

Terms and Conditions of Sale and Delivery

for DAFA Building Solutions A/S (Hereinafter referred to as "DBS")

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1. General

1.1 Each supply from DBS is covered by these Terms and Conditions of Sale and Delivery, provided that they have not been expressly deviated from or amended by other written agreement.

1.2 Special conditions of purchase or specific requirements for goods/services purchased by the buyer and listed in, for example, the buyer's purchase order or the buyer's general conditions of purchase, tender documents, etc., are not binding on DBS, unless DBS has expressly agreed to this in writing.

2. Quotation/order

2.1 Any agreement between the buyer and DBS is not deemed to have been concluded until the agreement has been confirmed in writing by DBS, e.g. by an order confirmation. In case of discrepancies between the order confirmation and the buyer's order or acceptance, the order confirmation prevails. DBS reserves the right to intermediate sale.

2.2 Technical information, guidelines, etc.

All intellectual property rights (including, but not limited to copyright, design right, patent right and utility model, as well as rights to drawing and products supplied by DBS as stipulated in the Danish Marketing Practices Act) belong to DBS. This applies irrespective of whether the drawing or product concerned is developed for the buyer and/or is based on the buyer's specific specification or drawings. The buyer acquires solely an ordinary right of use to the purchased products. The buyer is not entitled to disclose or make available drawings or specifications to others, nor is the buyer entitled to produce or allow others to produce the products or replicas of the products supplied by DBS.

3. Handling surcharge for stock items and opening

3.1 A handling free will be charged for orders less than DKK 1,000, net and exclusive of VAT. Delivery of opened consignments is not available.

4. Terms and conditions of payment and retention of title

4.1 Unless otherwise agreed, the purchase price falls due for payment on the due date specified on the invoice.

4.2 In case of non-payment, interest will accrue from the due date, cf. clause 4.1, on the amount due at any time at an interest rate of 1.5% per month or any part thereof.

4.3 The buyer is not entitled to set-off against the purchase price for claims arising from any other legal relationships, and the buyer is not entitled to exercise any right of retention or refuse payment due to a delay, complaint or counterclaim regarding the specific delivery.

4.4 If the buyer fails to comply with payment obligations vis-à-vis DBS, DBS reserves the right to withhold further deliveries, including to withhold deliveries that have already been handed over to a carrier, until payment in full for all receivables has been received.

4.5 DBS retains title to the goods sold until the purchase price plus any interest and costs have been paid.

5. Delivery

5.1 Delivery is ex works DBS in Brabrand, Denmark (Incoterms 2020), unless otherwise agreed in writing in each specific case. If delivery cannot be made as a consequence of the buyer's circumstances, the output will remain at DBS at the buyer's expense and risk. DBS is entitled to charge warehouse rent, costs, etc.

5.2 Any and all delivery times stated by DAFA are estimated and thus non-binding on DBS, unless a fixed delivery time has been explicitly agreed for the entire delivery or parts thereof.

5.3 If a fixed delivery time has been explicitly agreed, DBS is entitled to extend this period by ten (10) working days calculated from the expiry of the fixed delivery time. If DBS exceeds the extended delivery time, the buyer is entitled to an agreed penalty from the expiry of the extended delivery time. The agreed penalty constitutes 0.5% of the part of the agreed purchase price which covers the services comprised by the delay for each full week of delay. The agreed penalty cannot exceed 5% of the agreed purchase price for the delayed output. If DBS exceeds the extended delivery time by more than 45 working days, the buyer is entitled to rescind the agreement.

5.4 If the buyer chooses to rescind the agreement, the buyer will only be entitled to a refund of any remuneration already paid in respect of the delayed performance, but not of remuneration for other output. The buyer cannot assert any other remedies for breach as a consequence of the delay and, thus, is prevented from claiming compensation of any kind.

5.5 For customer-specific goods, the right is reserved to make deliveries below or above the agreed delivery of up to 10%.

6. Prices

6.1 Any and all deliveries are made at the prices applicable at the time of delivery and specified on DBS's price lists, order confirmations etc. Quotations and prices specified on the order confirmation are exclusive of VAT and of other public taxes charges, fees, etc., associated with the delivery, but will be added to the price upon invoicing.

6.2 DBS reserves the right to change prices without notice due to extraordinary price increases for raw materials and wage increases.

7. Returns

Returned goods are only accepted subject to prior agreement (goods valued at less than DKK 500 cannot be returned), and only with a deduction of 20% of the value. Furthermore, the buyer must pay the return freight. Invoice or order numbers must always be stated. The return freight is at the risk of the buyer. Bespoke goods or goods purchased specifically for the buyer cannot not be returned. The packaging must be the original package and must be undamaged, and the product must be marketable, undamaged, complete, and saleable. The return shipment must be labeled with a return order number, which must be requested from DBS. The return order number must always be applied to the return packaging. This ensures rapid and effective processing. Returned goods without a return order number will be rejected. The return shipment must always be specified and sorted according to product type. Products with limited shelf life (such as tape, joining tape, adhesives and sealants) cannot be returned. The products can be returned for up to one (1) year from the date of purchase.

8. Liability and defects

8.1 The buyer undertakes to examine the delivered products/services immediately and no later than one week after receipt. The buyer forfeits the right to invoke defects/deficiencies in the delivered products/services if the buyer fails to notify DBS of this immediately after the defect/deficiency is discovered or should have been discovered. In any case, the buyer loses the right to invoke defects/deficiencies in delivered chattel products, if the buyer does not notify DBS of this within two (2) years after the delivery date. This absolute deadline for filing a complaint does not apply to building materials, cf. Section 54 of the Danish Sale of Goods Act.

8.2 If it is documented that the products/services delivered by DBS were defective at the time of delivery, and the deadline for complaints in clause 8.1 has been complied with, DBS undertakes to remedy defects by repair or replacement delivery at its own discretion within a reasonable period of time. If DBS does not carry out repair or replacement within a reasonable period of time, DBS is liable in damages vis-à-vis the buyer pursuant to the general rules of Danish law with the following restrictions: DBS's liability for defects in the delivered products/services is limited to the invoice price of the defective products/services. As part of its commercial and product liability insurance, DBS has taken out additional insurance called "Ingredient and component cover", which has the following benefit for the buyer: If DAFA's products/services have been incorporated into or added to another product, including buildings ("End Product"), and the repair or replacement of DBS's defective product/service requires interference in the End Product, DBS is liable in damages - pursuant to the ingredients and components cover under the DAFA's commercial and product liability insurance - for costs directly associated with the interference in other equipment. Thus, DBS is in no case liable for indirect loss, including loss of profit, operating loss, costs for lawyers and other advisers, additional costs incurred in connection with the stationing and recall of employees, troubleshooting, studies, analyses or transport of the defective product/service and/or the End Product or other financial consequential loss. DBS's liability in damages vis-à-vis the buyer for defects in the delivered products/services may not exceed DKK 1 million per calendar year.

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8.3 Apart from what is stated in clauses 8.1 to 8.2 above, any claim made by the buyer arising from defects in the products/services delivered by DBS is ruled out.

8.4 The limitations of DBS's liability in accordance with this clause 8 do not apply if the defect was deliberately caused by DBS or it is due to the gross negligence of DBS.

8.5 In the event that building materials are used by the buyer as part of contracting work, for which the buyer has agreed to the terms and conditions stipulated in AB 18 or ABT 18 with the other party to the contract, DBS accepts that the buyer's joint contractor may intervene (subrogate) in any of the buyer's claims for lack of conformity pursuant to this clause 8, and DBS, irrespective of section 11 of DBS's Terms of Sale and Delivery, accepts that disputes arising from non-compliant supplies may be brought before the Danish Building and Construction Arbitration Board.

9. Product liability

9.1 DBS is liable in damages for any damage which the products/services delivered by DBS incur on anything other than the delivered product/service, in accordance with the general rules of Danish law on product liability. Damage to anything other than the delivered product/service occurring during the exercise of DBS's business is also deemed product liability. DBS's liability in damages is, however, limited pursuant to the following rules:

9.2 DBS is in no case liable in damages for indirect loss, including loss of profit, operating loss, costs for lawyers and other advisers and other financial consequential loss.

9.3 When DAFA products/services have been incorporated into or added to another product (the "End Product"), DBS is under no circumstances liable for any additional costs incurred for the stationing and/or recall of employees, troubleshooting, inspections, analyses or transport of the defective product/service and/or the End Product.

9.4 Claims from the buyer for damages resulting from product liability which are not excluded pursuant to clause 9.2 and/or clause 9.3, can never exceed DKK 5 million per insurance event. Furthermore, DBS liability for such claims for damages vis-à-vis the buyer can never exceed DKK 10 million per calendar year. In case of serial claims, defined as claims for damages filed against DBS as a result of damages or loss caused by the same factors giving rise to product liability and occurring over more than one calendar year, the liability for all such serial damage claims cannot exceed DKK 25 million in total.

9.5 The buyer must indemnify DBS against any claim for damages for which DBS may be liable in respect of the buyer's customer and/or injured third party, but for which DBS has waived liability in accordance with this clause 9 vis-à-vis the buyer.

9.6 If any third party files a claim for loss and/or damage as described in this clause 9 against either DBS or the buyer, the party concerned is obliged to immediately notify the other party of this in writing.

9.7 The limitations of DBS's liability in accordance with clause 9 do not apply if the damage was deliberately caused by DBS or if the damage is the result of gross negligence by DBS, or where the limitations are at variance with mandatory rules of law.

10. Insurance cover

10.1 DBS states that it has taken out usual commercial and product liability insurance with ingredient and component cover for damage and loss.

11. Governing law and venue

11.1 Any dispute arising from this agreement must be settled according to Danish law.

11.2 If the Parties are unable to resolve disputes arising from the agreement and if the dispute concerns a claim for less than DKK 2 million, the dispute must be settled by the ordinary Danish courts; or if the dispute concerns a claim which is equal to or higher than DKK 2 million, the dispute must be settled by the Danish Institute of Arbitration ("Danish Arbitration") in accordance with the rules of simplified arbitration. If the buyer is domiciled outside the EU, the dispute must be settled by Danish Arbitration, regardless of the amount of the claim.

Disputes which, according to the above, are to be settled by an ordinary Danish court of law, must be brought before and settled by (the City Court of Aarhus), unless the Parties agree otherwise. If the disputes pursuant to the above must be settled by Danish Arbitration, the arbitration must take place in Aarhus, unless the Parties agree otherwise. Unless the parties agree otherwise, the provisions of the rules of Danish Arbitration on simplified arbitration apply and the Arbitration Board must comprise one arbitrator, who is appointed by Danish Arbitration. This arbitrator may be a Danish citizen, and the arbitrator must have received a master of law degree from a Danish university and work as either a solicitor or a judge. The negotiations before the Arbitration Board must be conducted in Danish. The parties are, however, entitled to present material in English and submit witness statements in English.

12. Force majeure

12.1 We are not liable to the customer if the following conditions occur after the conclusion of the contract and prevent or delay the fulfillment of the contract: War and mobilization, riots and unrest, acts of terrorism, extraordinary natural phenomena, strikes and lockouts (whether or not we ourselves involved, is or is the cause of such discrepancies), late deliveries from suppliers, flood, fire, explosion, failure to transport, currency controls, death, illness or departure of key personnel, computer viruses or other circumstances beyond our direct control. In this case, we are entitled to postpone the delivery until the impediment to performance has ceased or, alternatively, cancel the contract in whole or part.