

**General Terms and Conditions of Sale and Delivery  
of Sächsische SANDSTEINWERKE GmbH (valid from 01.07.2013)**

**1. Scope of application and power of representation**

- 1.1. Our General Terms and Conditions of Sale and Delivery apply exclusively. We do not recognise any conflicting or deviating terms and conditions of the customer unless we have expressly agreed to their validity in writing. Our General Terms and Conditions of Sale and Delivery shall also apply exclusively if we carry out the delivery to the customer without reservation in the knowledge of conflicting or deviating terms and conditions of the customer. They shall only apply to entrepreneurs within the meaning of §§ 14, 310 I BGB (German Civil Code) and shall also apply to all future transactions with the customer.
- 1.2. Customers within the meaning of the Terms and Conditions are both consumers and entrepreneurs. Consumers within the meaning of the Terms and Conditions are natural persons with whom business relations are entered into without a commercial or independent professional activity being attributable to them. Entrepreneurs within the meaning of the Terms and Conditions are natural or legal persons or partnerships with legal capacity with whom business relationships are entered into and who act in the exercise of a commercial or independent professional activity.
- 1.3. All agreements made between us and the customer for the execution of this contract are set out in writing in this contract. No verbal collateral agreements have been made.
- 1.4. Our employees are not authorised to represent us, unless otherwise stipulated by law or our express declarations. Verbal promises made by our employees who are not authorised to represent us or collateral agreements and arrangements made with them are invalid without our written confirmation.

**2. Offer, order confirmation, offer documents**

- 2.1. Our offer/order confirmation is based on the calculation documents provided by the customer (e.g. drawings, dimensions).
- 2.2. Our offer is non-binding. By accepting the offer, the customer makes a binding declaration to request the ordered services. We are entitled to accept the contractual offer contained in the order within two weeks of receipt. The order confirmation shall be made in writing.
- 2.3. The conclusion of the contract is subject to correct and timely delivery by our suppliers. This shall only apply in the event that we are not responsible for the non-delivery, in particular if a congruent hedging transaction has been concluded with our supplier. The customer shall be informed immediately of the non-availability of the services. The consideration will be refunded immediately.

**3. Remuneration and due date**

- 3.1. The agreed prices are binding for the duration of the contract. Unless otherwise agreed, our prices are ex works excluding packaging and shipping costs. Statutory VAT is not included in our prices; it will be shown separately on the invoice at the statutory rate.
- 3.2. The individual prices are always decisive, even if a total price is stated in the offer and the contract has been concluded with the total price.
- 3.3. As our offer prices are based on today's production costs, we reserve the right to increase prices appropriately in the event of cost increases, in particular due to collective labour agreements or increases in the price of materials.
- 3.4. Workpieces with a volume of less than 0.025 m<sup>3</sup> are always invoiced in full at 0.025 m<sup>3</sup>, slabs of less than 0.25 m<sup>2</sup> at 0.25 m<sup>2</sup>.
- 3.5. We are entitled to issue interim invoices for partial services rendered in the amount of the partial service rendered. The purchase price is due for payment upon delivery of the object of purchase, unless otherwise stated in our order confirmation or the invoice.
- 3.6. The customer is obliged to pay within 12 working days of the due date and receipt of the invoice. After expiry of this period, the customer shall be in default of payment. Decisive for the timeliness of the payment is the credit entry on our account.  
During the period of default, a consumer must pay interest on the debt at a rate of 5 percentage points above the base rate.  
During the period of default, an entrepreneur shall pay interest on the debt at a rate of 8 percentage points above the base interest rate. We reserve the right to prove and assert a higher damage caused by default against the entrepreneur.
- 3.7. The customer shall only have a right of set-off if his counterclaims have been legally established or recognised by us. The customer may only exercise a right of retention if his counterclaim is based on the same contractual relationship.
- 3.8. In the event of free cancellation by the customer, it is assumed that the remuneration to be paid by the customer amounts to 10% of the agreed total price. Both we and the customer are free to prove a higher or lower claim to remuneration.  
The above provision also applies in the event of partial cancellation for the remuneration of the cancelled portion of the service
- 3.9. If we accept bills of exchange on the basis of a special agreement, the discount and bank charges shall be borne by the customer. The term of the bill of exchange may not exceed 90 days. Payments by bill of exchange or cheque shall only be deemed to be fulfilment upon encashment. We are not liable for the timely presentation and protest of bills of exchange in secondary locations and abroad.

#### **4. Delivery times**

- 4.1. Delivery periods shall commence upon conclusion of the contract. In addition, the start of the delivery periods requires the clarification of all technical questions. If the customer is required to procure documents, authorisations and approvals for delivery, the delivery period shall not commence until the customer has fulfilled these cooperation obligations. The same shall apply if, according to the agreement with the customer, a down payment is to be made by the customer. The delivery periods shall be extended appropriately in the event of delays in delivery due to force majeure.
- 4.2. We shall be liable in accordance with the statutory provisions insofar as the delay in delivery for which we are responsible is due to the culpable breach of a material contractual obligation. In this case, however, our liability for damages shall be limited to the foreseeable, typically occurring damage. Otherwise, in the event of a delay in delivery, we shall be liable for each full week of delay within the scope of a lump-sum compensation for delay amounting to 3% of the net delivery value, but not more than 15% of the net delivery value.
- 4.3. Partial deliveries are permissible, provided they are not unreasonable for the customer.

#### **5. Place of fulfilment, transport, transfer of risk and acceptance**

- 5.1. Unless otherwise stated in the order confirmation, delivery "ex works" (place of fulfilment) is agreed. If the goods are transported to a place other than the place of fulfilment, the risk shall pass to the customer at the start of the loading process, irrespective of by whom or on whose behalf the transport is carried out.
- 5.2. The customer shall bear the costs of transport. Unless otherwise agreed, the route and means of despatch shall be at our discretion.
- 5.3. If delivery "free construction site" or "free warehouse" has been agreed, this means without unloading by the supplier. The risk is transferred ex works.
- 5.4. Insofar as our contractual services include the execution of relocation and assembly services, the risk shall pass to the client upon acceptance of our services.

If in this case one of the parties requests a formal acceptance procedure, this must be carried out within 12 working days of the request. The service shall be deemed to have been accepted if the customer does not comply with our repeated request for acceptance, specifying an acceptance date that is at least 12 working days after receipt of the request letter, and if the repeated request refers to the fiction of acceptance if we fail to meet the new acceptance date.

Insofar as we only owe the delivery without the realisation of relocation and assembly services of the parts to be manufactured, the following shall apply:

If the buyer is an entrepreneur, the risk of accidental loss and accidental deterioration of the goods shall pass to the buyer upon handover or, in the case of sale by dispatch, upon delivery of the goods to the forwarding agent, carrier or other person or organisation designated to carry out the shipment.

If the buyer is a consumer, the risk of accidental loss and accidental deterioration of the item sold shall not pass to the buyer until the item is handed over, even in the case of sale by dispatch.

- 5.5. If the buyer is in default of acceptance, this shall be deemed equivalent to handover.

#### **6. Inspection of the goods and liability for defects**

- 6.1. The customer's rights in respect of defects presuppose that he has properly fulfilled his obligations to inspect and give notice of defects in accordance with § 377 HGB (German Commercial Code). Notifications of defects must be made in writing.
- 6.2. If there is a defect in the delivery, the customer is entitled to choose between subsequent fulfilment in the form of rectification of the defect or delivery of a new defect-free item. We are entitled to make two attempts at subsequent fulfilment. If the subsequent fulfilment fails, the customer is entitled, at his discretion, to demand withdrawal or a reduction in price.
- 6.3. Our liability for damages shall be governed by the statutory provisions. Insofar as we are not accused of wilful breach of contract, our liability for damages shall be limited to the foreseeable, typically occurring damage. This shall also apply in the event of culpable breach of material contractual obligations. Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability under the Product Liability Act. Our liability is otherwise excluded.
- 6.4 The limitation period for claims for defects is 12 months, calculated from the transfer of risk. If the delivered goods have been used for a building in accordance with their normal use and have caused its defectiveness, the statutory limitation period of § 438 I No. 2 b BGB shall apply.

#### **7. Retention of title**

- 7.1. In the case of contracts with consumers, we reserve title to the goods until the purchase price has been paid in full.
- 7.2. In the case of contracts with entrepreneurs, we reserve title to the goods until all claims arising from an ongoing business relationship have been settled in full.
- 7.3. The customer is obliged to inform us immediately of any access by third parties to the goods, for example in the event of seizure, as well as of any damage to or destruction of the goods. The customer must notify us immediately of any change of ownership of the goods or of his own change of residence.

7.4. We are entitled to withdraw from the contract and demand the return of the goods if the customer acts in breach of contract, in particular in the event of default in payment or a breach of the obligation under clause 3 of this provision.

7.5. The entrepreneur is authorised to resell the goods in the ordinary course of business. He hereby assigns to us all claims in the amount of the invoice amount which accrue to him against a third party as a result of the resale. We accept the assignment. After the assignment, the entrepreneur is authorised to collect the claim. We reserve the right to collect the claim ourselves as soon as the entrepreneur does not properly fulfil his payment obligations and is in default of payment.

The handling and processing of the goods by the entrepreneur shall always be carried out in our name and on our behalf. If the goods are processed with items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the goods supplied by us to the other processed items. The same shall apply if the goods are mixed with other items not belonging to us.

## **8. Cancellation and liability restrictions**

8.1. Due to a breach of duty outside the claims and rights of the customer due to a defect, the customer can only terminate the contract if the contractor is responsible for the breach of duty.

Claims arising from breaches of duty that do not justify claims and rights due to a defect shall lapse within two years of acceptance of the services.

If the customer wishes to terminate the contract due to a legal or material defect after subsequent fulfilment has failed, he is not entitled to any additional claim for damages due to the defect.

In the event of slightly negligent breaches of duty, our liability shall be limited to the foreseeable, contractually typical, direct average damage according to the type of service. This also applies to slightly negligent breaches of duty by our legal representatives or vicarious agents.

We shall not be liable to entrepreneurs for slightly negligent breach of insignificant contractual obligations.

8.2. The above limitations of liability do not apply to claims of the customer arising from product liability. Furthermore, the limitations of liability shall not apply in the event of physical injury or damage to health attributable to us or in the event of loss of life of the customer.

## **9. Pattern and material properties**

9.1. The samples provided by us are orientation samples. In the case of natural stone, the delivered goods may deviate from the samples provided in terms of colour, structure and texture.

9.2. The colour, structure and texture of a rock are determined by the different minerals and their spatial distribution of which the rock is composed. The distribution of individual minerals in the rock can vary greatly due to the natural formation process. Colour differences in natural stone are therefore inherent to this natural product.

9.3. Natural stone deliveries are selected to match the grain and colour. Deviations in grain, colour and structure as well as stains, veins, pores, open patches, chips and shading are reserved insofar as they lie within the natural range of the stone and are customary in the trade.

9.4. We reserve the right to carry out repairs to natural stone prior to delivery, insofar as these are customary in the trade.

9.5. We reserve the right to make customary dimensional deviations.

## **10. Place of fulfilment of payment, place of jurisdiction and applicable law**

10.1. The place of fulfilment for the customer's payment obligation is Pirna.

10.2. The place of jurisdiction is Pirna. However, we are also entitled to sue the customer at the court of his place of residence.

10.3. The contractual relationship shall be governed by German law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

## **11. Final provisions**

Should individual provisions of the contract with the customer, including these General Terms and Conditions, be or become invalid in whole or in part, or should the contract contain a loophole, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision whose economic effect comes as close as possible to that of the invalid provision. The loophole shall be replaced by the provision that would have applied if the parties had considered the unregulated circumstances.