

GLASEKSPERTEN A/S – STANDARD TERMS AND CONDITIONS SALE AND DELIVERY – COMMERCIAL SALES (B2B)



This is a translation. In case of doubt, the original Danish language version shall prevail.

1. Application

- 1.1 These terms of sale and delivery (hereinafter the "Terms") apply to all quotations, sales and deliveries from Glaseksperten A/S, business registration no. DK-30601998, to any commercial customer (hereinafter the "Buyer").
- 1.2 The Terms shall take precedence over all conflicting terms from the Buyer, such as in the Buyer's orders, acceptances and/or from the Buyer's general terms of purchase, including in cases where Glaseksperten A/S does not object to such conflicting terms.

2. Information in Glaseksperten A/S's sales material and price lists

- 2.1 Information in Glaseksperten A/S's brochures, advertisements, product descriptions, price lists, etc. containing data concerning capacity, durability, performance, technical data, dimensions, weight or the like, is not binding for Glaseksperten A/S. Furthermore, Glaseksperten A/S shall not be liable for misprints and model modifications.

3. Order confirmation

- 3.1 All agreements entered into between Glaseksperten A/S and the Buyer require a written order confirmation from Glaseksperten A/S in order to be legally binding for Glaseksperten A/S.

4. Buyer instructions and changes called for by the Buyer

- 4.1 In cases where Glaseksperten A/S produces a deliverable on the basis of the Buyer's instructions or directions in the form of drawings, specifications and the like, Glaseksperten A/S shall not be liable for the correctness of such instructions. Glaseksperten A/S will assume no liability for deliverables produced that, per the instruction or direction of the Buyer, are non-compliant with the Danish and European norms and standards in effect.
- 4.2 The Buyer may request a modification of an agreed deliverable. The request must contain an exact description of the desired changes. Glaseksperten A/S is not obliged to satisfy the request. Glaseksperten A/S must duly inform the Buyer in writing about whether such changes can be made and how, as well as the effect of such changes on the agreed price, delivery date and other terms of the parties' agreement. Glaseksperten A/S is not obligated to make the changes requested by the Buyer before the parties have agreed how the changes will affect the agreed price, delivery date and other terms of their agreement.

5. Intellectual property rights

- 5.1 Quotations, drawings, sketches, designs, specifications and technical data produced or provided by Glaseksperten A/S shall remain the property of Glaseksperten A/S. The Buyer shall treat this material confidentially and may not use it for any other purpose than the one for which Glaseksperten A/S submitted the material to the Buyer. Furthermore, the Buyer may not disclose, copy and/or hand over the information to any third party without prior written acceptance from Glaseksperten A/S.
- 5.2 In the event that the Buyer should breach item 5.1 above, the Buyer shall pay a penalty of DKK 100,000 per instance of breach to Glaseksperten A/S. If the breach consists of causing and sustaining a particular situation, every week or part thereof that the breach is sustained shall be considered one instance of breach.
- 5.3 If Glaseksperten A/S's losses resulting from the Buyer's breach of item 5.1 exceeds the agreed penalty stated in item 5.2, Glaseksperten A/S is entitled to claim damages for such losses in accordance with Danish law. Glaseksperten A/S is furthermore entitled to have an injunction issued without bond against the Buyer's unauthorised activities.

6. Prices

- 6.1 All of Glaseksperten A/S's listed prices are current prices. All sales shall be made at the prices in effect at the time of delivery. Therefore, unless otherwise agreed in writing, Glaseksperten A/S reserves the right to change the prices – including after issuance of an order confirmation – effective immediately in the event of a rise in production costs, including changes in material supplies, raw material prices and wages, as well as changes in exchange rates, customs duties, freight, insurance rates, taxes, fees and the like.
- 6.2 In the event of changes of more than 5% in Glaseksperten A/S's prices, the Buyer is entitled to cancel its order within eight days of being informed of the changes, unless the order is already in production or the parties have agreed otherwise in writing. The Buyer is not entitled under any circumstances to cancel its order if the price changes are due to an increase in VAT, taxes and fees, packaging expenses, environment and transport surcharges, or freight and transport insurance fees.
- 6.3 Glaseksperten A/S calculates its prices on the basis of EXW delivery to Glaseksperten A/S's production address as stated in the order confirmation (see INCOTERMS 2010), i.e. exclusive of VAT, taxes, fees, packaging costs, environment and transport surcharges, freight and transport insurance fees, etc., unless agreed otherwise in writing.

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7. Packing

- 7.1 Generally, Glaseksperten A/S delivers its products on single-use wooden frames, unless otherwise agreed in writing. Such single-use frames are not to be returned. Prices of various types of single-use frames are listed in Glaseksperten A/S's price list, which will be furnished upon request. Prices for special frames will be agreed separately with Glaseksperten A/S.
- 7.2 Glaseksperten A/S will deliver a frame slip with the deliverable, specifying the glass accompanying the deliverable.
- 7.3 Glaseksperten A/S uses steel frames in some cases. Steel frames are the property of Glaseksperten A/S. The buyer is obligated to return steel frames to Glaseksperten A/S as soon as possible and no more than 40 days after delivery has taken place. The Buyer bears the full risk for the steel frame after delivery has taken place and until the steel frame is returned to Glaseksperten A/S. Returns will be made at the risk and expense of the Buyer, unless otherwise agreed in writing. If a steel frame is not returned to Glaseksperten A/S by the stated deadline, or if a steel frame is damaged, the Buyer is obligated to reimburse Glaseksperten A/S the price of a new steel frame. This amount will be charged via a separate invoice.

8. Payment terms

- 8.1 Unless otherwise agreed in writing, Glaseksperten A/S's terms of payment are net eight days from the invoice date.
- 8.2 Glaseksperten A/S may invoice the Buyer when delivery has taken place. This also applies to partial deliveries.
- 8.3 If payment is made after the deadline, Glaseksperten A/S is entitled to charge 3% interest per month or part thereof on the sum that is overdue at any time starting from the due date.
- 8.4 On issuance of a payment reminder, a reminder fee of DKK 150 per reminder will be charged. In the event of breach of these payment terms, Glaseksperten A/S is furthermore entitled to demand reimbursement of the full extrajudicial collection costs, including attorneys' fees, from the Buyer, even if they exceed the rates established pursuant to the Danish Interest Act.
- 8.5 Glaseksperten A/S is entitled, at any time, to require that the Buyer provide, within five working days, security deemed by Glaseksperten A/S to be adequate for the Buyer's full payment obligation. Glaseksperten A/S is entitled to withhold delivery until such time as this security is provided.
- 8.6 If Glaseksperten A/S is to make partial deliveries, Glaseksperten A/S may withhold a delivery if the Buyer is in breach of its payment obligations with respect to one or more previous deliveries.
- 8.7 The Buyer may not withhold payments or deduct a counter-claim from Glaseksperten A/S's claim for payment, unless the Buyer's counter-claim is recognised in writing by Glaseksperten A/S or established by court ruling or settlement. Thus, a claim concerning a deliverable does not entitle the Buyer to withhold payment for goods already delivered. The Buyer's withholding of payment/counter-claim in this case shall constitute a serious breach.

9. Reservation of ownership

- 9.1 Glaseksperten A/S reserves the right of ownership to the deliverable in every respect. Thus, the deliverable shall remain the property of Glaseksperten A/S until the full purchase sum and any accrued costs and all other claims arising from the parties' business relationship are paid by the Buyer.

10. Delivery

- 10.1 Delivery shall take place EXW at Glaseksperten A/S's production address as stated in the order confirmation according to Incoterms 2010, unless otherwise agreed in writing. Delivery in parts is permitted. If Glaseksperten A/S, by agreement, delivers on terms other than EXW, the Buyer is obligated to undertake unloading of the deliverable upon delivery. In this case, delivery shall take place lorry-side on firm road. Unloading shall take place under any circumstances at the Buyer's expense and risk, including if the driver helps the Buyer with the unloading. If the Buyer does not accept the deliverable upon delivery, Glaseksperten A/S is entitled, at the Buyer's expense and risk, to opt to (a) unload the deliverable at the delivery site (b) charge the Buyer warehouse rent for storage of the deliverable until the Buyer provides written notice that the Buyer is ready to receive the deliverable, or (c) cancel the agreement concerning the deliverable and claim compensation from the Buyer. In addition, Glaseksperten A/S's terms "Flexible Delivery" shall apply for both "Windows and Doors" and "Glass" delivered to the Buyer.

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- 10.2 The delivery time is stated in Glaseksperten A/S's order confirmation. A postponement of the delivery time by up to 30 working days by Glaseksperten A/S shall be considered as delivered on time, and the Buyer may therefore not exercise any powers over Glaseksperten A/S on these grounds. Glaseksperten A/S shall duly notify the Buyer of changes to the delivery time.
- 10.3 If Glaseksperten A/S fails to deliver by the delivery time, the Buyer is not entitled to cancel the purchase or claim compensation for any damages or loss of profits, but the Buyer may, in writing, demand delivery by a reasonable deadline that may not be shorter than a week.

11. Delay

- 11.1 If Glaseksperten A/S fails to deliver by the final deadline established pursuant to item 10.3 above, and this failure is not owing to force majeure or any circumstance for which the Buyer is responsible, the Buyer may, through written notice to Glaseksperten A/S, cancel the agreement as regards the part of the delivery that is delayed. This exception does not apply insofar as the goods have been specifically manufactured for the Buyer, including but not limited to MicroShade, in which case the Buyer is, under all circumstances, obliged to accept delivery of the goods regardless of any delay.
- 11.2 Regardless of the reason for the delay, Glaseksperten A/S shall not be liable to pay compensation as a result of delay for either direct or indirect losses.

12. Force majeure

- 12.1 Glaseksperten A/S shall not be liable for failure to fulfil its obligations nor is it liable to pay damages to the Buyer for losses owing to unusual circumstances that prevent, render difficult or expensive fulfilment of the agreement and which are out of the control of Glaseksperten A/S, including labour disputes (strikes and lockouts), fire, war, terror, riot, internal unrest, unusual weather and natural disasters, public seizure, import or export bans, disruption of ordinary traffic, including energy supply, significant price and/or fee increases, currency fluctuations, production and delivery difficulties.
- 12.2 The stipulation in item 12.1 applies regardless of whether the obstacles to fulfilment affect Glaseksperten A/S itself or one of Glaseksperten A/S's subcontractors.

13. Claims and errors

- 13.1 Upon receipt, the Buyer must immediately, and before using the product, perform a qualitative and quantitative examination of the received goods with due care and diligence.
- 13.2 If the Buyer wishes to claim a qualitative or quantitative error, the Buyer must, in the case of visible error, immediately upon receipt and otherwise no more than five calendar days after the error has or should have been discovered, give Glaseksperten A/S written notice thereof, stating what the error is. In case of visible error, the Buyer must furthermore submit a claim in writing to the carrier before the latter leaves the delivery location. If the Buyer has or should have discovered the error, and the Buyer does not complain as stated, the Buyer may not submit a claim subsequently. Changes to or work on the sold product without Glaseksperten A/S's consent releases Glaseksperten A/S of any liability and obligation.
- 13.3 If, 12 months after handing over the deliverable, the Buyer has not notified Glaseksperten A/S that the Buyer wishes to claim an error, the Buyer shall lose the right to claim the error.
- 13.4 In the event of error that the Buyer can claim vis-à-vis Glaseksperten A/S, the latter may opt to choose to repair the product or deliver a replacement, and the Buyer may thus not cancel the purchase, claim compensation or proportionate discount in the purchase price, unless Glaseksperten A/S states that it does not wish to repair or replace the product. If Glaseksperten A/S chooses to make repairs, the Buyer shall bear the costs of the repairs, including but not limited to lifting platform and scaffolding expenses. In the event of redelivery, the replacement delivery is subject to the same terms of delivery and conditions as the original delivery.
- 13.5 The Buyer must follow any instructions from Glaseksperten A/S on the return of the defective goods to Glaseksperten A/S.
- 13.6 If Glaseksperten A/S provides repair or redelivery of the goods, the Buyer may not claim any other remedies for breach of contract. To the extent possible in accordance with the laws in effect, Glaseksperten A/S's compensation liability as a result of error is limited to an amount corresponding to the invoice sum, including environment and transport surcharges for the defective goods.
- 13.7 If only part of the delivery is faulty, the Buyer is obliged to fulfil the agreement with Glaseksperten A/S as regards the non-faulty part of the deliverable, including paying the purchase sum. Failure to do so on the part of the Buyer will be considered a significant breach.
- 13.8 If the Buyer has submitted a claim in due time but no defects are found for which Glaseksperten A/S is liable, Glaseksperten A/S is entitled to compensation for the work and the expenses it has incurred in connection with the claim.

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14. Guarantee

- 14.1 As regards double-glazed windows without built-in blinds and without other special functions supplied by Glaseksperten A/S, the rules in the Guarantee Programmes of the Danish Glass Industry (Glasindustriens Garantisikringsordning) and/or the Association of Danish Window Manufacturers (Vinduesindustriens Garantiordning), called the DVV guarantee, shall take precedence in the event of a discrepancy regarding the above stipulations in items 13.1–13.8. The coverage, terms and claim processing are stated in the two above-mentioned associations' terms, called the DVV guarantee, which can be accessed at www.glasindustrien.dk/glasindustriensgarantisikring and www.vinduesindustrien.dk.
- 14.1.1 Double-glazed windows with special functions, including but not limited to built-in blinds, Microshade, smart glass with on/off function, bullet-proof function and other safety functions, are not covered by the two above-mentioned Guarantee Programmes, called the DVV guarantee, and any guarantee for double-glazed windows with special functions must therefore be agreed in writing with Glaseksperten A/S, before any such guarantee shall be valid.

15. Product liability

- 15.1 Glaseksperten A/S's product liability is subject to the rules of Danish legislation on product liability, with the limitations stated here in item 15.
- 15.2 Glaseksperten A/S's liability shall be limited to direct loss. Under no circumstance, will Glaseksperten A/S be liable for operating loss, lost earnings, lost utility value, loss of business opportunities, lost savings or indirect loss or consequential damages in connection with product liability.
- 15.3 Glaseksperten A/S will not be liable for any damage to property that the product delivered by Glaseksperten A/S causes after the delivery and while it is in the possession of the Buyer. Nor will Glaseksperten A/S be liable for damage to products manufactured by the Buyer, or to products of which the Buyer's products are a component.
- 15.4 Glaseksperten A/S's liability shall be limited to DKK 50,000.
- 15.5 If a third party asserts a claim for compensation for product liability vis-à-vis the Buyer, Glaseksperten A/S must be informed thereof immediately. Both Glaseksperten A/S and the Buyer are mutually obligated to allow themselves to be sued in the court that hears claims for compensation made by a third party either against the Buyer or Glaseksperten A/S for product liability. However, the mutual relationship between the Buyer and Glaseksperten A/S must always be defined according to the terms of the agreement, including these Terms.
- 15.6 If product liability towards a third party is imposed on Glaseksperten A/S, the Buyer shall be obliged to indemnify Glaseksperten A/S to the same extent as the limitation of Glaseksperten A/S's liability, according to these Terms.

16. Limitation of liability

- 16.1 Under no circumstance will Glaseksperten A/S be liable for operating loss, lost earnings, lost utility value, loss of business opportunities, lost savings or indirect loss or consequential damage.

17. Partial invalidity

- 17.1 If one or more stipulations in these Terms or the parties' agreement are unenforceable because they conflict with mandatory legislation or for some other reason are not recognised, this shall not affect the validity of any other stipulation.

18. Governing law and dispute settlement

- 18.1 Disputes between the parties shall be settled according to Danish law, with the exception of Danish law's international private law rules.
- 18.2 If the Buyer is domiciled in the EU, the UK or Norway, any dispute arising as a result of or in connection with these Terms, the parties' agreement or otherwise between Glaseksperten A/S and the Buyer, including disputes concerning the existence and validity of the agreement, shall be settled in the Court in Hjørring, Denmark.
- 18.3 If the Buyer is domiciled outside of the EU or Norway, any dispute arising as a result of or in connection with the Terms, the parties' agreement or otherwise between Glaseksperten A/S and the Buyer, including disputes concerning the existence and validity of the agreement, shall be settled through arbitration by the Danish Institute of Arbitration according to the arbitration rules adopted by the Institute of Arbitration that apply on the commencement of an arbitration case. The court of arbitration shall have its seat in Hjørring, Denmark.