 The goods may only be sold during the customary and ordinary course of business and always subject to the condition that any receivables from a resale are assigned to Irlbacher. The receivables due to the customer as a result of a resale shall be deemed to be assigned to Irlbacher at the time the purchase agreement is signed at Irlbacher which shall also apply to goods from Irlbacher which are connected to or processed with other objects. The receivables assigned shall in such case be deemed to protect Irlbacher only to the amount of the value of the sold goods subject to reservation of title. Irlbacher shall not collect the receivables assigned as long as the customer meets his payment obligations. The buyer shall, however, be obliged to disclose to Irlbacher on request the names of the third-party debtors and to notify these of the assignment. The orderer shall be entitled to collect the receivables directly as long as he is not instructed otherwise by Irlbacher. He shall immediately pass on any amounts collected to Irlbacher in as far as payments are due to us.
- 12.6 Goods subject to reservation of title and/or receivables assigned may not be pledged or given as security. The customer shall be obliged to disclose at the time of the signing of the agreement any assignments, pledges and security assignments. The customer shall immediately notify Irlbacher of any access by any third party to goods subject to reservation of title or receivables assigned. Irlbacher undertakes to release at its sole discretion any receivables assigned in as far as the receivable to be secured is exceeded by more than 10 percent and in as far as such receivables assigned are based on fully paid shipments.

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13. Confidentiality / exploitation prohibition

- 13.1 Our commercial partners undertake to treat as confidential any internal processes, methods and other details of Irlbacher which may come to their knowledge. Any documents made available shall not be disclosed to any third party. In the event that Irlbacher becomes aware of any violation of this confidentiality obligation, Irlbacher reserves the right to claim damages.
- 13.2 Our commercial partners shall not be permitted to exploit or use any copyrights or know-how. A penalty of at least 10 percent of the order sum shall be payable in the event of a violation hereof. Further financial claims are reserved.

14 Miscellaneous provisions

- 14.1 In the event that any of the foregoing provisions are invalid, the remaining provisions hereof shall not be affected thereby. Any invalid provisions shall be re-interpreted in such a manner that the intended economic purpose is retained to the maximum extent possible. This shall be carried out on the basis of the interests as reflected by these General Terms and Conditions.
- 14.2 Any agreements made and entered into during or after the signing of the agreement shall not be valid unless made in writing. Oral statements by employees of Irlbacher shall not be binding unless confirmed in writing.
- 14.3 The place of performance for all claims in contract and law shall be 92539 Schönsee, Germany. Any disputes arising under the contractual relationship shall be referred to the courts of 92224 Amberg, Germany.
- 14.4 The parties agree on the application of the autonomous German law on sales, excluding the United Nations Convention on the International Sale of Goods (CISG), even if the customer has its place of business outside Germany.

Status: January 2018