

General terms and conditions of sale and delivery of Saint-Gobain Cultilene B.V.

1. General

1. The following definitions are used in these general terms and conditions:
 - a. Customer: any natural person or legal entity with whom/which we (Saint-Gobain Cultilene B.V.) enter into an agreement, negotiate for the purpose of entering into an agreement, to whom/which we make an offer, or in respect of whom/which we perform any legal acts.
 - b. Order: any order that the Customer places with us.
 - c. Agreement: any agreement that is entered into between us and the Customer, any amendment or addition to such an agreement, as well as all legal acts to prepare for or implement that agreement.
 - d. Products: all goods that are the object of an agreement with the Customer.
2. These general terms and conditions form part of all agreements and apply to all related legal acts between us and the Customer. We expressly reject the applicability of any general terms and conditions referred to by other parties. Unless agreed otherwise, the last version of the terms and conditions, referred to above, always apply and, if the Dutch text of these documents differ from the translation in another language, only the Dutch text will apply.
3. We are entitled to amend these general terms and conditions at any time. We will notify the Customer of any amendment as referred to in the previous sentence, in writing, no later than 14 days before the intended commencement date of that amendment.
4. If the Customer does not inform us in writing within 14 days of the notice referred to in the previous paragraph that the intended amendments are not accepted, the Customer will be deemed to have accepted these amendments, after which the amendments will form a full and integral part of the agreement that has been concluded with the Customer.
5. If the Customer has informed us in writing within the period referred to in the previous paragraph that an intended amendment is not accepted, we are entitled to terminate the agreement with immediate effect, without the Customer being entitled to any form of compensation.

2. Offers and rates

1. Our offers, rates and prices are issued without obligation. These may be altered at any time without prior notice, and in case of offers before acceptance. We reserve the right to alter our product characteristics without prior notice, without this affecting essential properties and the quality.
2. Unless stated otherwise, all of our offers are based on us performing the agreement under the normal working conditions that are customary in the sector.
3. We reserve the right to refuse orders without providing reasons, to require payment in advance, or to set different payment conditions to those agreed in these general terms and conditions.

3. Order confirmation

The orders that we receive are binding on us only after we have accepted them in writing in the form of an acknowledgement of receipt of the order that we send to the Customer. Verbal undertakings by and arrangements made with our employees or third parties we have hired are not binding on us until and insofar as we have confirmed them to the Customer in writing.

4. Price

1. In principle, our prices are expressed in euros and exclude VAT, although include the costs of transport to the stated destination within the Netherlands (delivery carriage paid), unless expressly stated otherwise, and other government-imposed levies, as further specified in Article 7 on transport. We reserve the right to charge the Customer separately for transport costs that exceed those that are reasonably deemed to be included in our prices.
2. If there is any change in factors that determine cost price after the offer is made or the agreement is concluded, such as in raw materials, items that involve the sales of a third party, wages or salaries, government costs and/or freight charges, we will be entitled to alter the price accordingly. We will notify the Customer of this alteration as soon as possible.

3. If we perform additional work, the associated costs will be payable by the Customer. The lack of a written order for additional work does not affect our right to claim the associated costs.
4. If prices are expressed in a foreign currency and the value of that currency changes negatively for us in respect of the euro after the agreement is concluded, we will be entitled to increase our prices such that the equivalent value in euros is the same as when the agreement was concluded.

5. Delivery period

1. Stated delivery periods are indicative only and can never be regarded as strict deadlines within the meaning of 83, Book 6 of the Dutch Civil Code. If the Customer cannot or does not wish to take delivery of an order that is ready for dispatch, we will store the related items for a period of no more than two weeks at the Customer's expense. After the end of this period, the Customer will be in default and charged for the storage costs, notwithstanding our other rights. We are also entitled to make partial deliveries at any time.
2. Unless otherwise agreed in writing, we are free to choose how to perform the agreement. We may hire third parties for the performance of the agreement, without consulting with or obtaining the Customer's consent.

6. Force majeure

1. We are not liable in any case for the consequences of failing to comply, or to comply on time, with our obligations due to force majeure. If force majeure occurs, we are entitled to either extend the agreed period for the execution of the order by the period of the force majeure, or to cancel the agreement, or any part of it that has not yet been performed, without being liable to pay any compensation.
2. Force majeure includes but is not limited to strikes, in the broadest sense, in other companies, strikes in our company, a general lack of the goods or services required for rendering the agreed performance, unforeseeable interruptions at suppliers or other third parties we depend upon, general transport problems and blocking of supplies, fire, third-party errors, and government measures, including import and export bans.
3. The Customer's financial and other obligations that arose before the force majeure commenced remain in force despite the force majeure.
4. Force majeure suspends the parties' obligations. If the force majeure lasts for longer than two months, both parties are entitled to terminate the agreement, with the exception of the Customer's purchase obligation for specifically purchased raw materials, packaging and the remaining finished products in stock. We are not bound to pay any compensation if the agreement is terminated.

7. Delivery, acceptance, transport and packaging

1. Goods are delivered, or deemed to be delivered, in accordance with the agreed delivery method specified on the order confirmation. The parties undertake to make use of the internationally recognised Incoterms (last published edition) during delivery.
2. For deliveries of the product group Glass, we provide packaging to the Customer. We are entitled to charge a fee for this purpose. We indicate in the order confirmation whether we wish to make use of our right to take back packaging. The Customer is then obliged to make the same quantity of packaging available to us in the same condition. The packaging is at the Customer's risk from the date of delivery up to and including the date on which we collect it again.
3. The time and date for our collection of the packaging will be determined by agreement.
4. We may charge costs for any differences in and/or damage to the packaging material.

8. Termination of the agreement

1. If the Customer fails to comply, fails to comply on time, or fails to duly comply with an obligation under an agreement with us, as well as in case of impending or actual bankruptcy, a moratorium on the payment of debts or an order placing the Customer in guardianship, or the discontinuation, liquidation, dissolution or alteration of the Customer's company or business, or in case of a court composition or liquidation of the Customer's assets, or if an application for credit insurance is not, or is not adequately, accepted by the company concerned, we are entitled, after having given the Customer a written notice of default, and even after partial execution of an order, without being liable to pay any compensation to the Customer, to unilaterally terminate all or part of the agreement, the ensuing obligations and all other existing agreements between the parties without judicial intervention and to repossess the delivered goods, or to require security for the performance of all or part of the remaining obligations, whereupon any claim that we have against the Customer, for whatever reason, will become immediately due and payable in full.
2. If the due performance of our obligations under an agreement with the Customer is fully or partially impossible, whether temporarily or permanently, as a result of one or more circumstances for which we are not accountable, including the circumstances listed in Article 6, we will be entitled to suspend the performance of the agreement or to terminate the agreement.

9. Payment

1. The Customer must pay our invoice within 30 days of the invoice date. Payments must be made, at our discretion, either at our offices or into our designated giro or bank account. This all applies unless the parties agree otherwise.
2. We reserve the right to deliver only on receipt of advance payment, or to require advance payment before starting with production. If we have obvious misgivings about the Customer's creditworthiness at any time, we will be entitled, before rendering any further performance, to require the Customer either to pay all or part of the purchase price in advance or to provide proper security for the amounts, whether or not due and payable, that we can or will be able to claim under any agreement with the Customer, at our discretion. Deliveries to parties outside the Netherlands will always be made only after a portion of the total price has been paid in advance.
3. All amounts charged to the Customer must be paid without any discounts or deductions, except for any payment discount percentage specified on the invoice, but then only insofar as the Customer does not owe any other amount to us.
4. In respect of the amounts owing to us by the Customer, the Customer may not rely on any suspension of payments and/or setoff against any claim that the Customer alleges to have against us. The Customer is likewise not entitled to rely on any right of retention in relation to any goods under the Customer's control that have to be handed to us.
5. The Customer is in default solely by the expiry of the payment period. In that case, all of our claims against the Customer, for whatever reason, will become immediately due and payable.
6. The Customer must pay statutory commercial interest plus a surcharge of 2% on all amounts that are not paid by the last day of the payment period.
7. If the Customer is in default towards us, the Customer is obliged to reimburse the extrajudicial and judicial collection costs in full. The extrajudicial costs to be reimbursed by the Customer amount to at least 15% of the unpaid amount, subject to a minimum of €350, plus the turnover tax due on the amount and statutory commercial interest from the default date. The provisions of the previous sentences do not affect our right to claim the damage that we have actually suffered if this damage is higher.
8. If there is a change in the Customer's situation, if the Customer dies, has no capacity to act, if the Customer's company is dissolved or altered, if there is a court composition or the Customer's assets are liquidated, or if the Customer suspends payments or fails to pay, we reserve the right, even after the partial execution of an order, to demand security or to cancel the rest of the order.

10. Retention of title

1. Delivered goods remain our property until the relevant invoice and any other fully or partially outstanding invoices have been paid in full with interest and any collection costs.
2. The Customer undertakes, immediately at our request, to establish a pledge in our favour over third-party receivables that arise from any sale or resale of the goods we have delivered.
3. If and for as long as we are still the owner of the goods, the Customer must immediately notify us of any impending or actual attachment of the goods or if any other claim is made to all or part of the goods. The Customer must moreover, immediately at our request, notify us where our goods are located. In case of attachment, a provisional or final moratorium on the payment of debts or bankruptcy, the Customer must immediately notify the attaching bailiff, administrator or receiver/liquidator of our rights of ownership.
4. Until ownership of the delivered goods has been acquired, the Customer may not pledge the goods to third parties, grant third parties any other right to the goods, or use the goods other than for normal processing or treatment within their business activities.
5. Immediately at our request, the Customer must give us a full and unrestricted opportunity to repossess delivered goods whose ownership has not passed to the Customer and irrevocable authorisation to enter, or have a third party enter, the areas used at or on behalf of the Customer for this purpose.

11. Complaints and objections

1. If the goods that we deliver noticeably do not comply with the agreement, the Customer is obliged to object immediately on delivery and to make a note, or have a third party make a note, of the established defects on the transport document to be signed on receipt of the goods. Complaints concerning defects that were not noticeable at the time of delivery must be made immediately after the Customer has noticed, or reasonably should have noticed, them, although no later than eight days after receipt of the goods, failing which a complaint will no longer be accepted and the Customer will no longer have any claims. The Customer is not entitled to reject goods for slight differences in measurements, weight and/or colour or in the surface structure. Any different terms and conditions of our supplier(s) concerning the properties and quality of the delivered goods also apply to the Customer. If we deliver plate glass products, we can never be held liable for any differences, regardless of the seriousness and amount thereof, from the values specified on the data sheet.
2. The Customer is obliged to handle and process the delivered goods at all times in accordance with our instructions for use and installation, failing which no claims can be enforced against us. The Customer's right to allege that the delivered products do not conform to the agreement ceases to apply in any case after those products are used and/or positioned and/or installed.
3. In case of a hidden defect or a valid complaint or objection, our liability is limited at all times to the replacement of defective goods or crediting the price, at our discretion.
4. In case of a complaint, the Customer may never lay claim to a more far-reaching form of compensation, warranty or damages than we can in turn claim from our supplier and/or insurer.
5. In case of a valid complaint, the Customer indemnifies us against any third-party claims as a result of that complaint.
6. Returns are permitted only if we have granted express, prior and written consent for that purpose.

12. Liability

1. Our contractual and statutory liability, where applicable, is limited at all times to the invoice value under the agreement in respect of which that liability has arisen, or – insofar as a risk that we have insured is involved – to the amount covered and paid by the insurance. We will never be liable towards third parties for damage that arises in relation to the performance of an agreement, to which these terms and conditions apply, further than we would be liable towards the Customer. The Customer indemnifies us against any further liability and, where possible, will stipulate such an exoneration in our favour in agreements with third parties.
2. We will never be liable for consequential damage that the customer or a third party suffers because of goods we deliver, or the use of such goods, including but not limited to trading losses, loss of orders, loss of profits, environmental damage and intangible damage.

3. We are likewise not liable for advice given concerning the nature, composition and use of the ordered goods. If products and/or parts that we have purchased from third parties are delivered, a warranty will be provided only insofar as we have received a warranty from our supplier. In that case, the warranty given to the Customer will be identical to the one we have received from our supplier. We are not obliged to deal with a warranty request if the Customer has not complied with their payment obligations. If the Customer has a valid warranty claim, the extent to which and the manner in which repairs and/or replacement takes place will be at our discretion.
4. Unless we have acted intentionally or been grossly negligent, we are not liable for the unlawful acts of those involved in the performance of the agreement, whether employees or not. We can never be held liable for damage caused by the intentional or grossly negligent acts of people who are not subordinates.
5. The Customer is obliged to indemnify us against any third-party claims arising from the unlawful acts of subordinates, employees or third parties involved in any way in the performance of the agreement.

13. Choice of law, forum and miscellaneous provisions

1. Dutch law applies to all disputes between us and the Customer. The provisions of the Vienna Sales Convention (C.I.S.G.) are expressly excluded.
2. Disputes between us and our Customer that fall within the jurisdiction of the courts will be settled exclusively by the competent court in Tilburg, unless we, as the claimant or applicant, choose the competent court of the Customer's place of business or permanent or temporary residential address.
3. The international rules for the interpretation of commercial terms (Incoterms), as last published by the International Chamber of Commerce (ICC) in Paris, are declared applicable to the interpretation of customary trade discounts.
4. Insofar as one of the provisions of these general terms and conditions is declared contrary to any statutory rule of mandatory law, now or in the future, these general terms and conditions will remain otherwise applicable, insofar as we have not declared them inapplicable to that case.
5. The headings of the articles in these general terms and conditions do not have any independent meaning and the parties will not be able to derive any rights from these headings.

These general terms and conditions of sale and delivery have been filed with the Chamber of Commerce under number 27149501 and at the registry of the 's-Hertogenbosch District Court.

A copy of these general terms and conditions of sale and delivery will be sent to you, free of charge, immediately on request. Our general terms and conditions of sale and delivery are also published on our website www.cultilene.com.