

Terms and Conditions of Delivery and Payment of DAW Group



DEUTSCHE
AMPHIBOLIN-WERKE
VON ROBERT MURJAHN

As at July 2018

1. General provisions

- 1.1. The following Terms and Conditions apply to all our deliveries and services to entrepreneurs. They apply for the duration of the business relationship, i.e. also for future orders, even if they are no longer expressly referred to.
- 1.2. Deviating terms and conditions of the Purchaser are as a matter of principle not accepted even if the Purchaser's order is placed subject to its terms and conditions, unless we have expressly consented to them in writing.
- 1.3. The current Terms and Conditions are at any time available on the Internet at www.daw.de.

2. Offer and conclusion of contract

- 2.1. All our offers are non-binding unless stated in writing as binding and limited in time.
- 2.2. All our offers require written form to be valid. The relevant contract is concluded by our order confirmation, or if no order confirmation is issued by delivery of the goods. Deviating agreements require our written confirmation and are binding only for the respective individual contract.
- 2.3. In the order confirmation, the note "as supplied before" relates only to the quality of the goods, but in no case to the price.
- 2.4. We are entitled to refuse to accept an order placed by the Purchaser if and to the extent that the insurance coverage provided by our trade credit insurer for securing our claims against the Purchaser would be exceeded, or if our trade credit insurer increases our self-retention in case of a possible default claim against the Purchaser by more than 20% in comparison to the self-retention applicable upon the conclusion of the contract, and the reasons for the increase in the self-retention insofar originate from the Purchaser's sphere of responsibility. We are furthermore entitled to reduce or cancel existing credit lines with the Purchaser if the Purchaser's actual or economic situation has an adverse effect on us for reasons for which the Purchaser is responsible.

3. Delivery, acceptance, custom-made products

- 3.1. Transportation/shipment of the goods is at the risk and expense of the Purchaser. This applies from loading the goods (sale by delivery), even if freight-paid delivery was agreed. For deliveries to German islands in the North Sea and Baltic Sea, we must in any case charge order-related delivery costs. This also applies to the delivery of EPS insulation boards in scaffolding bags. The weight upon shipment as established at our plant is authoritative.
- 3.2. Delivery obligations and delivery dates are suspended for as long as the Purchaser itself is in default with more than 10% of its payment obligations.
- 3.3. Additional costs that we incur due to missing or incorrect delivery information of the Purchaser (e.g. unloading possible only with crane truck) are charged to the Purchaser.
- 3.4. If the Purchaser is not available on site for acceptance upon delivery of the goods, we will either unload the goods upon instruction and at the risk of the Purchaser or, for lack of instruction, not unload but redeliver at the expense of the Purchaser. If the Purchaser instructs us to unload the goods without the Purchaser being able to countersign the delivery note, we will without undue delay submit the delivery note of the carrier to the Purchaser. If the Purchaser does not object to the delivery note within 24 hours of receipt, later objections will be excluded.
- 3.5. Partial deliveries are permissible, unless partial performance of the contract is unacceptable to the Purchaser.
- 3.6. If due to manufacturing tolerances the quantities of the delivered products slightly deviate from the quantities actually ordered, the Purchaser will not be entitled to refuse acceptance on that ground. We will charge only the quantity actually delivered.
- 3.7. In the event of non-acceptance of ordered special shades, special fillings, or custom-made products we will - without prejudice to further claims - be entitled to charge liquidated damages in the amount of 25% of the value of the goods, unless the Purchaser can prove that we suffered no damage at all or that the damage we incurred was significantly lower than the liquidated damages.
- 3.8. Delivery is made by a carrier commissioned by us and by the transportation route we choose, and - if applicable - the warehouse determined by us.
- 3.9. Workpieces made from natural stone under 0.03 sqm are always charged at 0.03 sqm, stone slabs of under 0.25 sqm are always charged at 0.25 sqm. Regarding workpieces made of GCL glass, the minimum charge unit is 0.05 sqm. For edge finishings and adhesions, the minimum charge length is 0.7m. Regarding measurement deviations, the respective applicable VOB/C shall apply: General Contract Provisions for the Performance of Construction Works - Natural Stone Works - DIN 18332.
- 3.10. Substantial and unforeseeable operational disruptions not caused by us, exceeding of delivery dates or failures on the part of our suppliers, and e.g. interruptions of operations due to shortage in raw materials, energy and manpower, lockouts, difficulties in providing means of transportation, transportation disturbances, official orders, or force majeure events occurring to us and our sub-suppliers will extend the delivery period by the duration of the incident preventing performance, insofar as they are relevant for the capability of delivering the goods. We will notify the Purchaser without undue delay of the beginning and end of such disruptions. If delivery is thereby delayed for more than one month, both the Purchaser and we will be entitled, to the exclusion of any claims for damages, to withdraw from the contract with regard to the quantity affected by the disruption to delivery. The statutory withdrawal right of the Purchaser in case of disruptions of delivery due to an incident for which we are responsible shall remain unaffected.

4. Price clause

- 4.1. If no written price agreement was made, the goods will be charged at the price as valid on the order date.
- 4.2. If we reduce or increase the prices at regular intervals after the conclusion of the contract but before dispatch, the changed prices shall apply to the quantities still to be delivered. In the event of a price increase, the Purchaser will be entitled to withdraw from the contract by written declaration submitted without undue delay, at the latest however within 14 days of receipt of the price increase notice. The withdrawal does not have any influence on deliveries made already before notification of the price increase.
- 4.3. Exceptional market and cost changes entitle us to correspondingly adjust our prices or to terminate the contract by extraordinary notice.
- 4.4. Price increases at short notice within the meaning of Section 309 (1) German Civil Code (BGB) are excluded.
- 4.5. We deliver samples at no cost only if we expressly inform the customer accordingly in writing.

5. Payment, invoice

- 5.1. Payment is due after receipt of the invoice, unless otherwise agreed in writing. Deductions of possible discounts require prior written agreement. Deducting discount on new invoices is not permissible if older due invoices are still unsettled.
- 5.2. The Purchaser has to submit any objections to the invoice/credit note in writing within 30 calendar days of receipt. Sending off within this period of time is sufficient. We point out this period of time to the Purchaser on a case-to-case basis. The omission of timely objection is deemed as approval of the invoice/credit note. The Purchaser may demand a correction of the invoice/credit note even after expiry of the time period, but in such case has to prove that the invoice/credit note is incorrect.
- 5.3. The submission of bills of exchange is not considered cash payment, and permissible as payment only upon our prior approval. Any discount expenses and bill charges are at the expense of the Purchaser.
- 5.4. If the Purchaser is in insolvency or default of payment, or if actions for the assertion of claims from bills of exchange or cheques are brought against the Purchaser, we will be entitled to make further deliveries only against prepayment and to accelerate open claims, such claims then becoming due immediately. Bills of exchange accepted on account of performance can be returned and cash payment or the provision of other collateral may be requested instead.
- 5.5. The Purchaser is not entitled to any set-off against our claims, unless the claims are undisputed or non-applicable.
- 5.6. We are entitled to store, process, and transmit data on the movement of goods and payment transactions with the Purchaser, insofar as this is required for common customer care and/or proper performance of the orders. The regulations of the Federal Data Protection Act on the transmission of data shall remain unaffected. Upon request, the addresses of the respective data recipients will be notified.

6. Retention of title

- 6.1. We retain title to all goods delivered until full settlement of all liabilities of the Purchaser under the mutual business relationships, thus in particular also until settlement of any current account balance or - if we issued a bill of exchange regarding the purchase price - until such time when a possible recourse on our part is excluded.
- 6.2. The Purchaser is entitled to dispose of our products that are under retention of title within the scope of the Purchaser's ordinary course of business for as long as the Purchaser duly complies with its obligations towards us.
- 6.3. If our goods are combined and/or mixed with moveable goods, this retention of title shall analogously apply subject to the proviso that we gain ownership of that part of the thus created product which in value corresponds to the proportion of our goods in the product created by the combination and/or mix. If the goods we deliver are processed or transformed - irrespective of whether by adding further substances - we are to be seen as producer of the newly created item.
- 6.4. Upon each acceptance of the goods, the Purchaser assigns to us all its claims against a customer resulting from the resale and/or combination and/or mixing of our goods, together with all ancillary rights, until full payment of all claims. We accept the assignment of the claim. The Purchaser is obliged to provide all information and documents required to assert the assigned claims. For the case of a resale of a product only partly owned by us (clause 6.3.), clause 6.3 shall apply analogously.
- 6.5. The Purchaser has to notify us without undue delay if third parties establish or wish to assert a right to the retained goods or our claims.

- 6.6. In the case of non-payment, the retention of title entitles us to request surrender of the retained goods also without prior setting of a time limit.
- 6.7. If the value of the collateral provided to us exceeds our claims by more than 20%, we will be obliged to release the exceeding amount upon request of the Purchaser. We are entitled to select the claims to be released.
- 6.8. If the retention of title is not valid according to the law of the country in which the delivered goods are situated, the Purchaser will upon our request be obliged to furnish collateral of equal value. If the Purchaser does not comply with this request, we may without consideration of agreed payment terms request immediate payment of all unsettled accounts.

7. Defects / breach of duty / liability

- 7.1. Our samples and the statements contained in the applicable technical information as amended from time to time shall be decisive for the agreed quality of the goods delivered. Insignificant production-related deviations which result in only insignificant impairment of use do not constitute any defect eligible for compensation. This in particular applies for minor deviations in shade and structure. Our employees are not entitled to warrant shades and/or structures.
- 7.2. The Purchaser has to examine the goods without undue delay after receipt, and must without undue delay notify any outstanding defects. Hidden defects are to be asserted in writing without undue delay after detection.
- 7.3. The Purchaser has to notify us without undue delay in writing of the non-delivery of goods to the agreed location at the agreed time. Later complaints that goods were not delivered can no longer be asserted.
- 7.4. In the event of actually existing and properly notified defects, we will at our choice be entitled to subsequent improvement or to take back the goods and replace them by goods free from defects. In the event of final failure of both types of subsequent performance, the Purchaser is entitled to reduce the purchase price or to withdraw from the contract.
- 7.5. The limitation period for claims under liability for defects of quality is one year insofar as the product has not been used according to its usual manner of use for a building and caused the defectiveness of such building. In that case, the limitation period is five years.
- 7.6. Our oral and written application instructions are non-binding and do not constitute any liability on our part - also in respect of any proprietary rights of third parties - and do not release the Purchaser from its own examination of our goods and their suitability for the intended purpose. If we might nonetheless be liable, the provisions set forth in this clause 7 shall apply analogously.
- 7.7. We do not assume any liability for defects caused by the Purchaser's improper processing or processing contrary to instructions, by use of unsuitable additives or blending, mixing or other combination with products of other manufacturers which we have not in writing expressly classified as harmless.
- 7.8. Our liability for slightly negligent breach of duty is limited to foreseeable damage typical for such kind of product.
- 7.9. Further compensation claims of the Purchaser (e.g. possible claims for compensation for consequential damage), irrespective of the cause in law, are excluded, unless based on intent or gross negligence.
- 7.10. In case of a recourse according to Section 445a German Civil Code (BGB) it is presumed that at the time the risk passed to the Purchaser no defects existed if the Purchaser in due performance of its duty according to clause 7.2. examined the goods but did not notify any defects, unless such presumption is incompatible with the type of goods or the nature of the defect.
- 7.11. In the case of a recourse claim, claims against us exist only if the Purchaser has not made any agreement with its contract partner exceeding the statutory liability claims for defects. The Purchaser has to accept being treated as if he had implemented all legally permissible contract law possibilities towards its contract partner (e.g. refusal of subsequent performance due to disproportionality, or limitation of the reimbursement of expenses to a reasonable amount). We are entitled to refuse recourse claims of the Purchaser, except for claims for redelivery of the goods, insofar as we grant the Purchaser a compensation of equal value for the exclusion of its rights. Further claims for damages of the Purchaser are excluded insofar as they are based on intent or gross negligence.
- 7.12. The limitations and exclusions of liability contained in these General Terms and Conditions of Delivery and Payment do not apply to claims based on injury of life, body or health, or due to a quality or durability guaranty assumed, or if our liability is mandatory according to statutory regulations, especially the Product Liability Act.
- 7.13. Regarding the delivery of products made of stone and glass, the following shall additionally apply: Samplings are non-binding and only generally reflect the appearance of the product. Hand samples and fragments can never show the differences in colour, mottling, structure, granulation and fabric in combination. We do not assume any liability for any colour differences, dulling, veining, spots, pores, streaks, inclusions and other natural qualities. Notches and grouting are unavoidable in multi-coloured varieties and do not amount to defects. The Purchaser has to expect the vagaries in natural stones. Colour shades of glass panels are only similar to the corresponding colour shades of the colour table issued by the RAL Deutsches Institut für Gütesicherung und Kennzeichnung e.V. In case of subsequent orders, slight colour deviations from the initially ordered glass panels can occur. Due to the sandwich construction depending on the type of stone selected, slight deformations of the surface can occur in natural stone panels and glass panels which exceed the surface tolerances specified in DIN 18332. Such natural cambering does also not constitute a defect.

8. Packaging, silo technology and mechanical engineering, return of goods

- 8.1. Unless expressly agreed otherwise, packaging is included in the delivery. According to the provisions of the Packaging Ordinance, we are not obliged to take back sales packaging insofar as we are additionally provided with a comprehensive disposal system. Emptied packaging has to be disposed of according to the acceptance specifications of the disposal facilities, and to be recycled.
- 8.2. If the Purchaser upon delivery of EPS insulation boards requests scaffolding bag logistics, this shall be at the expense and risk of the Purchaser. We expressly point out that the attachment of such scaffolding bags can influence the stability of the scaffolding. The scaffolding erector and its principal are responsible for examining the suitability of the scaffolding. Any liability for possible damage or other claims resulting from a lack of suitability of the scaffolding to bear scaffolding bags is expressly excluded - subject to clause 7.11. Materials other than EPS insulation boards or clean wastes thereof must not be stored in the scaffolding bags.
- 8.3. The conditions on which we provide the Purchaser with silo technology and mechanical engineering in connection with the goods are separately regulated in our "General Terms and Conditions of Use of Silo Technology and Mechanical Engineering/Containers" which are available at www.daw.de.
- 8.4. Returnable containers are to be returned in a clean and usable condition within a period of four weeks from the date of invoice, at the Purchaser's expense. If the returnable containers are not returned, or if they are returned in an unusable condition, we reserve the right to invoice the replacement value to the Purchaser. If the returnable containers are returned with delay, we reserve the right to charge a reasonable fee for the overdue use and possible wear and tear.
- 8.5. Exchange pallets (Euro pallets) are not considered packaging, but are means of transportation and are charged upon delivery, and credited when returned in unobjectionable condition.
- 8.6. Glass change racks are charged at a rental fee of EUR 12.00 per rack and for 10 working days in each case. We can charge EUR 1,200 to the Purchaser for each unreturned rack. Both we and the Purchaser are entitled to prove higher or lower damage.
- 8.7. For any other objects on loan, we can invoice a one-off maintenance fee of EUR 100.00 plus statutory value added tax to the Purchaser.
- 8.9. If the return of goods is agreed, this applies only to marketable goods. The return of special colour shades and custom-made products is excluded.

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

- 9.1. The provisions of the price lists (e.g. with regard to factory-made shades, pallet service) shall apply additionally. Further additional agreements are valid only when confirmed in writing by both Parties.
- 9.2. The foregoing conditions are neither cancelled by trade practice nor by tacit acquiescence.
- 9.3. A possible invalidity of any of the foregoing provisions does not affect the validity of the remaining provisions.
- 9.4. Place of performance for all deliveries is Ober-Ramstadt, or the respective delivery warehouse. Place of performance for all payments is our registered seat Ober-Ramstadt.
- 9.5. German substantive law applies for any dispute, to the exclusion of the UN Convention on the International Sale of Goods.
- 9.6. The jurisdiction of the courts at our registered seat is deemed agreed to be the sole place of jurisdiction for disputes of any kind arising from the delivery relationship, also in matters of bills of exchange and cheques, insofar as the Purchaser is a merchant, a legal person under public law or a public law separate estate. However, we can at our choice also bring action against the Purchaser at the Purchaser's general place of jurisdiction.
- 9.7. Our contractual relationship with the Purchaser is subject to confidentiality.