

General Business Terms of Zeidler & Wimmel Natursteinindustrie GmbH & Co. KG, Kirchheim / Ufr. Germany

§ 1 – Applicability of Business Terms

1)
Our deliveries, supplies and bids are made exclusively on the basis of these terms and conditions of business. They therefore apply to all future business relations as well, even if this is not expressly agreed to. Contracts can only be concluded by our written confirmation of an order.

2)
Other conditions and business terms of the client shall not form part of a contract even if we do not expressly object to them. They are only binding individually if they have been agreed to in writing with our branch office. However, such agreement may only apply in specific, individual cases and is not binding for any future transactions.

Order-confirmations by the client with unilateral reference to his own Business and Purchasing Terms shall not be binding and shall be considered invalid.

3)
Oral agreements, or agreements made by telephone or in telegraphic form are only binding if they are confirmed and accepted in writing by us.

4)
The acceptance, execution and invoicing of construction contracts, including fixing- and installation works, are governed by the German General Contract Regulations (VOB Parts A and B in their latest versions) and Part C of the German Technical Regulations acc. German Standards DIN 18332. Works for natural stone facade cladding are furthermore governed by the latest versions of German Standards DIN 18515 and 18516. However, invoicing will be based on the drawings prepared by us and the volume of natural stone surfaces derived from these or according to local measurement.

Stone slabs / stone panels with surface areas of less than 0.25 square metres will be measured at a minimum rate of 0.25 square metres and will be invoiced as such, and stone elements below 0,030 cbm Volume shall be measured as 0,030 cbm and be invoiced accordingly.

The customary tolerances shall be allowed. In the case of stone elements and stone panels the allowed tolerances are in accordance with German ATV DIN 18332, Item 2.1.2. as follows:

- a) thickness:
- up to thickness of panels of 30mm +/- 10 %
 - thickness of panels more than 30 up to 80 mm +/- 3mm
 - thickness of panels above 80mm +/- 5mm
 - in case of combined panels the visible thickness at junction +/- 0,5mm
 - in case of combined stone elements the visible thickness at junction +/- 1 mm
- b) length:
- up to length of 60 cm +/- 1mm
 - length more than 60 cm +/- 2mm
 - at thickness of more than 80 mm +/-5mm
- c) at angle
- at a given angle related to corner length 0,2 % up to max. 2 mm

The above tolerances are not applicable in case of split panels and split stone elements and well as panels and stone elements edged manually.

Natural cut stone does not make a facade waterproof. Waterproofing works are to be carried out by the Client as the fixing is carried out at all times on areas or ground prepared by the Client.

§ 2 - Bids and Conclusion of Contracts

1)
Amendments, corrections or ancillary agreements to our bids require written or telegraphic confirmation to become valid.

Our bids for natural stone works are based on the tender documentation provided by the client to the extent accepted by us. We shall therefore be entitled to arrange appropriate price adjustments if the actual conditions found deviate from the information given to us under the tender documentation.

2)
Our drawings, illustrations, measurements, weights or other data are only binding if they are specifically agreed to in writing between the parties.

3)

§ 3 - Prices and Ancillary Costs

1)
All prices contained in our bids are net prices and do not include Value Added Tax, which the client is required to pay as per applicable percentage defined by law. In case of supply-contracts the prices are quoted ex works (which is the Contractual delivery location) without cost of packing and forwarding.

2)
Unless otherwise agreed to in writing, the prices in our bids for commercial and private clients shall be binding for 30 days from receipt of bids.

3)
If the agreed delivery dates and schedules are postponed by the client, we are entitled to charge for any price increases occurring after the originally agreed dates.

4)
An increase in transport costs due to a retrospective alteration of the type of packing, transport route, destination or any other similar circumstances affecting the freight costs, for which we are not responsible, is to be borne by the client.

§ 4 - Transport and Transfer of Risk

1)
In cases of delivery ex-works the risk of destruction, deterioration and transport is transferred to the client as soon as the goods have left our factory or business premises.

If a supply is agreed "free site" or "free storage" it is understood without unloading by the supplier/ forwarder. Also in this case the transfer of risk shall be ex works.

Transport insurance and other insurances of the goods or products delivered ex our premises are within the sole responsibility of the client.

2)
If the delivery of the goods is held up for reasons for which we are not responsible, the risk passes to the client when we notify him that we are ready to deliver.

3)
The choice of transport-route and mode is at our option unless otherwise agreed.

§ 5 - Delivery and Work Schedule

1)
Binding delivery and work schedules must be mutually agreed in writing. Should we fail to adhere to an agreed delivery date, § 10 of these Business Terms shall apply in respect of damages or claims, regardless of the legal basis. In order to fulfil our commitments from the delivery schedule it is a precondition that all technical matters are clarified in time. Should we require from the client for the supplies documentation, permits, releases/approval of any kind, then the delivery periods will only start from the date when the client has met his support obligations. Partial deliveries are permitted if reasonably convenient for the client.

2)
In case of delays in delivery, or delay in work schedules due to Acts of God or other events, which make delivery for us considerably more difficult or impossible, such as subsequent difficulties in obtaining materials, plant interruptions, strikes, lock-outs, shortages of raw materials, war, embargos, intervention by state authorities or similar circumstances due to Acts of God, even if these occur with our suppliers or their subcontractors, we have the right to an appropriate extension of time. During periods of such hindrances we shall be entitled to suspend deliveries or execution of works temporarily. An appropriate extension of time will be granted to us under consideration of the agreed remaining delivery period, calculated from the day when the cause for the disruption has been removed.

§ 6 – Warranty Period

1)
The warranty period for executed construction contracts, including fixing- and installation works, shall be calculated according to Parts A, B and C of the German General Contract Regulations for Construction works (VOB). In case of sales or pure supply-contracts the warranty with regard to the quality of the materials shall be in accordance with Part C of VOB; otherwise the German Commercial Code (HGB) will apply.

2)
In the case of supplies and sales the client undertakes to check goods received immediately upon receipt and, in the case of obvious defects, to notify the supplier immediately, irrespective of whether the defect is due to quality, quantity or any other reasons. The notification must be lodged in writing and shall be submitted to us at maximum within 14 days following receipt of the goods.

3)
Stone samples related to agreed supplies and submitted by us to the client can only show the general colour and structure of the stones. The following items do not constitute a valid cause for objection of actual supplies by the client: Natural variations in the colour, grain, structure, spots, veins, pores, open areas, inclusions, shades and other natural variations in natural stone. Open spots properly cemented and levelled and similar, professionally executed surface corrections do not constitute a defect.

4)
The fitness for use of any raw materials delivered by us and processed further by the client is at the exclusive expense and risk of the client.

5)
After the expiry of the deadline described in Sub-Paragraph No. (2) above, the goods will be deemed to have been accepted by the client. Any warranty claims on the part of the client for obvious defects will therefore be deemed to have lapsed.

6)
The warranty period starts from the date of delivery. Should maintenance or repair instructions of our company not be adhered to, or in case that alterations to the materials should be made or should consumable items/ cleaning materials be used which do not correspond to the original supplier-specifications, we shall not be liable for any resulting damage.

7)
We shall only warrant in respect of latent/ hidden defects, including those not discovered in a careful examination within the period mentioned in Sub-Paragraph No. (2) above, if such defects are reported in writing immediately within 14 days after being discovered.

8)
The warranty for all defects occurring after the processing or installation of our materials by third parties or the client himself is not applicable if processing or installation has not been properly or professionally carried out.

9)
Defects acknowledged by us will, at our option, be remedied by replacement with fault-free materials of the type ordered or by means of repair. Consequential damages arising from the further processing of faulty materials as delivered, will not be reimbursed by us.

10)
If a replacement delivery or remedy fails within an appropriate period after receipt of the valid notification of defects, the client may only demand a price reduction or compensation.

11)
Information given by us concerning the product supplied, the intended use, weights, nature and the like of products are only descriptions or markings and are not assured characteristics. If our deliveries include official test certificates, e.g. from the German Landesgewerbeanstalt (= public Material Testing Laboratory) on compressive resistance, modulus of rupture, flexural strength or the like, the recorded test results constitute no assured characteristics by us for the entire delivery, as only individual samples have been taken and tested.

§ 7 - Default of Acceptance

If the client gets into delay in receiving delivery of goods or services, we are entitled to set a further deadline of 14 days, after the expiry of which we may withdraw from the contract or demand compensation for non-fulfilment.

§ 8 - Payment

1)
Our prices in bids, confirmations of orders and invoices are quoted in Euro, provided no other currency has been agreed for payment and billing. Unless otherwise agreed our prices are valid for supplies ex works without cost of packing or transport/forwarding. In case of supplies of materials the purchase price is due for payment upon takeover of materials, respectively prior to collection from our factory/works, unless otherwise agreed.

2)
The acceptance of bills of exchange or cheques requires special agreement. Cost of bank charges, discounting fees and exchange tax shall be borne by the client. Such costs are to be reimbursed to us together with the invoice amount. We shall accept no responsibility for timely presentation, protest, notification and return of a bill of exchange in the case of non-redemption.

3)
Payments for the performance of construction contracts/ stone works are to be made by the client pursuant to Part B of the German VOB-Regulations unless otherwise agreed.

4)
All other invoices for supplies are payable in full without deduction within 10 days following receipt.

5)
If the due date for payment is exceeded by the client, we reserve the right to demand from commercial clients the payment of penalty interest for arrears at an annual rate of 8% above the respective base interest rate of the European Central Bank pursuant to Paragraph 288, Section 2 of the German Civil Code (BGB). Penalty interest for late payments by private clients is 5 % above the respective base interest rate of the European Central Bank pursuant to Paragraph 288 (1). Further claims due to damage arising from arrears remain applicable in addition.

6)
In the case of non-payment or irregular payment of the amounts of invoices we reserve the right to discontinue or suspend deliveries or work without notice

7)
The client is only entitled to offset, retain or reduce the amount of the invoice, even in case notifications of defects or counterclaims have been submitted, if we have expressly agreed to such offsetting in writing or if the counterclaims have been finally established by a court.

8)
Payments are only effected legally when they have been made to us directly. Employees or representatives may accept payments only on presentation of a valid letter of authorisation issued by us.

§ 9 - Retention of Ownership

1)
The goods as delivered, installed or processed remain our property until our accounts receivable arising out of our business relationship with the client in the principal and ancillary matters have been paid in full.

2)
The client is entitled to sell or to further process the goods in the course of normal business at any time until further notice. He transfers his claims/ proceeds from the resale or processing of the goods to us as of this date.

3)
The client is not entitled to dispose of the goods subject to reservation of title in any other way.

4)
The client is entitled to and obliged to redeem the receivables transferred to us as long as we have not expressly revoked this authorisation.

5)
The client is obliged to store the goods in safe custody and to insure them against theft, fire and third-party liability at his own expense.

§ 10 – Compensation of Damages

In the case of damage-claims we shall only be liable in cases of malicious intent or gross negligence.

§ 11 - Change in the Person / Firm of the Client

The client is obliged to inform us in writing within one week in the event of the dissolution of the client's firm or a change in the person of the owner. We shall then be entitled to withdraw from the contract.

§ 12 – Copyright

The documentation, designs and illustrations attached by us to our bids, order confirmations or other written records, e. g. for monument-related or similar works are protected under copyright and may be used neither by the client nor be given by him to third parties.

The law on copyright also applies.
The client is liable for all damages to our company arising from failure to adhere to this agreement and/or the applicable laws.

§ 13 - Partial Invalidity

Should individual provisions of these General Business Terms be or become ineffective or invalid, the validity of the other provisions remains unaffected.

§ 14 Court and Jurisdiction

Place of jurisdiction for all disputes with commercial clients arising from matters in connection with a contract between us and such client is the court of Würzburg /Germany. This relates to claims and counter-claims.

Place of jurisdiction for non-commercial clients for court proceedings to obtain orders to pay debts is Würzburg as well.

This contract is subject to German law.
The UN Purchase-Law (CISG) shall not be applicable.

Zeidler & Wimmel Natursteinindustrie GmbH & Co. KG is basically not obliged nor willing to take part at a dispute resolution for consumers according to § 36 VSBG ("Verbraucherstreitbeilegungsgesetz") at a consumer arbitration board.