

General terms and conditions for the delivery of machines



Recommended by the Verband Deutscher Maschinen- und Anlagenbau e.V. (in effect after April 2003)

For use in dealings with:

1. a person performing his commercial or independent professional activity during the conclusion of the contract (entrepreneur)
2. juristic persons under public law or a public law separate fund

I. General

1. These conditions and any separate contractual agreements are the basis for all deliveries and services. Deviating purchasing conditions on the part of the ordering party do not become a part of the contract, even with acceptance of an order.
A contract comes into existence – if no special agreement exists – upon the written order confirmation of the supplier.
2. The supplier retains right of ownership and copyright to samples, cost estimates, drawings, and other information of a material and immaterial type – including that in electronic form. They may not be made accessible to third parties. The supplier is obligated to only make information and documentation that is designated by the ordering party as confidential accessible to third parties with the consent of the ordering party.
3. Verbal agreements do not exist. Amendments must be done in written form.

II. Price and payment

1. The prices are in effect ex factory if no special agreement exists, including loading in the factory, but excluding packaging and unloading. The appropriate legal amount of turnover tax must be added to the prices.
2. If no special agreement exists, payment is to be made to the account of the supplier without any deductions and in the following manner:
1/3 payment after receipt of the order confirmation
1/3 as soon as the ordering party is notified that the main parts are ready for shipping;
the remaining amount within one month of the transfer of risk.
3. The ordering party only has the right to withhold payments or to set off counter claims if his counter claims are undisputed or legally determined.
4. The still outstanding payments become due by postponing of the set delivery day caused by the ordering party.

III. Delivery period, delivery delay

1. The agreements of the contract parties determine the delivery period. Its compliance by the supplier requires that all business and technical matters are settled between the contract parties and the ordering party has fulfilled all of its obligations, such as the presentation of the necessary official certificates or authorizations or the payment of a down payment. If this is not the case, the delivery period is extended accordingly. This is not in effect if the supplier is responsible for the delay.
2. Compliance with the delivery deadline assumes correct and punctual delivery by the company itself.
3. The delivery deadline is complied with if the delivery object has left the factory by its expiration or readiness for shipping has been announced. If acceptance must take place, the acceptance deadline is decisive or notification of readiness for acceptance – except in cases of justified refusal of acceptance.
4. If the shipping or the acceptance of the delivery object is delayed for reasons for which the ordering party is responsible, it will be billed for the expenses caused by the delay, beginning one month after notification of readiness for shipping or acceptance.
5. If the non-compliance with the delivery period can be traced to force majeure, labor disputes, or other occurrences that are beyond the sphere of influence of the supplier, the delivery period increases accordingly. The supplier will notify the ordering party of the beginning and the end of these types of conditions as soon as possible.
6. The ordering party can withdraw from the contract without notice if the supplier is ultimately unable to perform the entire service before transfer of risk. The ordering party can also withdraw from the contract if the performance of a part of the delivery becomes impossible for an order and it has a justifiable interest in declining partial delivery. If this is not the case, the ordering party must pay the contract price due for the partial delivery. The same is true in case of inability on the part of the supplier. For all other cases, Section VII.2 is in effect.
If the impossibility or inability occurs during the acceptance delay or if the ordering party is solely or predominantly responsible for these conditions, it is still obligated to counter performance.
7. If the supplier is delinquent and the ordering party incurs damages due to this, it is entitled to demand a lump sum compensation for damages resulting from delay. This will be 0.5% for each full week of delay, but not to exceed a total of 5% of the value of the part of the overall delivery, which cannot be used in good time or in accordance with the contract as a result of the delay.
If the ordering party grants the delinquent supplier an appropriate deadline for performance of the service – in consideration of the legal exceptions – and the deadline is not complied with, the ordering party is entitled to withdraw from the contract within the scope of the legal regulations. Additional claims due to delay in delivery are determined solely by Section VII.2 of these conditions.

IV. Transfer of risk and acceptance

1. The risk is transferred to the ordering party when the delivery object has left the factory. This is also the case if partial deliveries are made or the supplier has assumed other services, such as the shipping expenses or transport and setup.
If acceptance must take place, this is decisive for the transfer of risk. This must be carried out immediately by the acceptance deadline or after notification of readiness for acceptance to the supplier. The ordering party may not refuse acceptance due to the existence of unimportant defects.
2. If the shipping or acceptance is delayed due to conditions for which the supplier is not responsible, the risk is transferred to the ordering party from the day of notification of readiness for shipping or acceptance. The supplier is obligated to take out insurance required by the ordering party at the expense of the ordering party.
3. Partial deliveries are permissible if they are reasonable for the ordering party.

V. Retention of ownership

1. The supplier retains ownership of the delivery object until receipt of all payments from the delivery contract.
2. The supplier is entitled to insure the delivery object against theft, breakage, fire, water, and other damages at the expense of the ordering party if the ordering party has not demonstrably concluded the insurance himself.
3. The ordering party may neither sell the delivery object, levy an execution upon the delivery object, nor use it as security. In case of the levying of an execution or seizure or other acts by third parties, he must inform the supplier of this immediately.
4. In case of behavior of the ordering party that is in violation of the contract, especially in case of delinquent payment, the supplier is entitled to repossess the delivery object after a warning and the ordering party is obligated to surrender the object. The exercising of the retention of ownership and the levying of an execution upon the delivery object by the supplier do not count as revocation of the contract.
5. The application for the commencement of insolvency proceedings entitles the supplier to withdraw from the contract and to demand the immediate return of the delivery object.

VI. Guarantee

The supplier is liable for defects of quality and legal imperfections of the delivery as follows (excluding additional claims), but notwithstanding Section VII:

Defects of quality:

1. All parts that prove to be defective as a result of a condition that existed before transfer of risk are to be improved or replaced at the discretion of the supplier free of charge. The supplier must be immediately informed of the determination of such defects in writing. Replaced parts become the property of the supplier.
2. The ordering party must give the supplier the necessary time and opportunity to make all improvements and replacements that the supplier deems necessary according to his discretion after agreement with the supplier. Otherwise, the supplier is freed from liability for resulting defects. The ordering party only has the right to eliminate the error himself or to have them eliminated by third parties and to demand that the supplier reimburse the necessary costs in urgent cases of endangerment to operating safety and to prevent disproportionate damage, whereas the supplier must be immediately notified.
3. Of the immediate costs caused by the improvement or replacement, the supplier is responsible for the costs of the replacement piece, including shipment and the appropriate costs of disassembly and assembly and the costs of any necessary provision of his workers and employees if this can be reasonable demanded in individual cases – to the extent that the complaint proves legitimate.
4. The ordering party has a right to withdraw from the contract within the scope of the legal regulations if the supplier allows an appropriate deadline granted him for improvement or replacement delivery due to a defect of quality to pass without result- in consideration of the legal exceptions. If only an unimportant defect exists, the ordering party only has a right to reduction of the contract price. The right to reduction of the contract price is otherwise excluded.
5. No guarantee is given in the following cases:
Unsuitable or improper use, incorrect assembly or commissioning by the ordering party or third parties, natural wear, faulty or negligent treatment, improper maintenance, unsuitable operating equipment, faulty construction work, unsuitable construction site, chemical, electrochemical, or electrical interference – if the supplier is not responsible for these.
6. In case of any improper overhaul work performed by the ordering party or third parties, the supplier is not liable for the resulting consequences. The same is true for changes made to the delivery object without the prior consent of the supplier.
7. Further legal claims of the ordering party are excluded, especially a replacement of damages which are not occurred at the delivery object itself.

Legal imperfections:

8. If the use of the delivery object leads to the violation of domestic industrial property rights or copyrights, the supplier will fundamentally procure the right to further use for the ordering party or modify the delivery object in a manner that is reasonable for the ordering party so that no more violation of rights of protection exists at his own expense.
If this is not possible under economically feasible conditions or within an appropriate period, the ordering party is entitled to withdraw from the contract. Under the conditions named above, the supplier is also entitled to withdraw from the contract.
In addition, the supplier will release the ordering party from undisputed or legally determined claims of the respective owner of the right of protection.
9. The obligations of the supplier listed in Section VI. 7 are final subject to Section VII.2 in case of property rights or copyrights violation. They only exist if the
 - the ordering party immediately notifies the supplier of vindicated rights of ownership and copyright violations,
 - the ordering party supports the supplier appropriately in the defense of the vindicated claims or allows the supplier to carry out the modification measures in accordance with Section VI. 7.
 - the supplier reserves the right to take all defense measures, including settlements out of court
 - the legal imperfection is not based on instructions of the ordering party and
 - the legal violation was not caused by the ordering party arbitrarily changing the delivery object or using it in manner not in compliance with the contract.

VII. Liability

1. If, due to the fault of the supplier, the delivered object cannot be used by the ordering party in accordance with the contract due to omission or faulty execution of suggestions and meetings that took place before or after conclusion of the contract or due to the violation of other additional contractual obligations – especially instructions for operation and maintenance of the delivery object –, the provisions of the sections VI and VII.2 are in effect, accordingly.
2. The supplier is only responsible for damages that are not caused to the delivery object itself – regardless of legal reasons
 - in case of intent
 - in case of gross negligence of the owner / the organs or managing employees,
 - in case of culpable loss of life, limb, health,
 - in case of defects, which he maliciously concealed or which he guaranteed not to exist,
 - in case of defects of the delivery object, to the extent that liability exists for personal or property damage to privately used objects according to the product liability law.

In case of culpable violation of major contract obligations, the supplier is also liable in case of gross negligence of non-managing employees and in case of slight negligence. In the latter case, the liability is limited to damages that are typical to the contract and were reasonably foreseeable.
No other claims exist.

VIII. Limitation of actions

All claims of the ordering party - regardless of legal reasons - expire after 12 months. The legal deadlines are in effect in cases of intentional or malicious behavior and in case of claims in accordance with the product liability law. They are also in effect for defects of a building or for delivery objects, which were used for a building in accordance with their normal use and which caused its defectiveness.

IX. Software use

If software is included in the scope of delivery, the ordering party will be granted a nonexclusive right to use the delivered software including its documentation. It is provided for use on the delivery object for which it is meant.

Use of the software on more than one system is prohibited.

The ordering party may only reproduce, edit, or translate the software or convert the object code into the source code to the extent that is legally permissible (§ 17 Abs. 1 Nr. 1 S. 1 UrhG). The ordering party is obligated not to remove manufacturer's data – especially Copyright notices – or to change them without the prior, express consent of the supplier.

The supplier or the software supplier retains all other rights to the software and the documentation (including the copies thereof). The granting of sub-licenses is not permissible.

X. Applicable law, jurisdictional venue

1. The Law of the Federal Republic of Germany, which is decisive for the legal relationships of domestic parties with one another, is solely in effect for all legal relationships between the supplier and the ordering party.
2. The jurisdictional venue is the court responsible for the headquarters of the supplier. However, the supplier is entitled to file a lawsuit at the headquarters of the ordering party.

German law is applicable to this contract relationship, excluding the UN law on sales!