

# Terms of Delivery and Payment of DAW Group

## As at February 2022



### 1. General provisions

- 1.1 The following terms and conditions shall apply to all deliveries and services to business customers. They shall apply for the duration of the business relationship, i.e. also for future orders, even if a reference is no longer expressly made.
- 1.2 Any deviating terms and conditions of the Buyer shall generally not be applicable, even if they form the basis of the Buyer's order as a condition, unless the seller has expressly agreed to them in writing.
- 1.3 The current terms and conditions can be accessed on the Internet any time at [www.daw.de](http://www.daw.de).

### 2. Offer and conclusion of contract

- 2.1 All offers are subject to confirmation unless they are specified in writing as firm and limited in time.
- 2.2 All offers must be made in writing to be valid. The relevant contract shall be concluded by the Seller's order confirmation or, in the absence of such confirmation, by delivery of the goods. Any deviating agreements shall require the written confirmation of the Seller and shall only be binding for the respective individual contract.
- 2.3 The presentation of goods (items) in web stores or on other online sales platforms / web sales pages of the Seller (hereinafter collectively referred to as "Web Presence") does not constitute a legally binding offer, but a non-binding invitation to the visitor of the respective Web Presence to buy the offered goods (items). By clicking the button "ORDER NOW WITH OBLIGATION TO PAY" in the ordering process on the Web Presence, the Buyer places a binding order for the goods (items) listed on the order page under the heading SUMMARY. If offered on the Web Presence, the Buyer may also place a binding order by telephone. The Buyer's order on the Web Presence or by phone is a binding offer to conclude a purchase contract with the Seller. The purchase contract shall then be concluded, at the Seller's discretion, by delivering the ordered goods (items) to the Buyer or by expressly confirming the Buyer's acceptance of its contractual offer in text form or by sending the invoice ("Order Confirmation").
- 2.4 The remark "as usual" in the confirmation of an order shall only apply to the condition of goods, in no case to the price.
- 2.5. The Seller shall be entitled to refuse to accept an order from the Buyer if and to the extent that the sum insured provided by the Seller's trade credit insurer to secure the claims against the Buyer would be exceeded upon acceptance of the order, or if the Seller's deductible for any loss of the Buyer's claims is increased by the trade credit insurer after conclusion of the contract by more than 20% compared to the deductible at the time of conclusion of the contract and the reasons for the increase of the deductible in this respect are within the Buyer's responsibility. In addition, the Seller is entitled to reduce or cancel existing credit limits with the Buyer if the Buyer's actual or economic situation changes adversely to the detriment of the Seller for reasons within the Buyer's responsibility.

### 3. Delivery, acceptance, custom-made products

- 3.1 Unless otherwise agreed between the Seller and the Buyer, shipment shall be made in accordance with Incoterms 2020 DAP.
- 3.2 Nevertheless, delivery/shipping shall be at Buyer's expense; any delivery costs advanced by Seller shall be charged to the Buyer. For deliveries to German North Sea and Baltic Sea islands, delivery costs will be charged in any case and on an order-by-order basis. This shall also apply in case of delivery of EPS insulation boards in scaffolding bags. The dispatch weights determined in the Seller's factory shall be authoritative.
- 3.3 Delivery obligations and delivery deadlines shall be suspended as long as the Buyer is in arrears with more than 10% of his payment obligations.
- 3.4 Additional costs caused to us as a result of missing or incorrect delivery information provided by the Buyer (e.g. unloading only possible with a crane vehicle) shall be passed on to the Buyer.
- 3.5 If, at the time of delivery of the goods, the Buyer, contrary to what has been agreed, is not present to accept the goods, the goods shall either be unloaded at the Buyer's direction and risk or, in the absence of the Buyer's direction, shall not be unloaded and shall be delivered a second time at the Buyer's expense. If the Buyer instructs the Seller to

unload the goods without the Buyer being able to countersign the delivery receipt, the Seller shall promptly provide the Buyer with the carrier's delivery receipt. If the Buyer does not object to the delivery receipt within 24 hours after receiving it, later complaints shall be excluded.

- 3.6 Partial deliveries are permitted, unless the partial fulfillment of the contract is unreasonable for the Buyer.
- 3.7 Should the quantities of the products delivered differ slightly from the quantities actually ordered due to the manufacturing process, this shall not entitle the Buyer to refuse acceptance. The Seller shall invoice only the quantity actually delivered.
- 3.8 In the event of non-acceptance of ordered customized shades/tints/tones or fillings or custom-made products, the Seller shall be entitled –without prejudice to further claims– to charge a lump-sum compensation amounting to 25% of the value of the goods not accepted, unless the Buyer can prove that the Seller has not suffered any damage at all or that the damage is significantly lower than the lump-sum compensation. As a result of the customized production, additional deliveries of up to 10 % deviating from the order and to be remunerated cannot be excluded and shall be accepted by the Buyer.
- 3.9 Delivery shall be made by a carrier appointed by the Seller and on a transport route chosen by the Seller and, where applicable, from the warehouse designated by the Seller.
- 3.10. Significant, unforeseeable operational disruptions, missed delivery deadlines or delivery failures on the part of its suppliers for which the Seller is not responsible, as well as e.g. operational disruptions due to a shortage of raw materials, energy or labor, strikes, lockouts, difficulties in procuring means of transport, traffic disruptions, orders by public authorities, pandemics/epidemics or cases of force majeure on the part of the Seller and its sub-suppliers shall extend the delivery period by the duration of the impediment to performance, insofar as they are of significance for the ability to deliver the goods. The Seller shall notify the Buyer immediately of the beginning and end of such impediments. If, as a result, delivery is delayed by more than one month, both the Buyer and the Seller shall be entitled to withdraw from the contract with respect to the quantity affected by the disruption in delivery, excluding any claims for damages. The Buyer's statutory right of withdrawal in the event of delivery disruptions due to a circumstance for which the Seller is responsible shall remain unaffected.

### 4. Price

- 4.1 If no written price agreement has been made, the goods shall be invoiced at the price valid on the date of the order.
- 4.2 Should the Seller reduce or increase prices on a periodic basis after conclusion of the contract but before shipment, the changed prices shall be charged for the quantities still to be received. In the event of a price increase, the Buyer shall be entitled to withdraw from the contract by written notice without undue delay, but no later than 14 days after receipt of the notice of the price increase. The withdrawal shall not affect deliveries which have already been made prior to the notification of the price increase.
- 4.3 Extraordinary market and cost changes shall entitle the Seller to adjust the prices accordingly or to terminate the contract extraordinarily.
- 4.4 Short-term price increases in the sense of Section 309 No. 1 of the German Civil Code (BGB) shall be excluded.
- 4.5 The Seller will only deliver samples free of charge if he expressly informs the Buyer of this in writing.

### 5. Payment, invoice

- 5.1 Payment shall be due upon receipt of the invoice unless otherwise agreed in writing. The deduction of any cash discounts shall require prior written agreement. A discount on new invoices shall be inadmissible insofar as older invoices due are still unpaid.
- 5.2 Objections to the invoice/credit note must be made by the Buyer in writing within 30 calendar days of receipt of the same. Sending the notice within this period shall be sufficient. The Seller will inform the Buyer of this deadline in each case. Failure to object in due time shall be deemed approval of the invoice/credit note. The Buyer may demand correction of the invoice/credit note even after expiry of the deadline, but must then prove that the invoice/credit note is incorrect.

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- 5.3 The submission of bills of exchange is not deemed to be a cash payment and is only permissible with our prior consent on account of payment. Discount charges and bill of exchange charges shall be borne by the Buyer.
- 5.4 If the Buyer is insolvent or in default of payment, the Seller shall be entitled to make further deliveries only against advance payment and to immediately declare outstanding claims due.
- 5.5 The Buyer shall not be entitled to set off any claims against claims of the Seller, unless such claims are undisputed or have been established by a non-appealable court decision.
6. **Processing and disclosure of data**  
**The Seller shall be entitled to store and process data relating to the goods and payment transactions with the Buyer to the extent that this is necessary for the usual support and/or the proper execution of the orders. In doing so, the Seller - with the consent of the Buyer given by placing the order - discloses or shares the data generated and collected by the business transaction (including personal data) for a specific purpose, in particular within the DAW Group (the companies of which are listed at [www.daw.de/datenschutzerklaerung](http://www.daw.de/datenschutzerklaerung)). The disclosure of data such as company and address data as well as information about the legal transactions carried out takes place for the fulfillment of service obligations as well as for the improvement of service offers to the Buyer. The Buyer shall additionally observe the Seller's business partner information on data processing (also available at [www.daw.de/datenschutzerklaerung](http://www.daw.de/datenschutzerklaerung)).**
7. **Retention of title**
- 7.1 All goods delivered shall remain the property of the Seller until all liabilities of the Buyer arising from the mutual business relations have been settled in full, and thus in particular also until a current account balance has been settled.
- 7.2 The Buyer shall be entitled to dispose of the reserved property within the scope of its ordinary business operations as long as it meets its obligations towards the Seller in due time.
- 7.3 In the event that the Seller's goods are combined and/or mixed with movable goods, this reservation shall apply accordingly with the understanding that such part of the product thus created shall become the property of the Seller which corresponds to the proportion of the value of the Seller's goods in the product created by the combination and/or mixing. In the event of processing or transformation of goods delivered by the Seller, irrespective of whether such processing or transformation is carried out with the addition of further materials, the Seller shall be deemed to be the manufacturer of the newly created object.
- 7.4 Upon the respective acceptance of the goods, the Buyer shall assign to the Seller, together with all ancillary rights, its claims against a purchaser arising from the resale and/or combination and/or mixing of the goods belonging to the Seller until all claims have been paid in full. The Seller accepts the assignment of the claim. The Buyer shall be obliged to provide all information and documents necessary for the assertion of the assigned claims. In the event of resale of a product only partly belonging to the Seller (Clause 7.3), Clause 7.3 shall apply correspondingly.
- 7.5 The Buyer shall notify the Seller without delay if third parties wish to establish or assert rights to the Seller's reserved goods or to its claims.
- 7.6 The retention of title entitles the Seller to demand the surrender of the goods subject to retention of title even without setting a deadline in advance in the event of non-performance.
- 7.7 If the value of the securities given to the Seller exceeds the claims by more than 20% in total, the Seller shall be obliged, to that extent, to release them at the Buyer's request. The Seller shall be entitled to select the claims to be released.
- 7.8 If the retention of title is not effective under the law of the country in which the delivered goods are located, the Buyer shall provide equivalent security at the Seller's request. If he does not comply with this request, the Seller may demand immediate payment of all unpaid invoices without regard to agreed payment terms.
8. **Defects / breach of duty / liability**
- 8.1 As to the agreed quality of the delivered goods, the samples of the Seller and the statements contained in the respective valid technical information shall be decisive. Insignificant deviations therefrom, which are production-related and only constitute an insignificant impairment of usability, shall not constitute a defect eligible for compensation. This applies in particular to minor deviations in color and structure. The Seller's employees are not entitled to guarantee hues and/or structures.
- 8.2 The Buyer shall inspect the goods immediately upon receipt and shall give notice of any obvious defects without delay. Hidden defects shall be claimed in writing immediately after their discovery.
- 8.3 The Buyer shall immediately notify the Seller in writing of the non-delivery of the goods to the agreed place at the agreed time. Later complaints that the goods have not been delivered cannot be made.
- 8.4 In the event of justified defects duly notified, the Seller shall be entitled, at its choice, to either remedy the defect or take back the goods and redeliver goods free of defects. In the event of the final failure of both types of remediation, the Buyer shall be entitled to reduce the purchase price or to withdraw from the contract.
- 8.5 The limitation period for claims based on liability for material defects shall be one year, unless the product has been used for a building in accordance with its normal use and has caused the defectiveness of such building. In this case the limitation period shall be five years.
- 8.6 The Seller's oral and written advice on technical applications shall not be binding and shall not constitute any liability - also with regard to any third-party property rights - and shall not release the Buyer from its own examination of the goods as to their suitability for the intended purposes. Should liability on the part of the Seller nevertheless come into question, the provisions of this Clause 8 shall apply correspondingly.
- 8.7 The Seller shall not be liable for defects caused by the Buyer as a result of improper processing or processing contrary to the instructions, use of unsuitable additives or mixing, blending or other combination with products of other manufacturers which have not been expressly declared unproblematic by the Seller in writing.
- 8.8 For each case of merely negligent breach of duty, the Seller's liability shall be limited to the foreseeable damage typical for the contract.
- 8.9 Further claims for compensation by the Buyer (e.g. any claims for compensation for a consequential damage caused by a defect), irrespective of their legal grounds, shall be excluded unless they are due to intent or gross negligence.
- 8.10. In the event of recourse pursuant to Section 445a of the German Civil Code (BGB), it shall be presumed that there were no defects at the time of the passing of risk to the Buyer if the Buyer dutifully inspected the goods in accordance with Section 8.2 but did not report any defects, unless such presumption is incompatible with the nature of the goods or the defect.
- 8.11. In the event of a right of recourse, claims against the Seller shall only exist if the Buyer has not entered into any agreements with its contractual partner that go beyond the statutory claims for liability for defects. In relation to the Seller, the Buyer must allow to be treated as if the Buyer had implemented all legally permissible contractual options with respect to its contractual partner (e.g. refusal of supplementary performance due to disproportionality or limitation of the reimbursement of expenses to a reasonable amount). The Seller shall be entitled to reject any recourse claims of the Buyer with the exception of claims for new delivery of the goods, provided that the Seller grants the Buyer an equivalent compensation for the exclusion of its rights.
- 8.12. The limitations and exclusions of liability contained in these Terms of Delivery and Payment shall not apply to claims for injury to life, limb or health or claims resulting from a guarantee of quality or durability assumed by the Seller or if liability of the Seller is mandatory under statutory provisions, in particular under the Product Liability Act.
- 8.13. Samples of products made of stone and glass are not binding and only generally show the appearance of the product. Prototypes / working models and fragments can

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never represent the differences in color, pattern, structure, grain and texture.

Hues of glass panels are only similar to the corresponding hues of the RAL (Deutsches Institut für Gütesicherung und Kennzeichnung e.V.) color table.

Natural bulging of natural stone and glass panels, in particular due to a so-called sandwich construction, also does not constitute a defect.

### 9. Packaging, return of goods

- 9.1 Unless expressly agreed otherwise, delivery including packaging shall be made in accordance with the provisions of the German Packaging Act (Verpackungsgesetz). The Seller shall not be obliged to take back sales packaging if the Seller is affiliated to widely available disposal systems. Emptied sales packaging shall be disposed of in accordance with the acceptance specifications of the disposal institutions and shall be recycled.
- 9.2 If the Buyer requests scaffolding bag logistics for the delivery of insulation boards, this shall be at the expense and risk of the Buyer. The attachment of such scaffolding bags may have an impact on the stability of the scaffolding. The Seller is not responsible for checking the suitability of the scaffolding. Liability for any damage or other claims resulting from the unsuitability of the scaffolding for the scaffolding bags is expressly excluded. Materials other than insulation boards or clean offcuts thereof may not be stored in the scaffolding bags.
- 9.3 Returnable packaging shall be sent back in a clean and usable condition within a period of four weeks from the date of invoice at the expense of the Buyer. If the returnable packaging is not returned or is returned in an unusable condition, the Seller reserves the right to charge the Buyer for the replacement value. In the event of late return of the returnable packaging, the Seller reserves the right to charge a reasonable fee for overdue use and any wear and tear.
- 9.4 Exchange pallets are not packaging but means of transport and will either be charged upon delivery and credited upon return in good order and condition or settled by means of a pallet account.
- 9.5 If the return of goods is agreed, this shall only apply to marketable goods. The return of customized colors and custom-made products is excluded.

### 10. Additional agreements, place of performance and place of jurisdiction

- 10.1 The provisions of the price lists (e.g. with regard to factory tints/shades, pallet service) shall apply as a supplement. Further additional agreements shall only be valid if they are confirmed in writing by both contracting parties.
- 10.2 The foregoing terms and conditions shall not be superseded by any trade custom or by tacit acquiescence.
- 10.3 The possible invalidity of one of the above conditions shall not affect the validity of the other conditions.
- 10.4 The place of performance for all deliveries shall be Ober-Ramstadt or the respective distributing warehouse. The place of performance for all payments shall be Ober-Ramstadt.
- 10.5 Any disputes shall be governed by German substantive law, excluding the UN Convention on Contracts for the International Sale of Goods.
- 10.6 The sole place of jurisdiction for disputes of any kind arising from the delivery relationship shall be the courts at the Seller's place of business, provided that the Buyer is a businessman (*Kaufmann*) within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law. However, the Seller may, at its choice, also sue the Buyer at the Buyer's general place of jurisdiction.
- 10.7 The contractual relationship of the Seller with the Buyer shall be subject to confidentiality.