

General Terms and Conditions of Delivery

The following wording has been recommended in general by the Verband Deutscher Maschinenbau-Anstalten e.V.

I. General

1. All deliveries and services are based on these terms and conditions as well as on special contractual agreements. Divergent purchase terms of the buyer do not become part of the contract by the fact that the order is accepted.

If not otherwise stipulated a contract is concluded with the written order confirmation of the supplier.

2. The supplier retains his property rights and copyrights concerning samples, cost estimates, drawings, and other similar information of physical and non-physical type - even in digital form; these may not be made available to third parties.

The supplier commits oneself not to make any plans and documents, described by the buyer as confidential, available to third parties without the buyers' consent.

II. Price and payment

1. In the absence of any special agreements prices shall be ex works including loading at works, excluding packing and unloading however. VAT at the legally prescribed rate in force at the time shall be added to the prices
2. In the absence of any special agreement payment is to be made to the supplier's bank, without deduction of any bank or remittance charges, in the following manner:
 - 1/3 payable after receipt of the order confirmation,
 - 1/3 as soon as the buyer was informed that the main components are ready for dispatch,
 - the remainder within one month after transfer of risks.
3. Withholding payments due to any counterclaims by the buyer is only permitted if the counter-claims are uncontested or legally established.
4. Compensating with counterclaims from other legal relations by the buyer is only permitted if the counterclaims are uncontested or legally established.

III. Delivery period, delay in delivery

1. The delivery period is agreed upon by the contract parties. Compliance with the delivery period by the supplier presumes that all commercial and technical details have been settled and that the buyer has met all his obligations as e.g. the production of all necessary official documents and authorizations and the payment of an instalment. If these prerequisites are not met, the delivery period is adequately prolonged. This does not apply if the supplier has caused the delay.
2. Reserves are made to the adherence to the delivery period that is subject to correct and timely delivery by sub-contractors. Possible delays are notified by the supplier as soon as possible.
3. The delivery period shall be considered as having been observed if on expiry the delivery item has left the works or readiness of dispatch has been notified. As far as an acceptance protocol has to be drawn – except in case of justified refusal of acceptance – the date of acceptance is decisive, if not the notification of readiness for dispatch.
4. If dispatch, respectively acceptance of the delivery item is delayed for reasons the buyer has to answer for, beginning one month after the notification of readiness for dispatch, respectively for acceptance, he will be charged the costs incurred thereof.
5. The delivery period shall be reasonably prolonged in case of unforeseeable events, of labour disputes as well as in case of other events that are beyond the supplier's sphere of influence. The supplier will inform the buyer of the beginning and end of such circumstances as soon as possible.
6. The buyer may withdraw from the contract without fixing a term if the supplier is finally unable to supply the complete delivery prior transfer of risk. Furthermore, the buyer can withdraw from the contract if partial delivery becomes impossible and he has a justified interest in refusing partial delivery. If not, the supplier has to pay the price corresponding to the value of the partial delivery. The same is applicable in case of incapacity of the supplier. Otherwise, section VII 2 will be applicable.

If the impossibility or the incapacity occurs during the late acceptance or if the buyer has to answer for these circumstances alone or in the major extent he is bound to compensation.

7. If, due to a delay caused by the supplier, the buyer should suffer damage, he shall be entitled to claim lump-sum settlement. After a waiting period of two weeks, this shall be, for each full week of delay, 0.5 percent of the total amount, but altogether no more than a maximum of 5 percent of the value of that part of the total delivery which, due to the delay, cannot be used in time or not in accordance with the contract.

After the buyer has fixed the supplier an appropriate time limit for performance– under consideration of legal exceptional cases - and that having expired without results, the buyer is entitled to rescission within the statutory provisions. Upon request of the supplier, the buyer undertakes to declare within a reasonable period of time whether he makes use of its right to withdraw.

Further claims raised from the delay of delivery are determined according to section VII.2 of these General Terms and Conditions.

IV. Transfer of risk and accepting delivery

1. The risk shall pass to the buyer when the delivery item leaves the factory and that also in case of partial deliveries or if the supplier is also providing any other services, such as for example dispatch costs or transportation and installation. As far as an acceptance has to be done, it is decisive for the transfer of risk. It must be carried out immediately on acceptance date, if not after readiness for acceptance has been notified by the supplier. The buyer may not refuse the acceptance if a defect is not essential.
2. Should dispatch, respectively acceptance be delayed or undone due to circumstances for which the supplier does not have to answer the responsibility, the risk shall pass to the buyer from the date of readiness for dispatch, respectively acceptance onwards. The supplier commits oneself to effect such insurances as are requested by the buyer at the latter's request and expense.
3. Partial deliveries are allowed as far as reasonably demandable from the buyer.

V. Reservation of title

1. The supplier reserves his title to the delivery item up to receipt of all payments - also for additionally owed ancillary services - as agreed in the delivery contract.
2. The supplier shall be entitled to insure the delivery item at the expense of the buyer against theft, breakage, fire, water, and any other damages, unless the buyer submits evidence of having arranged such insurance itself.
3. The buyer may neither sell nor pledge or assign the delivery item as a security. In case of seizure, attachment, or any other decrees by third parties, he must notify the supplier immediately.
4. In case of conduct contrary to contract on the part of the buyer, in particular in case of default in payment, the supplier shall be entitled to recall the items after having sent a letter of reminder and the buyer shall be obliged to hand them over.
5. In virtue of the retention of title the supplier may only recall the delivery item if he has withdrawn from the contract.
6. The filing of a bankruptcy petition entitles the supplier to withdraw from the contract and to ask for the immediate restitution of the delivery item.

VI. Claims for defects

The supplier shall be held liable for material and title defects of the delivery excluding further claims - and without prejudice to section VII, as follows:

Material defects

1. All parts must be repaired or re-supplied, according to the supplier's choice, which turn out to be defective due to circumstances occurred before transfer of risk. The establishment of such defects must be notified to the supplier immediately in writing. Any replaced parts become the property of the supplier.
2. In order to effect all repairs or replacement deliveries which appear to the supplier to be required, the buyer - after having come to an agreement with the supplier - shall be obliged to make the necessary time and opportunity available; otherwise the supplier shall be free from the liability for consequences resulting hereof. Only in urgent cases where operational safety is in danger and in order to avoid disproportionately large damages - and in such cases the supplier must be informed immediately - shall the buyer be entitled to correct the defect itself or have it corrected by third parties and to demand reimbursement of the required costs from the supplier.
3. Of the direct costs incurred due to repair or replacement delivery the supplier shall bear - provided the complaint turns out to be justified - the costs of the replacement part including dispatch, as well as the appropriate costs for dismantling and assembly; furthermore the costs for mechanics and auxiliary staff who may have to be made available, as well as the travel costs as far this does not mean disproportionate charges for the supplier.
4. Within statutory provisions, the buyer has the right to withdraw from the contract if the supplier - in consideration of the legal exceptional cases - does not succeed in remedying a material defect or providing replacement delivery within a reasonable period. If the defect is un-essential, the buyer just has the right to reduce the price. Otherwise the right to reduce the price remains excluded.
5. Further claims are determined exclusively according to section VII.2 of these General Terms and Conditions.
6. No liability is assumed particularly in the following cases:
Inappropriate or improper use, faulty assembly or start-up by the buyer or third parties, natural wear and tear, faulty or negligent handling, incorrect maintenance, unsuitable operating materials, faulty construction work, unsuitable subsoil, chemical, electro-chemical or electrical influences, unless the supplier is responsible for it.
7. Any improper alterations or repair works carried out by the buyer or third parties shall make the liability of the supplier for any consequences resulting hereof null and void. The same applies to alterations of the delivery item made without the prior consent of the supplier.

Title defects

8. If the use of the delivery item means an infringement of inland industrial property rights or copy-rights, the supplier will make the legal right for the further use available for the buyer at the supplier's expenses or he will modify the delivery item in an acceptable way for the buyer so that there is no longer an industrial property rights infringement.

Should this not be possible at commercially appropriate conditions or within a reasonable period, the buyer is entitled to withdraw from the contract. Under the mentioned circumstances the supplier has the same right to withdraw from the contract.

Furthermore the supplier will release the buyer from undisputed or legally established claims of the concerned industrial property rights holder.

9. In case of infringement of the industrial property rights or copyrights the obligations of the supplier are limited to those mentioned in section VI.8 with reservation of section VII.2.

10. They exist only if:

- the supplier informs the buyer immediately if claims are raised from industrial property rights and copyrights,
- the buyer supports the supplier in reasonable extent in defending itself against the raised claims, respectively makes it possible for the supplier to carry out the modifications according to section VI.8.
- all rights remain reserved for the supplier as far as defence measures, including to come to a settlement out of court, are concerned,
- the title defect is not due to an instruction of the buyer and
- the infringement of the right is not due to the fact that the buyer has modified the delivery item on its own or has not used it as specified by the contract.

VII. Liability of the supplier, exclusion of liability

1. If through any fault attributable to the supplier the supplied item cannot be used by the buyer in accordance with contract as a result of omitted or faulty pre- or post-contractual proposals and consultations or any other contractual collateral duties - in particular any instructions for use and maintenance of the supplied item - the provisions of sections VI and VII.2 shall apply and any further claims on the part of the buyer are excluded.

2. For damages that do not concern the supplied item itself, the supplier will be liable, for whatever law reasons – only

- a. in case of intent
- b. in case of gross negligence of the owner/ the executive employees,
- c. in case of culpable harming of life, body and health,
- d. in case of defects that have been fraudulently concealed,
- e. in case of a promise of guaranty
- f. in case of defects of the delivery item as far as, according to the Product Liability Act, responsibility is engaged for damages caused to persons or property when objects are used privately.

In case of culpable breach of essential contractual obligations the supplier is also liable in case of gross negligence of non-executive employees and in case of light negligence, in the latter case the liability is limited to the damages that can be reasonably foreseen and typical for the contract.

Any further claims shall be excluded

VIII. Prescription

The buyer's right to assert claims – for whatever legal reasons - is limited to 12 months. For claims for damages according to section VII.2 a – d and f, the legal time limits are applicable. They are also applicable for defects of a construction work or for delivery items that, according to their usual manner of use, have been used for a construction work and have caused its defectiveness.

IX. Use of software

As far as software programs are part of the delivery the buyer is granted a non-exclusive legal right to use the software and its documentation. It is ceded for use on the delivery item intended for it. It is forbidden to use the software on more than one system and for more than one machine as well as for purposes of third parties.

The buyer is only authorized to duplicate, re-work, translate or convert the object codes to source codes in the legally permitted extent (§§ 69 a ff. UrhG). The buyer commits itself not to remove manufacturer identifications - particularly copyright information – or to modify them without prior express consent of the supplier.

All other rights on the software and the documentation, including copies, remain the property of the supplier, respectively the software supplier. It is forbidden to give out sub-licences.

X. Jurisdiction, Venue

1. For all legal relations between the buyer and the supplier the law of the Federal Republic of Germany will be the only applicable.
2. The court of jurisdiction is the competent court for the seat of the supplier's company. But the supplier has also the right to take legal action at the seat of the buyer's company.