

Terms and conditions of glaziers and for glazing services to consumers (B2C)

Drafted by the Association of Glaziers (Ondernemers Vereniging van Glazeniers, OVG), filed at the court registrar of the District Court of Rotterdam listed under document number 10/2003.

1. Definition

A 'user', as stated in these terms and conditions, is defined as a party/parties who use these terms and conditions in one or more contractual agreements, whom shall henceforth be referred to as 'user'. A 'consumer' in the context of these terms and conditions is defined as the counterparty who is a natural person, not being a legal entity, and is not acting as a practitioner of a profession or a company, and has accepted these terms and conditions by any possible method of communication, whom will henceforth be referred to as 'counterparty' in these terms and conditions. The drafter of these terms and conditions, known as 'OVG', short for: '*Ondernemers Vereniging van Glaziers*' will be referred to as 'Association of Glaziers', for the purpose of translating these terms and conditions from the original text in Dutch to the English language.

2. General: offers and confirmation

These terms and conditions are applicable to all legal relationships in which the user is acting as a provider, advertiser and/or supplier of glass related goods and/or services, glass workings and/or processing, and installment of glass, including stained glass, tiffany glass, melting and forging of glass, and bonding (gluing) of glass, insulating glass and/or other glass workings in the broadest sense possible and/or synthetic (plastics) sheets including all (extra) materials corresponding to the above. All offers are non-committal, unless they contain a term for acceptance and/or confirmation of order.

3. Pricing

All pricing is regarded to be without VAT, unless otherwise has been previously agreed upon in writing.

4. Delivery and shipping: estimated times of arrival

The agreed upon shipping times and/or periods are for indication purposes only, thus they are not binding and do not produce strict deadlines and/or expiration dates for shipping periods.

5. Complaints

A. General

The counterparty is legally obliged to, upon arrival of the ordered goods, inspect the goods and verify if the goods are of the quality and standards contractually agreed upon, for the reason of the goods being artisan goods and/or being produced by artisan production methods, such as hand-blown glass, and/or hand-cast glass.

B. Quality of goods

Complaints by the counterparty, concerning goods not complying to the agreed upon quality, must be returned within 8 days after having received the goods by means of registered postage, for the purpose of informing the user of these terms and conditions. In the case of a dispute between the user and the counterparty the counterparty can request a verdict from the arbitration committee (see article 13).

C. Provisional clause

Under no circumstances shall the user of these terms and conditions be obliged to compensate any damage and/or losses in excess of the nominal invoice amount of the goods sold and/or services rendered by the user, for which the compensation of damage and/or loss is claimed.

6. Payment

The counterparty is legally bound to pay the invoices sent by the user within the agreed upon payment terms, starting from the invoice date, without deduction of any possible discount.

The counterparty is obligated to pay the set terms of the total amount of commission: 25 % at signing for the commission, 25 % the start of production and 50 % at transfer of the finished product. The commissioning is only valid after user has received the signed agreement of commission and receiving the agreed upon downpayment of the first term.

If the counterparty does not pay the full amount owed to the user within the agreed upon payment terms the counterparty will be legally obliged to pay interest at a rate of 1.25% of the net invoice amount for each month (30 days) that passes after the payment terms have expired, starting on the date the invoice amount is due for claiming under Dutch law.

Extrajudicial costs of the user for hiring external/third-party debt collection and/or recovery services for the purpose of collecting the amount due to the user by the counterparty, must be paid by the counterparty.

These extrajudicial costs for debt recovery and/or collection are, for the parties under these terms and conditions, presumed to be 15% of the nominal invoice fee, with a minimum of €30 including VAT. The user is not obliged to provide any kind of proof whatsoever of having made such costs.

7. Goods given for the purpose of safekeeping, forging, crafting or other forms of manipulation

The risk of damage during, or caused by, transportation of, temporary storage and/or safekeeping of, or the manipulation of the, to the producer or trader given for the purpose of forging, glass working, or other forms of manipulation and/or crafting, or for the purpose of safekeeping given, goods, which is involved completely or partially in a commission, is excluded from the liability of the user, with the exception of willful misconduct and/or negligence by the user.

8. Dimensions, weights, and sizing

Regarding the dimensions and weight of all goods, the user adheres to common practices for tolerance limits such as they are generally regarded to be industry standards for the manufacturing and production of goods to which these terms and conditions apply, as stated in these terms and conditions.

9. Force majeure

The user is not responsible for any damage and/or losses caused by circumstances that were unforeseeable at the time of entering into contract, under these terms and conditions, with the counterparty. As unforeseeable is, inter alia, defined: Lack of raw materials, factory downtime of whatsoever causation, labor strikes, exclusion or lack of laborers, quarantining, epidemics, mobilization, martial law, war, conjunction of railroads, lack of means of transportation, road blockades, and partial, late or complete breach of contract by suppliers and/or glass manufacturers and/or factories regarding any contractual terms and obligations in relation to the user, whatsoever the cause.

10. Risk distribution for commissions

The user is not responsible, nor does the user accept any liability whatsoever, for flaws or shortcomings in or to glass, lead, or copper frames, or other used materials in case of third-parties supplying new or existing stained glass, meant for installment in insulating glass. The counterparty fully accepts all liability for possible damage and/or losses that might occur by entering into contract under these terms and conditions.

The user is not responsible or liable for any minor flaws and/or shortcomings caused by cleaning or installing stained glass, produced by any third-party, between insulation glass, for the reason of the cleaning being a manual process. Regardless of the greatest possible care and attention being given whilst checking, testing, controlling, and striving towards perfect execution, a tolerance of 5% is defined as acceptable for these scenarios. The measuring distance applied is a minimum of 75 centimeters, void of direct contact with sunlight.

11. Damage and liability

During the re-leading, or rebuilding using any other type of material, of existing stained glass it is possible that, in the process of replacing broken or flawed glass panes, color or structure anomalies appear, for which the user cannot be held responsible.

The user can give no more than 5 years of warranty for condensation between the glass sheets of stained glass installed in insulating glass, with the exception of (sliding) doors and revolving windows. Patinating of lead, or other materials of which any frame is made, is only done under the condition that the counterparty fully accepts all liability for possible damage and/or losses that might occur. By entering into contract under these terms and conditions the counterparty agrees to do so.

12. Applicable law; choice of forum

Dutch law and legislation applies to all legal relations between the user and the counterparty. All disputes, which may arise between the user and the counterparty, will be settled by the relevant Dutch judge that is competent and authorized by Dutch law for the specific dispute.

13. Arbitration Committee

In the case of a legal dispute, you are required to notify both the user and the secretariat of the O.V.G. Ondernemers Vereniging van Glazeniers (Association of Glaziers) Post-office box 2075 2800 BE Gouda, the Netherlands, in writing. You will receive a complaint form with which you are to make your complaints formally known, and a copy of the quotation/order confirmation, based on which the user will make his or her position regarding the dispute known, of which you will receive a transcript. The costs of the procedure are a minimum of €150 plus the travel expenses of the expert(s), and €40 administrative fees, starting from a nominal quotation fee of €500 without VAT. In return you will receive an inspection report from an expert.

The arbitration committee consists of a single member of the Association of Glaziers and two independent experts. A complaint is only admissible if, and when, you have fully complied to the above mentioned conditions, within a time period of one month, and have notified the user, whom is a member of the Association of Glaziers, within 8 days after delivery, or within the relevant and applicable warranty period(s). After the technical inspection report has been issued by the expert(s), you may determine whether or not you still wish to move forward with the procedure to request a verdict from the arbitration committee. If you decide not to move forward, the costs of the procedure will be returned to you, minus the costs of research, travel expenses, and the administrative fees of €40. The user will be charged with these costs.

If the user gives you an offer based on the technical inspection report, and you do not find the offer reasonable and/or agreeable, you may request the committee to review the offer. If the committee nonetheless considers the offer to be reasonable and agreeable, they will reject the complaint of the counterparty, and the costs of the procedure will not be refundable.

You have the right to clarify and elaborate on the contents of your complaint during a committee hearing, in the presence of the user. The possible verdicts of the committee are:

1. Acknowledgement (in part) of your complaint and, proportional to the degree in which your complaint has been acknowledged, refunding the procedural costs, minus the costs of research, travel expenses, and the administrative fees of €40. The user will be charged with these costs.
2. Allocating a damage compensation fee due to you, and proportional to the degree of acknowledgement of your complaint, refunding the procedural costs, minus the costs of research, travel expenses, and the administrative fees of €40. The user will be charged with these costs.
3. Deciding that you must pay the unpaid amount of the invoice(s), including the procedural costs, and the costs of research, travel expenses, and the administrative fees of €40.

4. Ordering you or the user to fulfill the terms of the contract of the offer, including paying the costs of research, travel expenses, and the administrative fees of €40.
5. Nullifying the contract and refunding the procedural costs, minus the costs of research, travel expenses, and the administrative fees of €40. The user will be charged with these costs.
6. Ordering the user to execute relevant (repair) work and, proportional to the ratio in which your complaint has been acknowledged, refunding the procedural costs, minus the costs of research, travel expenses, and the administrative fees of €40. The user will be charged with these costs.

The committee has the legal authority to decide on any other kind of verdict, of which the committee is of the opinion to be reasonable and equitable for the purpose of concluding the dispute. The verdict of the committee is legally binding for both parties. There are no available methods of appeal to a higher court for verdicts of the committee. The only legal option to have a verdict of the committee reviewed is by appealing to a judge of a regular court within two months after the verdict has been sent. However, this judge may only marginally examine the verdict, as has been determined by Dutch law in article 7:904 BW. This means that the judge will only affirm, annul, or remand the verdict, if the verdict is unacceptable in regards to its contents or the process of establishment given the applicable circumstances according to the criteria of reasonability and equitability. In daily practice this would mean that the verdict of the committee will only be rejected by a regular court in case the committee has neglected and/or disregarded the fundamental norms and values of procedural law and legislation, such as the adversarial principle. Any circumstantial (human) writing- or calculation errors in the verdict may be corrected by requesting so in writing within fourteen days.

The management of the Association of Glaziers cannot be held responsible for any damage and/or losses caused by breach of contractual terms by the user. The management has but a single instrument with which to exercise authority and/or power, which is cancelling the membership of the member by means of expulsion and recovering the abovementioned costs from the member.

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Translated on the 12th of December 2016 by Derren de Jong, on behalf of De Jong Tekst en Vertaling. For all legal purposes refer to the original terms and conditions, as drafted in Dutch, filed with the court registrar of the District Court of Rotterdam, Netherlands listed under document number 10/2003. These terms and conditions are loosely translated, the user and/or the translator of these terms and conditions cannot be held responsible for any erroneous translation of the original text.