

VDMA Terms and Conditions for the Delivery of Machinery

For use with respect to:

1. a person, who, when concluding the contract, acts in exercise of their trade, business or profession (entrepreneur);
2. legal entities under public law or public-law separate assets.

I. General

1. All goods and services are subject to these conditions and any separate contractual agreements. Different conditions of purchase shall not become provisions of the contract even if the order is accepted.
In the absence of a special agreement, a contract is concluded with the supplier's written confirmation of the order.
2. The supplier reserves the right of ownership and copyright to samples, cost estimates, drawings or similar information, tangible and intangible, also in electronic form; these must not be made accessible to third parties. The supplier shall only make accessible to third parties any information designed as confidential by the buyer if the latter consents to this.

II. Prices and payments

1. In the absence of special agreement, the prices shall apply ex works including loading at the works, but exclusive of packaging and unloading. The prices are subject to VAT at the statutory rate.
2. In the absence of special agreement, payment is to be made without any deduction to the account of the supplier, namely:
1/3 deposit upon receipt of confirmation of the order,
1/3 as soon as the buyer has been informed that the main components are ready for dispatch, while the residual amount is due within one month after the transfer of risk.
3. The buyer shall have the right to withhold payments only insofar as his counter-claims are undisputed or established as legally valid.
4. The buyer shall only have the right to offset counter-claims from other legal relationships insofar as they are undisputed or established as legally valid.

III. Delivery time, delay in delivery

1. Delivery time shall be determined by agreement of the contracting parties. Its compliance by the supplier requires that all commercial and technical issues between the parties have been clarified and the buyer has fulfilled all the obligations incumbent upon him such as submission of the necessary official certificates or approvals or the payment of a deposit. If this is not the case, then the delivery time shall be appropriately extended. This shall not apply if the supplier is responsible for the delay.
2. Compliance with the delivery time is subject to correct and timely delivery. The supplier shall notify as soon as possible of any anticipated delays.
3. The delivery time shall be complied with if by its expiry the delivery item has left the supplier's works or readiness for dispatch has been reported. If acceptance is required, then apart from justified non-acceptance, the acceptance date shall be decisive, or alternatively notification of readiness for acceptance.
4. If dispatch or acceptance of the delivery item is delayed for reasons for which the buyer is responsible, then beginning one month after notification of dispatch- or readiness for acceptance the costs incurred by the delay shall be charged to him.
5. If non-compliance of the delivery time can be traced back to force majeure, to labour conflicts or other events which are outside the control of the supplier, then the delivery time shall be appropriately extended. The supplier shall notify the buyer of the beginning and end of such circumstances as soon as possible.
6. The buyer may without notice withdraw from the contract if the entire provision finally becomes impossible for the supplier before transfer of risk. Furthermore the buyer may withdraw from the contract if when ordering the performance of part of the delivery becomes impossible and he has a legitimate interest in rejecting the partial delivery. If this is not the case then the buyer shall pay the apportionable contract price for the partial delivery. The same shall apply in the event of incapacity of the supplier. Otherwise paragraph VII. shall apply. 2.

If impossibility or incapacity occurs during the delay in acceptance or if the buyer is solely or largely responsible for these circumstances, he shall still be obliged for the consideration.

7. If the supplier suffers delay and damage arises from this to the buyer, then he shall be entitled to request a lump sum in compensation. This shall amount for each full week of delay to 0.5 % in aggregate but a maximum of 5 % of the value of that part of the complete delivery that as a result of the delay cannot be used in time or not in accordance with the contract.

If the buyer grants to the supplier - taking into account the statutory exceptions - after the due date a suitable period for performance and if the period is not complied with, the buyer shall be entitled within the framework of statutory provisions to cancel. He shall be obliged at the request of the supplier to declare within an appropriate period whether he will make use of his right of withdrawal from the contract.

Other claims arising from delay in delivery shall be solely determined under paragraph VII.2 of these conditions.

IV. Transfer of risk, acceptance

1. Risk is transferred to the buyer when the delivery item has left the works, and namely also when partial deliveries are made or the supplier has accepted other services such as shipment costs or delivery and installation. If there will be an acceptance, the latter shall be decisive for the transfer of risk. It must be made immediately on the date of acceptance or alternatively after the supplier has notified of readiness for acceptance. The buyer may not refuse acceptance for a minor defect.
2. If dispatch or acceptance is delayed or not carried out as a result of circumstances which cannot be attributed to the supplier, risk shall be transferred to the buyer from the date of notification of readiness for dispatch or -acceptance. The buyer shall be obliged to take out any insurance at the cost of the buyer as the latter requests.
3. Partial deliveries are permissible if reasonable for the buyer.

V. Reservation of proprietary rights

1. The supplier shall reserve ownership of the delivery item until all payments have been received, also for any additionally due benefits, under the delivery contract.
2. The supplier shall be entitled to insure at the cost of the buyer the delivery item against theft, breakage, fire-, water- and other damage, unless the buyer himself has taken out insurance which can be proven.
3. The buyer may neither alienate, mortgage nor pledge the delivery item as security. In the event of seizure, confiscation or other dispositions by third parties he must immediately inform the supplier of this.
4. In the event of breach of contract by the buyer, in particular default in payment, the supplier shall be entitled to recover the delivery item after due notice and the buyer shall be obliged to surrender it.
5. Due to reservation of ownership, the supplier may only request return of the delivery item if he has withdrawn from the contract.

VI. Warranty claims

The supplier shall be responsible for material defects and defects in title in the delivery to the exclusion of further claims - subject to paragraph VII - as follows:

Material defects

If the parties have agreed on a certain quality of the object of the sale, the objective requirements for the object of the sale do not apply to this extent.

1. All those parts which turned out to be defective as a result of circumstances before transfer of risk shall, at the choice of the supplier, be improved or replaced free of defect. The establishment of such defects is to be shown to the supplier immediately in writing. Replaced parts become property of the supplier.
2. The buyer, after agreement with the supplier, shall grant the latter the time and opportunity to undertake all the improvements and replacement deliveries which the supplier deems necessary; otherwise the supplier shall be free of liability for the consequences arising therefrom.

Only in urgent cases of risk to operational safety or for prevention of excessive damage, where the supplier must be notified immediately, shall the buyer have the right to resolve the defect or have it resolved by third parties and to demand from the supplier reimbursement of the necessary expenses.

3. If the objection is proven to be legitimate, the supplier shall bear the expenses necessitated by the cure if this does not result in any disproportionate burden on the supplier. If the expenses increase due to the fact that the buyer has transported the object of the sale to a location other than the place of performance after delivery, the additional costs shall be paid by the buyer. In the event of the sale of a newly produced item, the supplier shall also compensate the expenses paid by the buyer within the scope of its statutory obligations as part of rights of recourse within the supply chain.
4. The buyer shall, within the framework of statutory provisions, have the right to cancel the contract, if the supplier - taking into account the statutory exceptions - allows to elapse a suitable period, set for him for improvement or replacement delivery due to a material defect, without remedy. If there is only a minor defect, the buyer shall have the right only to a reduction of the contract price. The right to a reduction of the contract price shall remain otherwise excluded.
5. Other claims shall be solely determined under paragraph VII.2 of these conditions.
6. No liability will be accepted in particular in the following cases: Inappropriate or unprofessional use, defective assembly or commissioning by the buyer or third parties, natural wear and tear, defective or negligent treatment, improper maintenance, unsuitable operating materials, faulty construction work, unsuitable site, chemical, electro-chemical or electrical affects - unless the supplier was responsible for these.
7. If the buyer or a third party carries out inappropriate improvements, the supplier shall bear no liability for the resulting consequences. The same shall apply for modifications to the delivery item if carried out without prior agreement of the supplier.

Defects in title

8. If the use of the delivery item leads to the infringement of industrial property rights or copyrights in Germany, the supplier at his cost must provide the buyer with the right to further use or modify the delivery item in such a reasonable way for the buyer that there is no further infringement of proprietary rights.

If this is not possible on commercially reasonable terms or within a reasonable period, then the buyer shall be entitled to cancel the contract. Under the stated conditions the supplier shall also have a right to cancel.

In addition the supplier shall indemnify the buyer from undisputed or legally enforceable claims by the respective holders of proprietary rights.

9. The supplier's obligations referred to in paragraph VI.8 are subject to paragraph VII.2 for the case of infringements of proprietary rights or copyright.

They shall only exist if

- the buyer immediately informs the supplier of asserted proprietary- or copyright infringements,
- the buyer assists the supplier to a reasonable extent in defence of the asserted claims or allows the supplier to carry out the modification measures in compliance with paragraph VI.8,
- all defensive measures remain open to the supplier, including out-of-court settlements,
- the defect in title is not due to an instruction by the buyer and
- the infringement of right was not caused by the buyer independently modifying the delivery item or using it in a non-contractual manner.

VII. Supplier's liability, liability exclusion

1. If the delivery item as a result of the supplier's culpably negligent or erroneous suggestions or advice, made before or after the conclusion of the contract, or by the culpable infringement of other secondary contractual obligations – especially the instructions for operating and maintaining the delivery item – cannot be used by the buyer in a manner compliant with the contract, then the provisions of paragraphs VI and VII.2 shall apply to the exclusion of further claims by the buyer.
2. For damage which not caused to the delivery item itself, the supplier shall - for any legal reasons whatsoever - only be liable
- a. in the event of intent or gross negligence,
 - b. for culpable injury to life, body, health,
 - c. for defects the supplier has fraudulently concealed,
 - d. within the framework of a promise of guarantee,
 - e. for defects in the delivery item, if liability is incurred under the law on product liability for damage to persons or property to privately used items.

In the event of culpable violation of major contractual obligations the supplier shall be liable also for ordinary negligence, limited, however, in the latter case to reasonably foreseeable, typical damage typical.

Other claims shall be excluded.

VIII. Limitation

The period of limitation for all claims of the buyer, for whatever reasons, is 12 months; this also applies to the period of limitation for rights of recourse within the supply chain pursuant to section 445b(1) of the German Civil Code (BGB). The suspension of the expiry of the period of limitation pursuant to section 445b(2) BGB remains unaffected; it ends at the latest five years after the supplier has delivered the item to the seller. The provisions on the period of limitation of rights of recourse and the suspension of the expiry of the period of limitation do not apply if the last contract in this supply chain is consumer goods purchase. The statutory periods shall apply for claims for damages under paragraph VII.2 a-c and e. They shall also apply to defects in a structure or for delivery items which in conformity with their normal mode of use were used for a structure and caused the latter's defectiveness.

IX. Use of software

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

The buyer may copy, revise or translate the software or have it converted from the object code to the source code only to the statutory permitted scope (section 69 of the Copyright Act (UrhG)). The buyer shall be obliged not to remove or modify manufacturer's data - in particular copyright marks - without prior express consent of the supplier.

All other rights to the software and documentation including copies shall remain with the supplier or software supplier. Sublicensing is not permitted.

X. Applicable law, place of jurisdiction

1. The law of the Federal Republic of Germany governing legal relations of domestic parties shall apply exclusively to all legal relations between the supplier and the buyer.
2. The place of jurisdiction is the court competent for the head office of the supplier. The supplier shall however be entitled to bring an action at the headquarters of the buyer.