

Terms of delivery of machines

Our terms of delivery are based on the VDMA (German Engineering Federation) Terms and Conditions for the Supply of Machinery, as of August 2019.

For use against:

1. A person who, when concluding the contract, is acting in the exercise of his commercial or independent professional activity (entrepreneur)
2. Legal entities under public law or a special fund under public law.

I. General information

1. All deliveries and services are subject to these terms and conditions and any separate contractual agreements. Deviating terms and conditions of purchase of the customer shall not become part of the contract even if the order is accepted.
In the absence of a special agreement, a contract is concluded with the written order confirmation of the supplier.
2. The supplier reserves the right of ownership to samples, cost estimates, drawings and the like. The supplier reserves the property rights and copyrights to samples, cost estimates, drawings and similar information of a physical and non-physical nature - also in electronic form; they may not be made accessible to third parties. The Supplier undertakes to make information and documents designated as confidential by the Purchaser accessible to third parties only with the Purchaser's consent.

II. Price and payment

1. Unless otherwise agreed, prices are ex works including loading at the factory, but excluding packaging and unloading. Value added tax at the respective statutory rate shall be added to the prices.
2. In the absence of a special agreement, payment shall be made without any deduction to the supplier's account, namely
1/3 down payment after receipt of the order confirmation,
1/3 as soon as the customer has been informed that the main parts are ready for shipment, the remaining amount within one month after transfer of risk.
3. The purchaser shall only be entitled to withhold payments to the extent that his counterclaims are undisputed or have been legally established.
4. The customer shall only be entitled to offset counterclaims from other legal relationships to the extent that they are undisputed or have been legally established.

III. Cancellation of the Order / Termination of the Contract by the Purchaser

1. The Purchaser's unilateral right to withdraw from or terminate the contract after its conclusion (i.e., cancellation of the order) is excluded—to the extent permitted by law.
2. If the Supplier accepts a cancellation in exceptional cases, or if the Purchaser terminates the contract prematurely in breach of contract, the Purchaser shall pay the Supplier a lump-sum compensation as damages. This amount—subject to proof of lesser damages by the purchaser or greater damages by the supplier—shall be as follows:

3. a) 15% of the net order value if the cancellation occurs after the contract has been concluded but before the supplier has begun production or procured materials.
b) 50 % of the net order value if the cancellation occurs after production has begun or materials have been procured, but before the completion or readiness for shipment of the delivery item has been reported.
c) 90% of the net order value if the cancellation occurs after notification that the goods are ready for shipment or at a later date.
4. The purchaser is expressly permitted to prove that the supplier has incurred no damage or only significantly less damage than the flat rates specified above. Likewise, the supplier reserves the right to claim damages in excess of the flat rates, to the extent permitted by law.

IV. Delivery time, delay in delivery

5. The delivery time shall result from the agreements between the contracting parties. The supplier's adherence to the delivery time presupposes that all commercial and technical questions between the contracting parties have been clarified and that the customer has fulfilled all obligations incumbent upon him. Obligations, such as the provision of the necessary official certificates or approvals or the payment of a deposit. If this is not the case, the delivery time shall be extended accordingly. This shall not apply if the supplier is responsible for the delay.
6. Compliance with the delivery time is subject to correct and timely delivery to us. The supplier shall inform the customer as soon as possible of any impending delays.
7. The delivery period shall be deemed to have been met if the delivery item has left the supplier's works or readiness for dispatch has been notified by the time it expires. If acceptance is to take place, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - or alternatively the notification of readiness for acceptance.
8. If dispatch or acceptance of the delivery item is delayed for reasons for which the customer is responsible, the customer shall be charged the storage fees incurred as a result of the delay in the amount of € 500.00 per week or part thereof, starting two weeks after notification of readiness for dispatch or acceptance.
9. If non-compliance with the delivery time is due to force majeure, labor disputes or other events beyond the supplier's control, the delivery time shall be extended accordingly. The Supplier shall inform the Purchaser of the beginning and end of such circumstances as soon as possible.
10. The customer may withdraw from the contract without setting a deadline if the supplier is finally unable to provide the entire service before the transfer of risk. In addition, the Purchaser may withdraw from the contract if, in the case of an order, the performance of part of the delivery becomes impossible and the Purchaser has a justified interest in rejecting the partial delivery. If this is not the case, the customer shall pay the contract price for the partial delivery. The same applies if the supplier is unable to deliver. Otherwise, Section VII.2 shall apply.
If the impossibility or inability occurs during the delay in acceptance or if the customer is solely or predominantly responsible for these circumstances, he shall remain obliged to provide consideration.

11. If the supplier is in default and the customer suffers damage as a result, he shall be entitled to demand lump-sum compensation for the delay. This shall amount to 0.5% for each full week of delay, but in total not more than 5% of the value of that part of the total delivery which cannot be used on time or in accordance with the contract as a result of the delay.

If the Buyer sets the supplier a reasonable deadline for performance after the due date - taking into account the statutory exceptions - and if the deadline is not met, the Buyer shall be entitled to withdraw from the contract within the framework of the statutory provisions. At the Supplier's request, the Purchaser undertakes to declare within a reasonable period of time whether it will exercise its right of withdrawal.

Further claims arising from delay in delivery shall be determined exclusively in accordance with Section VII. 2 of these terms and conditions.

V. Transfer of risk, acceptance

1. The risk shall pass to the customer when the delivery item has left the factory, even if partial deliveries are made or the supplier has assumed other services, e.g. shipping costs or delivery and installation. If acceptance is required, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date, alternatively after the supplier has notified the customer that the goods are ready for acceptance. The customer may not refuse acceptance in the event of a minor defect.
2. If dispatch or acceptance is delayed or does not take place as a result of circumstances for which the supplier is not responsible, the risk shall pass to the customer from the day of notification of readiness for dispatch or acceptance. The Supplier undertakes to take out any insurance requested by the Purchaser at the latter's expense.
3. Partial deliveries are permissible insofar as reasonable for the customer.

VI. Retention of title

1. The supplier retains title to the delivery item until receipt of all payments - including for any additional ancillary services owed - under the delivery contract.
2. The supplier is entitled to insure the delivery item against theft, breakage, fire, water and other damage at the customer's expense, unless the customer has demonstrably taken out the insurance himself.
3. The customer may not sell, pledge or assign the delivery item as security. In the event of seizure, confiscation or other dispositions by third parties, he must inform the supplier immediately.
4. In the event of breach of contract by the customer, in particular default of payment, the supplier shall be entitled to take back the delivery item after issuing a reminder and the customer shall be obliged to surrender it.
5. Due to the retention of title, the supplier can only demand the return of the delivery item if he has withdrawn from the contract.

VII. Warranty claims

The Supplier shall be liable for material defects and defects of title in the delivery to the exclusion of further claims - subject to Section VII - as follows:

Material defects

1. All those parts which prove to be defective as a result of a circumstance prior to the transfer of risk shall, at the discretion of the supplier, be repaired or replaced free of defects. The supplier must be notified immediately in writing of the discovery of such defects. Replaced parts shall become the property of the supplier.
2. The customer shall, after consultation with the supplier, give the supplier the necessary time and opportunity to carry out all repairs and replacement deliveries which the supplier deems necessary; otherwise the supplier shall be released from liability for the resulting consequences. Only in urgent cases of danger to operational safety or to prevent disproportionately large damage, in which case the supplier must be notified immediately, shall the Purchaser have the right to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary expenses from the Supplier.
3. To the extent that the complaint proves to be justified, the supplier shall bear the expenses necessary for the purpose of subsequent performance, provided that this does not result in a disproportionate burden on the supplier. Insofar as the expenses are increased by the fact that the Buyer has moved the purchased item to a place other than the place of performance after delivery, any additional costs incurred as a result shall be borne by the Buyer. In the case of the sale of a newly manufactured item, the supplier shall also reimburse the expenses incurred by the Purchaser within the scope of its statutory obligation in the context of recourse claims in the supply chain.
4. Within the framework of the statutory provisions, the purchaser has the right to withdraw from the contract if the supplier - taking into account the statutory exceptions - allows a reasonable deadline set for the rectification or replacement delivery due to a material defect to expire fruitlessly. If there is only an insignificant defect, the customer shall only be entitled to a reduction of the contract price. The right to reduce the contract price is otherwise excluded.
5. Further claims shall be determined exclusively in accordance with section VII. 2 of these terms and conditions.
6. No liability is accepted in the following cases in particular: Unsuitable or improper use, faulty assembly or commissioning by the purchaser or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences - insofar as they are not the responsibility of the supplier.
7. If the customer or a third party carries out improper repairs, the supplier shall not be liable for the resulting consequences. The same applies to changes made to the delivery item without the prior consent of the supplier.

Legal defects

8. If the use of the delivery item leads to an infringement of industrial property rights or copyrights in Germany, the supplier shall, at his own expense, procure the right for the purchaser to continue using the delivery item or modify the delivery item in a manner reasonable for the purchaser in such a way that the infringement of property rights no longer exists.

If this is not possible under economically reasonable conditions or within a reasonable period of time, the purchaser shall be entitled to withdraw from the contract. Under the aforementioned conditions, the supplier shall also be entitled to withdraw from the contract.

In addition, the supplier shall indemnify the Purchaser against any undisputed or legally established claims of the owners of the industrial property rights concerned.

9. The obligations of the supplier mentioned in section VI. 8 are, subject to section VII. 2, conclusive in the event of infringement of property rights or copyrights.

They only exist if

- The customer informs the supplier immediately of any asserted infringements of industrial property rights or copyrights
- The Purchaser supports the supplier to a reasonable extent in the defense against the asserted claims or enables the supplier to carry out the modification measures in accordance with Section VI. 8
- The supplier reserves the right to take all defensive measures, including out-of-court settlements
- The defect of title is not based on an instruction of the customer and
- The infringement was not caused by the fact that the customer modified the delivery item without authorization or used it in a manner not in accordance with the contract.

VIII. Liability of the supplier, exclusion of liability

1. If the delivery item cannot be used by the customer in accordance with the contract due to culpably omitted or faulty suggestions or advice given by the supplier before or after conclusion of the contract or due to the culpable breach of other contractual ancillary obligations - in particular instructions for operation and maintenance of the delivery item - the provisions of sections VI. and VII. 2. shall apply to the exclusion of further claims by the customer.
2. For damages that have not occurred to the delivery item itself, the supplier is liable - for whatever legal reasons only
 - a. In the event of intent and gross negligence
 - b. In the event of culpable injury to life, limb or health
 - c. In the case of defects which he has fraudulently concealed
 - d. Within the framework of a guarantee commitment
 - e. In the event of defects in the delivery item, insofar as liability exists under the Product Liability Act for personal injury or property damage to privately used items.

In the event of culpable breach of material contractual obligations, the supplier shall also be liable for simple negligence, but limited to the reasonably foreseeable damage typical of the contract.

Further claims are excluded.

IX. Statute of limitations

All claims of the customer - on whatever legal grounds - shall become time-barred after 12 months; this shall also apply to the limitation period for recourse claims in the supply chain pursuant to Section 445b (1) BGB, provided that the last contract in this supply chain is not a sale of consumer goods. The suspension of the limitation period under § 445b para. 2 BGB remains unaffected. The statutory time limits shall apply to claims for damages in accordance with Section VII. 2 a-d and e. They also apply to defects in a building or to delivery items that have been used for a building in accordance with their normal use and have caused its defectiveness.

X. Use of software

If software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the software supplied, including its documentation. It shall be transferred for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

The customer may only reproduce, revise, translate or convert the software from the object code into the source code to the extent permitted by law (§§ 69 a ff. UrhG). The Customer undertakes not to remove manufacturer's details - in particular copy-right notices - or to change them without the prior express consent of the supplier.

All other rights to the software and the documentation, including copies, shall remain with the supplier or the software supplier. The granting of sublicenses is not permitted.

XI. Applicable law, place of jurisdiction

1. All legal relationships between the supplier and the Customer shall be governed exclusively by the law of the Federal Republic of Germany applicable to legal relationships between domestic parties. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply.
2. The place of jurisdiction is the court responsible for the supplier's registered office. However, the supplier is entitled to bring an action at the customer's headquarters.