

Sales and Delivery Conditions

Based on recommendations of the VDMA
(Association of German Manufacturers of Plant and Machinery)

For use with:

1. Any persons proceeding within their commercial or self-employed business transactions upon signing the contract.
2. Legal entities or body corporates.

I. General

1. Any supplies and performances are subject to these conditions as well as any other contractual agreements that are fixed in writing. Any contract is established – in default of any other particular agreement – when the supplier provides the acknowledgement of order in writing.
2. All documents relating to the quotation, e.g. drawings, illustrations, indications of weights and dimensions will constitute a guide only, provided that they are not mentioned as having binding effect. The supplier reserves the right of ownership and of copyright in respect of estimates of costs, drawings and documents of all kinds – also in electronic form. They must not be made available to third-parties. The supplier will seek the permission of the purchaser before confidential documents of the latter are passed on to third-parties.

II. Scope of Delivery

The scope of delivery will be defined in the supplier's written confirmation of the order.
Additional agreements and modifications require a written confirmation of the supplier.

III. Price and Payment

1. Unless otherwise agreed, the price will be for delivery ex works, including loading at the factory, but excluding the cost of packing and unloading. Turnover tax will be charged at the statutory rate applicable.
2. Unless agreed to the contrary, payment must be made net in cash without any deductions, free to the address indicated by the supplier, as follows:
1/3 of the order value upon order placing;
1/3 of the order value upon expiry of half of the delivery time;
1/3 of the order value against shipping documents or notification of the readiness of the goods for shipment.
3. The purchaser will not be allowed to withhold payment or to set amounts off relating to a counterclaim which the supplier disputes.
4. If payments are not made in good and due time by the purchaser, interest on arrears at the official European rate of discount + 8 % shall be charged.

IV. Delivery Time

1. The delivery time will result from the agreements between the parties of contract. Observance through the supplier will require that all commercial and technical questions between the contract parties have been clarified and the purchaser has fulfilled all his duties, i.e. he has furnished all licences, clearances etc. required for the shipment and he has effected the agreed down payments at the due dates. Is this not the case, the delivery time will be extended proportionately.
2. The delivery time will have been kept if the goods are dispatched from the factory before the expiry date, or if the supplier has made notification of readiness for shipment to the purchaser.
3. In case non-observance of the delivery time results from force majeure, from industrial disputes or strikes or any other events out of the control of the supplier, the delivery time shall be extended proportionately. The supplier will inform the purchaser of the beginning and the end of any such circumstances immediately.
4. If the purchaser requests shipment to be postponed, he must pay for the cost of storage, starting after the supplier's notification of readiness for shipment. If the supplier has fixed a reasonable extension period and this period also expires without result, he will be entitled to make alternative disposition of the goods and to fix another date of forwarding the goods to the purchaser.

V. Passing of Risk

1. The risk will pass over to the purchaser as soon as the goods have left the factory, even though shipment is made in part deliveries or the supplier has accepted other obligations, e.g. the cost for shipping or transportation to site and erection.
2. If the shipment is delayed due to circumstances which the purchaser has to explain, then the risk will devolve on him as from the day the supplier has declared the goods to be ready for shipment, however the supplier must effect at the expense and behest of the purchaser all insurances which may be required.
3. Part deliveries are admissible.

5. VI. Retention of Title

1. The goods will remain the property of the supplier until the purchaser has paid in full accordance with the terms of all contracts of supply signed so far.
2. Cheques and bills will be accepted only as an undertaking to pay, and the retention of title of the supplier will not lapse until the said cheques/bills are honoured. If payment by cheques or bills is agreed, the transfer of title does not take place until the definite honouring of the bill.
3. The purchaser will not be allowed to pledge the goods in any way or to use them as collateral. The alienation of the goods is admitted to the purchaser only within the regular course of business. In case of alienation or processing of the goods, the purchaser hereby irrevocably assigns to the supplier for security reasons his claims resulting from alienation or processing or any other legal ground as well as his title for restitution due to retained property. The purchaser also assigns any insurance claims resulting from damage, loss, theft or robbery of the goods. Should the goods be pledged, seized or otherwise be the subject of a restraint by a third-party, the purchaser must inform the supplier of this without delay.
4. If the purchaser infringes the contract, in particular by being in default of payment, the supplier will be entitled to retrieve his property by giving due notice, and the purchaser will undertake to surrender it. The raising by the supplier of his right to retrieve his property and the pledging of the goods by the supplier will not constitute cancellation of the contract.

5. In case of filing for the institution of insolvency proceedings, the supplier will be entitled to withdraw from the contract and to demand for immediate surrender of the goods.

VII. Claims in Respect of Shortcomings

In respect of defects of quality and defective titles concerning the shipment, the suppliers warrants - excluding any other claims – to the following extent:

Defects of Quality:

1. The supplier will undertake to repair or replace at his discretion free-of-charge any portion of the goods turning out to be defective within 12 months after shipment. If the shipment of the goods is delayed, liability will finish latest 15 months after indication of readiness for shipment. The detection of any such defects must be immediately notified to the supplier in writing. Parts replaced become the property of the supplier.
2. The purchaser has to allow the supplier adequate opportunity and time for the purpose of carrying out repairs and replacements which the supplier may consider to be necessary, otherwise the supplier will be freed from his liability. Only in urgent cases of risk to operational safety or with the object of preventing serious damage to the goods, in which case the supplier must be immediately informed before, or in the event that the supplier fails to remedy the defect, will the purchaser be entitled to effect his own remedial action or have the remedial action done by others, and to demand reimbursement of his expenses from the supplier for his work.
3. If the complaint of the purchaser can be proven to be rightful, the supplier will bear of the cost - which is directly attributable to a repair / replacement - the amount of the replacement part.
4. The supplier will not warrant in respect of damage caused among other things by: improper transport or storage by the purchaser or third-parties, negligent or careless use, non-observance of generally known rules, maintenance cycles as well as operating and maintenance manuals, incorrect assembly / start-up and operation of the goods by the purchaser or third-parties, fair wear and tear (in particular regarding wearing parts), incorrect or careless handling, use of unsuitable material, faulty constructions and civil works, unsuitable foundation soil, chemical, electrochemical or electrical impacts, insofar as these cannot be attributed to a fault of the supplier.
5. The period of warranty in respect of the replacement part and the work of repair will be three months, but it will not end before expiration of original warranty period in respect of the goods.
6. In case the purchaser or a third-party carries out any retouching work in an improper way, the supplier will not be liable for the consequences. The same will apply to any modifications performed in respect of the goods without prior approval by the supplier.

Defects of Titles:

7. If the use of the goods entails an infringement of industrial rights or copyrights, the supplier will - at his own costs – basically acquire for the purchaser the right to further use or will modify the goods in a way that will be reasonable for the purchaser and that will eliminate the infringement of right.

VIII. Right of Purchaser to Withdraw from the Contract

1. The purchaser will have the right to cancel the contract if the complete performance becomes finally impossible for the supplier.
2. The purchaser will also be entitled to cancel the contract if the supplier fails to honour a reasonable respite granted to him for the purpose of repair or new delivery in replacement of a defect, which he acknowledges within the meaning of the Delivery Conditions. The purchaser may cancel the contract also in other cases where the supplier fails to repair or to replace defective parts of the goods.
3. Excluded are all other and further claims of the purchaser, in particular for redhibition, cancellation or reduction.

IX. Liability

All other claims of the purchaser, in particular the claim for replacement of damages not occurred at the delivered goods, are excluded.

Any liability for consequential damages, in particular loss of profits and / or loss of production, is excluded.

X. Use of Software

If the scope of supply includes software, the purchaser will have the right to use the delivered software as well as the relating documentation. It will be provided for the use on the goods supplied for this purpose. Using the software on more than one system is forbidden. Only with the supplier's approval, is the purchaser allowed to copy, revise and translate the software or to change it from the object coding to the source coding. All other rights in connection with the software remain with the supplier of the goods or the software supplier.

XI. Jurisdiction / Applicable Law

1. All disputes arising from the contract shall be settled by the court that has local venue over the supplier's seat. However, the supplier is entitled to file a lawsuit at the purchaser's headquarters.
2. The Law of the Federal Republic of Germany is applicable. International Sales Law does not apply.