

DAW Group Terms and Conditions of Delivery and Payment

Effective September 2016

1. General provisions

- 1.1. The following Terms and Conditions apply to all of our goods and services provided to companies. They shall apply for the duration of the business relationship and thus to all future transactions, even if they are not explicitly referred to.
- 1.2. Deviating terms and conditions of the Buyer are not recognised in principle, even if they are stipulated as a condition of purchase in the Buyer's contract, unless we have given our express written consent in this regard.
- 1.3. Our current Terms and Conditions can be viewed and downloaded at any time at www.daw.de.

2. Quotations and contract conclusion

- 2.1 Our quotations are in all cases subject to change, unless specified in writing as binding and limited in time.
- 2.2. All our quotations must be in writing to be valid. A contract is deemed concluded on issuance of our order confirmation, or, in such cases where a confirmation is not issued, on delivery of the goods. Deviating agreements require our written confirmation, and such confirmation shall only apply to the individual contract to which it refers.
- 2.3. The term "as previously supplied" in an order confirmation refers solely to the specifications of the goods and on no account to the price.
- 2.4. We are entitled to refuse acceptance of a Buyer's order, if and to the extent that the insured amount provided by our trade credit insurers to insure our receivables from the Buyer would be exceeded if we accepted the order, or if, following conclusion of the contract, our deductible amount payable in the case of a default by the Buyer were to be increased by our trade credit insurers by more than 20% in relation to the deductible in place at the time of conclusion of the contract, and insofar as the reasons for this increase in the deductible lie within the scope of responsibility of the Buyer. We are further entitled to reduce or cancel existing credit limits with the Buyer if, due to reasons that lie within the Buyer's scope of responsibility, his actual or business circumstances should deteriorate to our disadvantage.

3. Delivery, acceptance, custom-made products

- 3.1. The transportation/shipment of the goods is for the account and risk of the Buyer. This takes effect on the loading of the goods (for sale by dispatch), even if freight-paid delivery was agreed. All deliveries to German islands in the North Sea and Baltic Sea are subject to delivery charges on a per-order basis. This also applies to the delivery of EPS insulation boards in scaffolding bags. The shipment weights determined in our manufacturing facility are decisive.
- 3.2. We are only liable for delivery delays if these delays are the result of wilful intent or a grossly negligent breach of duty on our part. We have no obligation of subsequent delivery of quantities not delivered at the time in question, if it would be unreasonable to complete this delivery.
- 3.3. Delivery obligations and deadlines are suspended as long as the Buyer is in default for more than 10% of his payment obligations.
- 3.4. Additional costs which we incur due to missing or incorrect delivery information from the Buyer (e.g., that unloading is only possible by crane), shall be invoiced to the Buyer.
- 3.5. If the Buyer is not present to accept the goods on delivery, we shall either unload them on the instruction and at the risk of the Buyer or, in the absence of instructions from the Buyer, we shall not unload the goods and deliver them at a later date at the Buyer's expense. If the Buyer instructs us to unload the goods, but the Buyer is not able to sign the delivery voucher, we shall forward the freight forwarder's delivery voucher to the Buyer without delay. If the Buyer does not file a complaint with regard to the delivery voucher within 24 hours of receipt, later complaints are excluded.
- 3.6. Partial deliveries are permitted unless partial fulfilment of the contract is unreasonable for the Buyer.
- 3.7. In the case of non-acceptance of orders of special colours, fillings or custom-made products, we are entitled –without prejudice to further claims – to charge flat-rate compensation for damages in the amount of 25% of the value of the goods unless the Buyer can provide

evidence that we have not incurred any damages whatsoever, or that the incurred damages are considerably lower than the amount of the flat-rate compensation.

- 3.8. Delivery is carried out by a forwarder contracted by us, using a transport route selected by us, or if applicable, from a specific warehouse designated by us.
- 3.9. Items in natural stone smaller than 0.03 m³ are in all cases subject to the minimum invoice amount of 0.03 m³, stone panels smaller than 0.25 m² will be invoiced for 0.25 m². In the case of CGL glass items, the minimum invoice amount is 0.05 m². For corner pieces and bonded items, the minimum invoice length is 0.7 m. Tolerances are as specified in the applicable VOB/C standard [*Verdingungsordnung für Bauleistungen* (Building Contract Terms)]: General Technical Terms for Building Contracts – Natural Stone Finishing – DIN norm 18332.

4. Price clause

- 4.1. In the absence of a written agreement on prices, the goods shall be invoiced at the price valid on the order date.
- 4.2. In the event that we implement a regular reduction or increase in prices after contract conclusion but before shipment, all ordered quantities not yet accepted will be invoiced using the revised prices. In the case of a price increase, the Buyer is entitled to withdraw from the contract by submitting a written declaration without delay, however no later than 14 days after receipt of notification of the price increase. Withdrawal from the contract does not affect deliveries which were made before notification of the price increase.
- 4.3. In the event of extreme fluctuations in markets or costs, we are entitled to adjust our prices accordingly, or to issue a notice of extraordinary termination of the contract. Price increases at short notice as envisioned in Section 309 (1) BGB [*Bürgerliches Gesetzbuch* (German Civil Code)] are excluded.

5. Payments and invoices

- 5.1. Payment is due on receipt of our invoice, unless agreed otherwise in writing. The deduction of any discounts is subject to prior written agreement. Deducting discount from new invoices is not permitted if any older invoices due for payment are not yet settled.
- 5.2. Objections to an invoice/credit note have to be made in writing by the Buyer within 30 calendar days of receipt. It is sufficient if the objection is sent within this period. We shall inform the Buyer of this deadline in individual cases. If no objection is filed within this deadline, the invoice/credit note is deemed as accepted. The Buyer may request a correction of the invoice/credit note even after expiry of the deadline, in such cases the Buyer must prove that the invoice/credit note is incorrect.
- 5.3. Bills of exchange are only accepted as conditional payments. We are not obligated to accept bills of exchange. However, if a bill of exchange is accepted, the bank discounting and collection fees are charged to the Buyer and must be paid immediately in cash. We do not assume any responsibility for timely submission or for the filing of protests. Bills of exchange and cheques only apply as payment after clearing. Any foreign exchange risk is for the account of the Buyer.
- 5.4. In the event that the Buyer is insolvent or in default of payment or is the subject of bill of exchange or cheque proceedings, we are entitled to make further deliveries only against advance payment and to request immediate settlement of outstanding claims. Bills of exchange provided as conditional payments may be returned and instead, cash payment or collateral in another form may be requested.
- 5.5. The Buyer is not permitted to offset our claims, unless they are offset against uncontested claims, or claims that are declared final and binding by a court ruling.
- 5.6. We are entitled to save, process and transfer data relating to the goods and payment transactions with the Buyer to the extent necessary for the normal administration of our business relations and/or the proper execution of the orders. The provisions of the Federal Data Protection Act regarding the transfer of personal data remain unaffected. The addresses of the respective data recipients are available on request.

6. Retention of title

- 6.1. All delivered goods remain our property until the complete fulfilment of all of the Buyer's obligations arising from our mutual business relations, i.e. in particular until payment of an open-account debit balance, or – if we have issued a bill of exchange with respect to the

purchase price of the goods – until such time that any recourse claims on our part are excluded.

- 6.2. The Buyer is entitled to dispose of the items subject to retention of title within the context of his proper business operations, as long as he fulfils his obligations to us within the required deadlines.
- 6.3. If our goods are mixed or processed with other movable items thereby creating a new product, the above reservation applies subject to the proviso that each part of the product created in this manner becomes our property, proportionate to the value of our goods contained in the product produced by this mixing and/or processing. In the case of the processing or redesigning of goods delivered by us, irrespective of whether this process included the addition of other materials, we are deemed to be the manufacturer of this newly-created item.
- 6.4. By accepting delivery of the goods in each case, and until he has fully settled all outstanding obligations to us in this regard, the Buyer assigns to us all claims and all ancillary rights created from the resale and/or the mixing and/or the processing of the goods belonging to us that he may hold against a buyer. We accept the assignment of such claims. The Buyer is obligated to provide all information and documents required for enforcing the assigned claims. In the event of the resale of a product of which we are deemed only part-owners (Art. 6.3), Art. 6.3 shall apply accordingly.
- 6.5. The Buyer shall inform us without delay if third parties intend to establish or enforce rights against our claims or our goods that are under retention of title.
- 6.6. Retention of title permits us to request the surrender of the reserved goods without setting a deadline in advance, if the Buyer does not provide the necessary performance.
- 6.7. If the value of the collateral provided to us exceeds our claims by more than 20%, we are obligated to release collateral to a corresponding extent, on the Buyer's request. We are entitled to select the claims which will be released.

7. Defects/Breach of duty

- 7.1. Our samples and the information contained in the applicable version of our technical specifications are decisive for the agreed characteristics of the delivered goods. Minor deviations from the above, which can result from the production process and only represent an insignificant impairment of the usability of the product, are not deemed to be a defect requiring replacement. This applies in particular to minor deviations in colour or structure. Our employees are not entitled to issue warranties for colour shades and/or structural characteristics.
- 7.2. Upon receipt, the Buyer must inspect the goods without delay and report any obvious defects immediately. If hidden defects are discovered, immediate notification in writing is required following their discovery.
- 7.3. The Buyer must notify us immediately in writing if the goods are not delivered to the agreed destination at the agreed time. Complaints regarding the non-delivery of goods that are filed at a later date shall not be recognised.
- 7.4. In the case of defects that are justified and which have been properly reported to us, we are entitled to repair the goods or to take them back and deliver defect-free goods. Should both of these methods fail to remedy the defects, the Buyer is entitled to reduce the purchase price or to withdraw from the contract.
- 7.5. The limitation period for claims based on liability for physically defective goods is one year, to the extent that the product has not been used properly within the scope of its use in building construction and that this has caused the defects. In this case, the limitation period for claims is five years.
- 7.6. Any advice we give on the technical application of the goods, verbally or in writing, is non-binding and does not imply liability on our part – also regarding any third-party property rights – and does not release the Buyer from his duty to inspect the goods to determine their suitability for their intended purposes. Should there nevertheless be any question of our liability, the provisions of this Article 7 shall apply accordingly.
- 7.7. We do not assume any liability for defects which are caused by the Buyer as a result of improper processing or processing contrary to instructions, or the use of unsuitable additives or mixtures, or combinations or other connections with products of other manufacturers which we have not expressly declared in writing to be safe.
- 7.8. In the event of any merely negligent breach of duty, our liability shall be limited to the foreseeable damage typically occurring under this type of contract.

- 7.9. Further compensation claims of the Buyer are excluded, irrespective of their legal basis, unless such claims arise from acts of malicious intent or gross negligence.
- 7.10. In the case of entrepreneur's recourse (Section 478 BGB), the Buyer may only assert claims against us insofar as the Buyer has concluded agreements with the consumer that exceed the statutory liability claims for defects. Additional claims for compensation for damages on the part of the Buyer are excluded, unless such claims arise from acts of malicious intent or gross negligence.
- 7.11. The liability limitations and exclusions set forth in these Terms and Conditions of Delivery and Payment do not apply to claims arising from loss of life, or injuries to body or health.
- 7.12. The following provisions shall apply to the supply of products made of stone or glass:
Samples are non-binding and are only intended to indicate the general appearance of the product. Hand patterns and reductions can never provide a proper representation of the differences in colour, design, texture, grain and structure. We assume no liability for differences of colour, blurry appearance, irregular vein patterns, spots, pores, lines, cavities and other typical characteristics which are commonly found in natural stone. Notches or grouting are unavoidable with coloured stone and do not represent defects. The Buyer must expect such minor variations which occur in natural stone.
The colours of glass panels are understood to be only approximations of the colours in the colour card of the RAL German Institute of Quality Assurance and Labelling, e.V. In the case of subsequent orders, minor variations in colour compared to the original delivery of glass panels may occur.
On account of the sandwich construction of our natural stone and glass panels, slight distortions may occur in the material surfaces, depending on the type of stone used, which exceed the surface tolerances stipulated in DIN norm 18332. This natural surface distortion is also not deemed to be a defect.

8. Packaging, silo and machine technology

- 8.1. Unless expressly agreed otherwise, the deliveries include packaging. Pursuant to the provisions of the German Packaging Ordinance, we are exempt from the take-back obligation for sales packaging to the extent that we are connected to nationwide disposal network. Empty sales packages are to be disposed of according to the acceptance specifications of the disposal facilities, so the materials can be recycled.
- 8.2. In the event that the Buyer requests scaffolding bag logistics for the delivery of EPS insulation boards, this shall be for the account and risk of the Buyer. We would like to expressly note that attaching such scaffolding bags can have an effect on the stability of the scaffolding. The scaffolder and his principal are responsible for verifying the suitability of the scaffolding. Liability for any damages or other claims which result from the unsuitability of scaffolding for the use of scaffolding bags, is, in accordance with Art. 7.11 expressly excluded. Materials other than EPS insulation boards or clean cuttings of the same, must not be stored in scaffolding bags.
- 8.3. The terms and conditions under which we supply the Buyer with silo and machine technology in connection with the goods are outlined separately in our "*General Terms and Conditions of Usage of Silo and Machine Technology/Containers*", which can be viewed and downloaded at www.daw.de.
- 8.4. Loaned packaging must be returned no later than four weeks from the invoice date in a clean and usable condition, at the Buyer's expense. In the event that the loaned packaging is not returned, or is not returned in a usable condition, we reserve the right to invoice the Buyer for the replacement cost. If the loaned packaging is returned later than the stipulated return date, we reserve the right to charge an appropriate fee to cover the additional usage and any wear and tear.
- 8.5. Exchangeable pallets (Euro pallets) are not deemed to be packaging, but are a means of transportation, and will be charged on delivery, a corresponding credit note will be issued if they are returned in a proper condition.
- 8.6. Portable glass racks will be subject to a rental fee of 12 euros per rack for a rental period of 10 working days. The Seller is entitled to charge the Buyer a fee of 1,200 euros for each unreturned rack. Seller and Buyer are both entitled to furnish proof that the actual damages incurred are lower or higher.
- 8.7. For other loaned items we reserve the right to charge the Buyer a one-time maintenance fee of 100 euros plus statutory VAT.

9. Supplementary agreements, place of performance and place of jurisdiction

- 9.1. The terms of the price list (e.g. regarding plant tinting shades and pallet service) apply additionally. Any additional agreements are only valid if confirmed in writing by both parties.
- 9.2. The Terms and Conditions set forth above are neither annulled by any commercial practice nor by tacit consent.
- 9.3. Should any of the above provisions become invalid, the validity of the remaining provisions shall remain unaffected.
- 9.4. The place of fulfilment for all deliveries is Ober-Ramstadt or the respective distribution centre. The place of fulfilment for all payments is our registered office in Ober-Ramstadt.
- 9.5. All legal disputes shall be governed by material German law, to the exclusion of the UN Convention on the International Sale of Goods.
- 9.6. The sole venue of jurisdiction for disputes of any kind arising from this supply relationship, including bills of exchange and cheques, is at the courts in the district of our registered office, insofar as the Buyer is a merchant, a legal entity under public law or a special fund under public law. However, at our discretion we may also initiate proceedings against the Buyer at his general venue of jurisdiction.