

GENERAL TERMS AND CONDITIONS VELUX COMMERCIAL - SWITZERLAND

1. General

- 1.1 These General Terms and Conditions ("**GTC**") form the basis of all offers, order confirmations and all purchase contracts of VELUX Commercial Schweiz AG ("**VELUX Commercial**") issued to or entered into with customers with the exception of individuals not acting in their course of business ("**Customers**") and also apply in regard to current and future business relationships, unless otherwise agreed in writing. A Customer will include a legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of its trade, business or profession. These GTC shall apply accordingly to contractual agreements for works and/or services. If a contract or these GTC refer to "products", this shall be construed to include works (*Werke*) and the respective provisions shall also apply to works (where necessary by way of analogy).
- 1.2 These GTC apply to the exclusion of any other contract terms that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing, unless VELUX Commercial expressly agrees otherwise in writing, and even in the event that VELUX Commercial does not expressly object to such other contract terms at any time after receipt.
- 1.3 Derogations from these GTC are subject to VELUX Commercial's agreement in writing. Additions, supplements, or side agreements require VELUX Commercial's written approval to be binding under a contract, regardless of the method by which they are communicated.
- 1.4 Unless otherwise agreed in the concluded contract, Norm SIA 118 shall be deemed agreed in contracts for works, including the periods listed there for liability for defects. In such cases, Norm SIA 118 shall take precedence over any deviating provisions in these GTC.

2. Conclusion of contract, product changes

- 2.1 Unless otherwise stated in the individual contract offer, VELUX Commercial's offers are valid for 30 days of their date.
- 2.2 VELUX Commercial reserves the right at any time to make changes to the products to be supplied due to technical enhancement, changes in the law or regulation and to make industry-standard deviations from masses, weights, and other technical data relating to the products.
- 2.3 Any samples, drawings, descriptive matter or advertising produced by VELUX Commercial and any descriptions or illustrations contained in the catalogues or brochures of VELUX Commercial are produced for the sole purpose of giving an approximate idea of the products and other goods described in them. They shall not form part of any contract or have any contractual effect.

3. Prices, Packaging

- 3.1 The contract price is calculated from the most current VELUX Commercial price list accounting for any agreed discount and the basis of any individual offer or price. The contract price includes delivery to sites within Switzerland. Where agreed as part of the contract to be undertaken by VELUX Commercial, services such as, but not limited to, unloading, stacking, the provision of any required equipment and freight costs for delivery abroad will be payable for by the Customer as additional services and will be invoiced separately. The contract price in the written contract or order confirmation shall be binding. The contract price is exclusive of, and Customer itself shall be responsible paying for, any foreign or domestic taxes or charges of any kind that may be applicable

(including without limitation excise, sales, use, or value-added taxes; customs or other import duties; or other taxes, tariffs or duties).

- 3.2 The contract price is based on the prime cost applying to VELUX Commercial on conclusion of the contract. In the event that there are at least four months between the conclusion of the contract and the first anticipated delivery date, the following provision shall apply: VELUX Commercial may at its discretion adjust the contract price in accordance with any fluctuations in the costs to VELUX Commercial of undertaking the contract and which costs were relevant to the calculation of the contract price. A contract price increase shall be considered and - on request of the Customer - a price reduction shall be made if, for example, the cost to VELUX Commercial for the procurement of input materials or energy or transport costs have increased or decreased. Increases in one type of cost, e.g., transport costs, will be applied subject to consideration being given to the increase being offset by decreases in other respects, e.g., costs for input materials. In the event of applicable reductions in cost, e.g., in transport costs, VELUX Commercial shall at its discretion reduce the contract price to the extent that these cost reductions are not fully or partially offset by increases in other respects. When exercising its discretion, VELUX Commercial shall act reasonably and select the respective points in time of a cost change in such a way that cost reductions are not taken into account according to standards which are less favourable for the Customer than cost increases, and in order that cost reductions have at least the same effect on the contract price as cost increases.
- 3.3 If and to the extent VELUX Commercial is required under the contract, or otherwise, to take back packaging, this service upon request by the Customer will be undertaken at VELUX Commercial's discretion either directly or via a service company instructed by VELUX Commercial in the individual case. The place of take-back shall be determined by VELUX Commercial at its reasonable discretion, taking due account of the interests of the Customer. The costs of the take-back shall be borne by the Customer.

4. Delivery times, force majeure, self-delivery

- 4.1 Unless otherwise expressly agreed in the contract, delivery dates and times as set out in the contract or order confirmation shall constitute an estimate only.
- 4.2 Adherence by VELUX Commercial to delivery dates and times, whether expressly agreed in the contract or otherwise, is dependent on the timely fulfilment of the Customer's obligations under the contract and dependent upon receipt by VELUX Commercial of all information required for order fulfilment as well as other details reasonably required by VELUX Commercial to be provided by the Customer. Any such delivery obligations will be subject to receipt by VELUX Commercial of any agreed payments in accordance with the contract. VELUX Commercial shall have no liability where delivery cannot be completed within any delivery dates and times due to circumstances which are outside of those for which VELUX Commercial is responsible.
- 4.3 Unforeseeable events beyond VELUX Commercial's reasonable control which impact on its ability to perform the contract such as war, risk of war, insurrection, violence by third parties against persons or property, force majeure including currency and commercial measures, industrial action within VELUX Commercial's company or its suppliers or transport companies, interruption to the designated transport services, fire, lack of raw materials, energy shortages, epidemics and pandemics, and other operational disruptions on VELUX Commercial's premises or those of VELUX Commercial's suppliers, and the effects of which VELUX Commercial could not have avoided by taking reasonable measures, shall entitle VELUX Commercial to an extension of any contract delivery period accounting for the effect on VELUX Commercial of the event in question. This shall also apply if VELUX Commercial is in default or if the performance impediments listed above were already present prior to conclusion of the contract but were not known to VELUX Commercial and VELUX Commercial was not responsible for this lack of knowledge. VELUX Commercial shall notify the Customer of impediments of the aforementioned types without undue delay.
- 4.4 If delivery delays attributable to the aforementioned impediment types (sec. 4.3) last longer than two months, both parties shall be entitled to rescind the contract. However, the Customer may only

rescind if VELUX Commercial does not declare at the Customer's request within one week whether VELUX Commercial wants to rescind or deliver within a reasonable period. The same right of rescission shall arise regardless of the aforementioned period, if one of the parties no longer has an interest in performance of the contract in view of the delay.

- 4.5 Should VELUX Commercial be in default of delivery, the Customer shall set a reasonable period for performance. Otherwise, no claim for compensation may be demanded in lieu of performance, nor may the Customer rescind the contract. The period does not need to be set if VELUX Commercial seriously and finally refuses to perform, or VELUX Commercial does not affect performance on a date or within a period set in the contract, and the Customer has linked its continued interest in performance to the timeliness of performance, or there are special circumstances which justify immediate rescission in due consideration of mutual interests.
- 4.6 If fixed dates for delivery are agreed, they shall only apply provided that all details of the order are clarified in full and in a timely manner, in particular all information, permits and authorisations to be acquired by the Customer, and punctual receipt of any agreed advance payment. If a final date is agreed, this shall not be met if the deliveries and/or services are incomplete and defective on this date, with the result that overall commissioning cannot be completed by the set date. Insignificant defects or short deliveries and low performance shall not be taken into consideration.
- 4.7 After expiry of a reasonable period set for performance by VELUX Commercial in the event of default, the Customer shall be entitled to rescind the contract.
- 4.8 VELUX Commercial reserves the right to make deliveries by instalments, acting reasonably including to account for the interests of the Customer. Such deliveries shall be deemed closed deliveries for billing purposes.
- 4.9 If deliveries cannot be made by an agreed date or are delayed, due to reasons which are the fault of the Customer, all costs of VELUX Commercial incurred relating to storage and transportation costs shall be payable by the Customer.
- 4.10 Delivery is subject to correct and timely delivery of products and pre-materials to VELUX Commercial and its affiliates.

5. Passing of risk

- 5.1 Risk of damage to or loss of the products shall pass to the Customer at the time of delivery (including carriage-paid delivery) or, if the Customer wrongfully fails to take delivery of the products, at the time when VELUX Commercial has tendered delivery. Delivery in this context shall include:
 - 5.1.1 for deliveries, when the products are made available for pickup by VELUX Commercial (EXW Incoterms 2020),
 - 5.1.2 for the setup or installation – if this is part of VELUX Commercial's contractual duties in the individual case - on acceptance or, if agreed, after a successful test run. Insofar as acceptance is dispensable or replaced according to the statutory provisions, these statutory provisions shall take precedence.
- 5.2 If the shipment, delivery, commencement, setup or installation, transfer to the Customer's own operations or test run is delayed due to reasons for which the Customer is at fault, or if the Customer is in default of acceptance for other reasons, the risk shall pass to the Customer.

6. Terms of payment

- 6.1 Unless otherwise agreed, delivery and installation are against prepayment without deductions = net cash. Unless otherwise agreed, for invoice amounts of up to CHF 250.00 net VELUX Commercial charges a handling charge of CHF 25.00 net per invoice and for invoice amounts exceeding CHF 250.00 up to CHF 1,000.00 net VELUX Commercial charges a handling charge of CHF 40.00 net per invoice.

- 6.2 VELUX Commercial shall be entitled to set-off any sum owing to it by the Customer against any sum owing by it to the Customer, whether any such sum is owing in relation to the products or under the contract or otherwise.

7. Retention of title

- 7.1 Title to products shall not pass to the Customer until VELUX Commercial receives payment in full for the products. The Customer authorizes VELUX Commercial to enter its ownership in the relevant retention of title register if VELUX Commercial wishes to do so and shall cooperate without delay in any measures to protect the ownership of VELUX Commercial.
- 7.2 Until such time as title to the products passes to the Customer, the Customer shall keep the products separate from those of the Customer and third parties and properly stored, protected and insured and identified as the property of VELUX Commercial.

8. Rights in the case of defects

- 8.1 The Customer shall inspect the products as soon as reasonably practicable following delivery, and – if required by sample processing – shall check the characteristics of the delivered products and shall within ten (10) days from such delivery notify VELUX Commercial in writing of any detected defect or of any matter or thing by reason of which the Customer believes the products do not conform to the contract. If the Customer fails to serve such a notice the products will be conclusively deemed as having been accepted without reservation. Upon delivery, the Customer must immediately inspect the products for transport damage and immediately notify the transport company and VELUX Commercial of any such damage.
- 8.2 Upon receipt of such a notice in the correct form and within the correct time frame, VELUX Commercial at its sole discretion may undertake rectification or a replacement delivery. Any further rights of the Customer, in particular the rights to withdraw from the contract (rescission), to reduce the purchase price (reduction), to substitute performance and/or to damage claims, are excluded.
- 8.3 Unless expressly agreed in writing, VELUX Commercial has no warranty obligations or liability under the contract for any defects or otherwise caused by (1) the Customer, (2) incorrect installation based on all installation instructions (unless this is part of VELUX Commercial's contractual obligations), (3) a lack of or inadequate maintenance, (4) incorrect storage or handling of deliveries, or (5) processing of the delivery by the Customer.
- 8.4 VELUX Commercial has no warranty obligations and shall not be liable for (1) superficial alterations including the fading of colours, (2) interference effects, effects specific to multiple glazing and anisotropy of the glazing (for definitions, see SIGAB-Richtlinie 006 "Visuelle Beurteilung von Glas am Bau"), (3) unavoidable and/or expected reductions in the efficiency of VELUX products, and (4) natural changes to related materials.
- 8.5 VELUX Commercial shall have no warranty obligations and no liability for defects, damage, and losses, as well as personal injury due to (1) inadequate aerodynamic dimensioning of the flue by the Customer or building owner, (2) usability and capability of the blank panel for a special use or purpose, (3) the installation in swimming pools or other interiors with high humidity or high concentrations of salt, chlorides, and similar aggressive substances, (4) installation of products less than 2.5 metres above the floor because of a risk of pinching.
- 8.6 If design and/or installation is not part of the obligations accepted in the contract by VELUX Commercial, VELUX Commercial assumes no warranty obligations or liability for the design and/or installation of products.
- 8.7 VELUX Commercial has no warranty obligations and shall not be liable for Customers' assumptions regarding the usability of VELUX products or their special characteristics, qualities, or functions, unless they are expressly listed in these GTC, or VELUX Commercial has agreed to them in writing.

9. Limitations of liability

- 9.1 Claims for damages of any kind against VELUX Commercial, its legal representatives or vicarious agents are excluded (including for slight negligence or acts and omissions of auxiliary personnel of VELUX Commercial) unless wilful misconduct or gross negligence has taken place.
- 9.2 The aforementioned limitation of liability does not apply to liability pursuant to the Product Liability Act or injury to life, body or health.

10. Declaration of conformity

- 10.1 Only products delivered by VELUX Commercial are subject to VELUX Commercial's declaration of conformity. Enhancements or modifications to products carried out by the Customer are excluded.

11. IP rights and copyright

- 11.1 If products need to be manufactured or delivered according to the specifications of designs, drawings, models, or samples provided by the Customer, the Customer shall warrant that IP rights or copyright shall not be infringed by the manufacturing or delivery of such products. If manufacturing or delivery by third parties is prohibited with reference to IP rights or copyright, VELUX Commercial shall suspend manufacturing or delivery. VELUX Commercial shall not be liable for review of the legal position. At the same time, VELUX Commercial excludes Customer claims for compensation if the Customer is at fault for infringement of IP rights or copyright.

12. Final provisions

- 12.1 The contract constitutes the whole agreement between VELUX Commercial and the Customer. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of VELUX Commercial which is not set out in the contract. If any part of the VELUX agreement or these GTC's shall be found to be invalid, ineffective or unenforceable, such invalidity, ineffectiveness or unenforceability shall not affect any other part hereof. Such invalid, ineffective or unenforceable provision shall be replaced by a valid and enforceable provision that comes as close as possible to the economic purpose of the original provision.
- 12.2 Insofar as these GTC or a contract require written form, this shall be deemed to have been complied with if a declaration is made in text form, also without a signature. A signature is only necessary where one is explicitly required in these GTC or the contract.
- 12.3 Our handling and processing of data is set out in our privacy policy, available at <https://commercial.velux.ch/de-ch/ueber-uns/datenschutzerklaerung>.
- 12.4 The law of Switzerland with explicit exclusion of its conflict of laws rules shall apply. The provisions of the CISG shall not apply.
- 12.5 In the event of a dispute between the parties, if an amicable solution cannot be reached without the involvement of a third party, the parties should examine whether the dispute mainly concerns technical issues. If this is the case, they should consider and discuss with each other agreeing on the involvement of an expert arbitrator to provide a binding and final opinion on these issues as per article 189 of the Swiss Civil Procedure Code. There is no obligation to mandate an expert arbitrator. The expert arbitrator shall provide a binding and final opinion on the questions submitted to him/her for examination. The parties shall agree on the expert arbitrator's fee together with the expert arbitrator. The costs of the expert arbitrator's report shall be borne by the losing party according to the findings of the report. In the event of partial defeat, the apportionment shall be determined in proportion to the respective victory or defeat. The parties shall be jointly and severally liable vis-à-vis the expert arbitrator.
- 12.6 Any dispute arising out of or in connection with a contract or these GTC shall be subject to the exclusive jurisdiction of the courts of the city of Aarburg.