

VDMA Terms and Conditions for the Supply of Machines

These terms and conditions apply to:

1. persons who, in concluding the contract, act by virtue of their commercial or independent professional activity (entrepreneurs);
2. legal entities under public law or special funds under public law.

I. General

1. All deliveries and services shall be based on these Terms and Conditions as well as any separate contractual agreements. Purchaser's terms and conditions of purchase that deviate from these shall not be part of the contract even through acceptance of an order.

In the absence of any special agreement, a contract shall be concluded with Supplier's written order confirmation.

2. Supplier reserves proprietary rights and copyrights to designs, cost estimates, drawings, and similar information, be it tangible or intangible, including in electronic form; they must not be made accessible to third parties. Supplier undertakes to make information and documents designated by Purchaser as confidential accessible to third parties only with Purchaser's consent.

II. Price and Payment

1. In the absence of a special agreement, the prices shall be ex works including loading at the works but excluding packaging and unloading. The value-added tax is added to the prices in the applicable legal amount.
2. In the absence of a special agreement, payment is to be made without any deductions to Supplier's account as follows:
 - 1/3 down payment upon receipt of the order confirmation,
 - 1/3 as soon as Purchaser is informed that the main parts are ready for shipment,
 - the remaining amount within one month after transfer of risk.
3. Purchaser shall be entitled to withhold payments only if its counterclaims are undisputed or have been determined to be legally binding by final court decision.
4. Purchaser shall be entitled to set off counterclaims from other legal relationships only to the extent that these are undisputed or have been determined to be legally binding by final court decision.

III. Delivery time, Delivery delay

1. The delivery time results from the agreements of the contracting parties. Compliance by Supplier will require that all commercial and technical questions have been clarified between the parties and that Purchaser has fulfilled all obligations for which it is responsible, such as the procurement of the required official certificates or permits, or the making of a down payment. If this is not the case, the delivery deadline shall be extended appropriately. This shall not apply if Supplier is responsible for the delay.
2. Compliance with the delivery deadline shall be subject to correct and punctual deliveries by Supplier's own suppliers. Supplier shall give notice of any impending delays as soon as possible.

3. The delivery time shall be deemed complied with if the delivery item has left Supplier's plant by its expiration or readiness for dispatch is reported. If acceptance has to take place, the acceptance date, except for justified refusal of acceptance, shall be decisive; alternatively, the notification of readiness for acceptance shall be decisive.
4. If the shipment or the acceptance of the delivery item is delayed for reasons for which Purchaser is responsible, then beginning one month after notification of readiness for shipment or for acceptance the costs arising due to the delay shall be charged to Purchaser.
5. If non-compliance with the delivery time is due to force majeure, labour disputes or other events outside Supplier's sphere of influence, the delivery deadline shall be extended appropriately. Supplier shall advise Purchaser as soon as possible of the commencement and the end of such circumstances.
6. Purchaser may withdraw from the contract without setting a deadline if performance of the entire service becomes definitively impossible for Supplier prior to the transfer of risk. Moreover, Purchaser may withdraw from the contract if in the case of an order a portion of the delivery becomes impossible and Purchaser has a justified interest in refusing the partial delivery. If this is not the case, Purchaser has to pay the contractual price apportionable to the partial delivery. The same shall apply in the event of Supplier's incapacity. In all other regards, Section VII.2 shall apply.

If the impossibility or the incapacity occurs during default of acceptance or if Purchaser is solely or predominantly responsible for these circumstances, Purchaser shall remain obligated to provide consideration.

7. If Supplier is in default and if Purchaser suffers any damage therefrom, the latter shall be entitled to demand a lump sum compensation for the delay. For each full week of delay this shall be 0.5 %, but in total no more than 5% of the value of that part of the overall delivery that, as a result of the delay, cannot be used in a timely manner or pursuant to the contract.

If Purchaser, taking into account the statutory exceptions, sets the Supplier a reasonable deadline for performance after the due date and the deadline is not met, Purchaser shall be entitled to withdraw from the contract within the scope of the statutory provisions. Purchaser undertakes, at Supplier's request, to state within a reasonable time period whether Purchaser intends to make use of its right of withdrawal.

Further claims arising from default in delivery shall be governed exclusively by Section VII.2 of these Terms and Conditions.

IV. Transfer of Risk, Acceptance

1. The risk shall be transferred to Purchaser when the delivery item has left the plant, even if partial deliveries take place or if Supplier has assumed other services, for example, the shipping costs or delivery and installation. If acceptance is to take place, this shall be decisive for the transfer of risk. It must take place immediately on the acceptance date; alternatively, after notification by Supplier that the delivery item is ready for acceptance. Purchaser shall not refuse acceptance in the event of a non-essential defect.
2. If the shipment or acceptance is delayed or does not take place due to circumstances that cannot be attributed to Supplier, the risk shall be transferred to Purchaser on the day of notification of readiness for shipment or acceptance. Supplier undertakes to take out any insurance policies Purchaser demands at the latter's cost.
3. Partial deliveries shall be permitted as long as they can be expected to be reasonably acceptable to Purchaser.

V. Retention of title

1. Supplier shall retain the title to the delivery item pending receipt of all payments under the supply contract, including for any additional ancillary services owed under the supply contract.
2. Supplier shall be entitled to insure the delivery item at Purchaser's cost against theft, breakage, fire, water and other damage, unless Purchaser has demonstrably taken out the insurance itself.
3. Purchaser may neither sell nor pledge the delivery item nor transfer it as security. In the case of pledges and seizures or other orders by third parties, Purchaser shall immediately advise Supplier thereof.
4. In the event of conduct in contravention of the contract by Purchaser, in particular default in payment, Supplier shall be entitled to the return of the delivery item after issuing a reminder, and Purchaser shall be obliged to surrender the delivery item.
5. Based on the retention of title, Supplier may demand surrender of the delivery item only if it has withdrawn from the contract.

VI. Claims for defects

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

Material defects

1. All parts that prove to be defective as a result of a circumstance that precedes the transfer of risk are to be repaired or replaced without defect at Supplier's discretion. Upon determination of such defects Supplier is to be notified immediately in writing. Replaced parts shall become the property of Supplier.
2. After consultation with Supplier, Purchaser is to grant Supplier sufficient time and opportunity to carry out the repairs and replacement deliveries that Supplier deems necessary; otherwise, Supplier shall be released from any liability for the consequences arising therefrom.
Only in urgent cases of risk to operational safety or to prevent disproportionate damages, in which case Supplier is to be notified immediately, shall Purchaser be entitled to remedy the defect itself or have it remedied by a third party and to demand reimbursement of the required expenses from Supplier.
3. To the extent that the complaint proves to be justified, Supplier shall bear the expenses required for the purpose of subsequent performance, if this does not impose a disproportionate burden on Supplier. If expenses increase due to the fact that after delivery Purchaser has brought the purchased item to a place other than the place of performance, the additional costs resulting from this are to be borne by Purchaser. Aside from that, upon the sale of a newly manufactured item, Supplier shall, within the scope of its statutory obligation, also reimburse Purchaser's expenses in connection with recourse claims in the supply chain.
4. Within the scope of the statutory provisions, Purchaser shall have a right to withdraw from the contract if, taking into account any statutory exceptions, Supplier allows a reasonable grace period set for the subsequent repair or replacement delivery due to a material defect to expire without performance. If the defect is only insignificant, Purchaser shall be entitled only to a reduction in the contractual price. Aside from that, the right to a reduction in the contractual price shall be excluded.
5. Further claims shall be determined exclusively in accordance with Section VII. 2 of these Terms and Conditions.

6. In particular, no liability shall be assumed in the following cases, unless they are the responsibility of the Supplier: Unsuitable or improper use, incorrect assembly or commissioning by Purchaser or a third party, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable operating supplies, defective construction work, unsuitable foundation soil, chemical, electrochemical or electrical influences
7. In the event of improper repairs by Purchaser or a third party, Supplier shall bear no liability for the consequences arising therefrom. The same shall apply to modifications of the delivery item undertaken without Supplier's prior consent.

Defects of Title

8. If the use of the delivery item causes the infringement of industrial property rights and copyrights in Germany, Supplier shall in any case procure at its cost the right to further use by Purchaser or modify the delivery item in a manner acceptable to Purchaser such that the infringement of property rights no longer exists. If this is not possible at reasonable economic conditions or within a reasonable time period, Purchaser shall be entitled to withdraw from the contract. Under the conditions referred to, Supplier shall also be entitled to withdraw from the contract.
Furthermore, Supplier shall indemnify Purchaser from claims of the affected holders of property rights that are undisputed or determined to be legally binding.
9. The obligations of Supplier mentioned in Section VI.8 shall be final subject to Section VII.2 in the event of the infringement of property rights or copyrights.
They exist only if
 - Purchaser notifies Supplier immediately of any asserted property right or copyright infringements,
 - Purchaser assists Supplier to a reasonable extent in defending against the asserted claims or allows Supplier to undertake the modification measures according to Section VI. 8,
 - all defence measures including out-of-court settlements remain reserved to Supplier,
 - the defect of title is not based on an instruction of Purchaser and
 - the infringement was not caused by the fact that Purchaser modified the delivery item without authorization or has used it in a manner not compliant with the contract.

VII. Supplier's liability, exclusion of liability

1. If the delivery item cannot be used by Purchaser in accordance with the contract a) as a result of culpably omitted or deficient suggestions or advice by Supplier that were given before or after the conclusion of the contract or b) through the culpable breach of other contractual ancillary obligations, in particular instructions for the operation and maintenance of the delivery item, then the stipulations of Sections VI and VII.2 shall apply to the exclusion of other claims by Purchaser.
2. Supplier shall be liable for damages that did not occur to the delivery item itself, irrespective of the legal grounds, only
 - a. in the event of intent and gross negligence,
 - b. in the event of wrongful damage to life, body and health,
 - c. in the event of defects that Supplier maliciously concealed,
 - d. in the context of a warranty,
 - e. in the event of defects in the delivery item insofar as, pursuant to Product Liability Law, liability exists for personal injury and damage to property in privately used objects.

In the event of culpable violation of essential contractual duties, Supplier shall be liable even for simple negligence; however, liability shall be limited to the damage that is reasonably foreseeable and typical for the contract.

Any other claims are excluded.

VIII. Statute of limitations

All claims by Purchaser, on any legal bases whatsoever, shall be statute-barred in 12 months; this shall also apply to the limitation of actions concerning recourse claims in the supply chain pursuant to Sec. 445b Par. 1 BGB [Bürgerliches Gesetzbuch = German Civil Code], if the last contract in this supply chain is not a consumer good purchase. The suspension of expiration under Sec. 445b Par. 2 BGB shall remain unaffected. For claims for damages according to Sec. VII. 2 a-d and f the statutory time limits shall apply. They shall also apply for defects in a structure or for delivery items that, in accordance with their customary manner of use, were used for a structure and caused its defectiveness.

IX. Use of Software

If software is included in the scope of delivery, Purchaser shall be granted a non-exclusive right to use the delivered software including its documentation. It shall be granted for the use of the delivery item intended therefor. Any use of the software on more than one system shall be prohibited.

Purchaser may only duplicate, revise, translate or convert the software from the object code into the source code to the extent permitted by law (Sections 69a et seq. German Copyright Act). Purchaser undertakes not to remove manufacturer's data, particularly copyright notices, or to alter them without Supplier's prior explicit consent.

All other rights to the software and the documentation including copies shall remain with Supplier or with the software provider. The granting of sublicenses shall not be permitted.

X. Applicable Law, Place of Jurisdiction

1. All legal relations between Supplier and Purchaser shall be governed exclusively by the laws of the Federal Republic of Germany applicable to the legal relations between domestic parties.
2. The place of jurisdiction shall be the court competent for Supplier's registered office. Supplier shall, however, be entitled to bring an action at the location of Purchaser's registered office.

Status August 2019