

General terms and conditions for the delivery of machinery in domestic and European business transactions as recommended by the Verband Deutscher Maschinen- und Anlagenbau e.V.

(Federal German Association for Machine and Plant Building, Registered Society)

For application in dealings with:

1. merchants, if the contract is appurtenant to the operation of the commercial enterprise;
2. legal entities under public law and separate assets under public law.

I. Offer

Any documents appertaining to the offer, such as illustrations, drawings, weight and measurement indications, shall be deemed merely approximately relevant unless expressly confirmed as binding. Seller shall reserve his right of ownership and copyright in relation any cost estimates, design drawings and other documents; any such documentation being prohibited from being made accessible to third parties. Seller shall be obliged to refrain from making accessible to third parties any design drawings marked as confidential by Buyer except with Buyer's express consent.

II. Scope of delivery

Seller's written confirmation of order shall be relevant in determining the scope of delivery, whereas in the absence of a timely confirmation of order, the Seller's offer shall be relevant, provided it contains a time commitment and the offer was accepted within the specified time limit. Any additional agreements and amendments shall be subject to Seller's written confirmation.

III. Prices and payment

1. In the absence of a special agreement, prices shall apply ex-works including loading at the factory, but excluding packaging. Added to the prices will be the corresponding, legally valid V.A.T. (sales tax) rates.
2. In the absence of a special agreement, payment shall be effected on a cash basis, without any deduction or discount, free Seller's office of payment, as follows: 30% down payment upon receipt of the confirmation of order, 60% upon notification to Buyer that the main elements are ready for shipment, and settlement of the balance within the subsequent month.
3. Retention of payments or set-off due to Buyer's claims contested by Seller shall not be admissible.
4. Failure to meet the target will incur interest at the bank rates then in force, including commission for short-term loans, but at least interest equal to 4% above the bank rate then applied by the Deutsche Bundesbank.

IV. Lead time

1. The lead time shall commence at dispatch of the order confirmation, albeit not before submission of the documents, permits, authorisations to be procured by the Buyer, nor before receipt of the agreed down payment.
2. The lead time shall be deemed observed if the delivery item has left the factory by the time of lead time expiration, or upon notification of readiness for shipping.
3. The lead time shall be extended by a fair and reasonable amount of time in the event of measures related to industrial disputes, particularly strikes and lockouts, and at the occurrence of unforeseen hindrances not willfully intended by the Seller, to the extent that such hindrances can be proven to have a considerable influence on the completion or surrender of the delivery item. The same shall apply to any of these circumstances afflicting sub-suppliers. The circumstances described above shall equally not be the Seller's responsibility, if they arise during an already existing delay. Seller shall be obliged to promptly notify Buyer of the beginning and end of such hindrances in relevant cases.
4. If the shipment is delayed upon the Buyer's request, the Buyer will be charged for the costs accrued during storage, beginning one month following notification of readiness for shipment; in the case of storage of the Seller's factory, however, Buyer shall be charged for at least 1/2 per cent of the overall invoice amount for each month. However, even after implementation and fruitless expiration of a fair and reasonable period of time, Seller shall not be authorised to dispose of the delivery item in any other manner and deliver to the Buyer at a reasonable delayed time.
5. Prerequisite for observation of the lead time shall be Buyer's performance of his contractual duties.

V. Transfer of risk and acceptance

1. The risk shall be transferred at the latest when the delivery items start on their journey to the Buyer, even if partial deliveries are made or if the Seller is also responsible for other services such as payment of the shipping costs and/or transporting and setting up the delivery items. Upon Buyer's request, Seller will have the shipment insured at Buyer's expense against theft, breakage, damages by shipping, fire or water, as well as any other insurable risks.
2. If the dispatch of the goods is delayed due to reasons for which the Buyer is responsible, the risk shall be transferred to the Buyer on the day the delivery items are ready for shipment; however, the Seller shall be obliged to take out, upon Buyer's request and at Buyer's expense, all insurances demanded by the Buyer.
3. All goods delivered, even if they show minor defects, shall be accepted by the Buyer without prejudice to the rights under VII.
4. Partial deliveries shall be admissible.

VI. Reservation of proprietary rights

1. The Seller reserves his right of ownership in the delivery item until he is in receipt of all payments due under the sales contract.
2. Seller shall have the right to have the delivery items insured at the Buyer's expense against theft, breakage, damages by shipping, fire or water and any other damages unless it can be ascertained that the Buyer has already taken out such an insurance policy on his own.
3. Buyer shall be authorised neither to pledge the goods as collateral security nor transfer its ownership by way of security. In the event of a levy of execution, legal seizure attachment, or acts decreed by third parties, Buyer shall be obliged to immediately notify the Seller.
4. If the Buyer's behaviour is in violation of the contract, especially due to default in payment, Seller shall have the right to take back the goods after a due reminder, whereas Buyer shall be obliged to surrender the goods accordingly. Seller's assertion of his right of ownership and seizure of the delivery item shall not be construed as a repudiation of contract.

VII. Liability for defective goods

In the case of defects in the delivered items, including the absence of expressly promised characteristics, the Seller shall be held liable, excluding any additional claims, irrespective of Section IX as follows:

1. All components which turn out to be useless or seriously impaired in their usefulness within 6 months following commissioning, due to circumstances preceding the transfer of risk - most notably design flaws, inferior construction materials or manufacture shortcomings - shall at the Seller's discretion be either rectified or delivered anew at the Seller's expense. The finding of such defects must be immediately notified to the Seller in writing. Replaced parts shall become the Seller's property. If the shipping, set-up/installation or commissioning of the items are delayed due to reasons beyond the Seller's responsibility, the liability period shall expire not later than 12 months following transfer of risk. For products/equipment purchased to a considerable degree, Seller's liability shall be limited to the assignment of the liability claims which he may have against the supplier of the purchased products/equipment.

2. The Buyer's right to assert claims from damages shall in any case become statute-barred not later than 6 months from the date of timely submission of a claim, but earliest upon expiration of the warranty period.
3. No warranty will be given for damages resulting from the subsequent reasons: Unsuitable or inappropriate utilization, faulty installation and/or commissioning on the part of the Buyer or a third party, natural wear and tear, inadequate or negligent treatment, inappropriate production equipment and facilities, substitution of working materials, flawed construction works, unsuitable building site, chemical, electro-chemical or electrical influences, to the extent that they are not attributable to the Seller's fault.
4. Following an arrangement with the Seller to that effect, the Buyer shall grant the Seller an appropriate amount of time for the performance of all remedying works and substitute deliveries as the Seller sees fit in all fairness, as the Seller will otherwise become exempt from his liability for defects. Solely in urgent cases causing imperilment of operational safety, and for the purpose of warding off disproportionately large damages, in which case the Seller must be notified immediately, or if the Seller is in default regarding the elimination of a defect, shall the Buyer have the right to either remedy the defect on his own or have it remedied by a third party, and claim compensation from the Seller for the costs incurred.
5. Of the direct costs arising immediately from the remedying and/or substitute delivery, the Seller shall - inasmuch as the complaint turns out to be justified - bear the costs for the replacement part including shipping and handling, as well as a reasonable and proportionate amount of the costs for disassembly and reassembly, and moreover - if such can be demanded in all fairness, depending on the situation of a given instance case - the costs for provision of his fitters and helpers as may be necessary. In any other case, the costs shall be borne by the Buyer.
6. The warranty period for replacement parts and remedying works shall be three months; the duration of the warranty period shall, however, continue at least until the expiration date of the delivery item's original warranty period. The warranty term for the delivery item shall be extended by a period of time equal to the duration of the temporary cessation of work caused by the remedying of the defects.
7. In the case of inappropriately executed alterations or repair works performed by the Buyer or by third parties without the Seller's prior approval, Seller's liability for any consequences which may ensue from said unauthorised actions shall be rescinded.
8. Any further claims on the part of the Buyer, in particular claims for compensation for damages which did not occur in the delivery item per se, shall be excluded. Such an exemption from liability shall not apply in cases of wrongful intent, gross negligence on the part of the owner or a senior employee, and culpable breach of essential contractual obligations. In the event of a culpable breach of essential contractual obligations, the Seller shall be held liable solely for reasonably predictable damages typical of the contract - except in cases of wrongful intent and gross negligence on the part of the owner or a senior employee. Furthermore, exemption from liability shall not apply in cases where liability is incurred by defects in the delivery item for damages to life and property in privately used objects according to product liability law. Exemption from liability shall furthermore not apply in cases of absence of properties and characteristics expressly assured, if it had been the specific intent of said reassurance to guard the Buyer against damages not occurring in the delivery item per se.

VIII. Liability for secondary obligations

If the Buyer is prevented, due to the Seller's fault, from utilizing the item delivered in conformity with the contract due to the negligent or faulty execution of proposals or consultations submitted before or after conclusion of the contract, or due to omission of other secondary contractual obligations - in particular instructions for the operation and maintenance of the delivery item - the provisions of Sections and VII and IX shall apply, as the case may be, excluding any and all further claims on the Buyer's part.

IX. Buyer's right of withdrawal and cancellation, and Seller's further liability

1. Buyer shall have the right to withdraw from the contract if the Seller proves entirely incapable of performing the overall scope of works and services owed by him under the contract prior to the transfer of risk. The same shall apply to Seller's inability. In the same vein, Buyer shall have the right to withdraw from the contract if, in the case of an order for items of a similar nature, the completion of the full quantity of the delivery share proves impossible, and if he has a justified interest in refusing a partial delivery; if this is not the case, the Buyer shall have the right to reduce his consideration accordingly.
2. In the case of a delay in performance as per the provisions of Clause IV of the terms of delivery, and if the Buyer grants a fair and reasonable period of grace to the Seller in default - subject to the express declaration that he will refuse acceptance of the works and services following expiration of said period of grace -, and if the period of grace is not met, the Buyer shall have the right to withdraw from the contract.
3. If impossibility occurs during a delay of acceptance, or due to the Buyer's fault, the latter shall remain obligated to provide consideration.
4. Moreover, Buyer shall have the right to cancel the contract if Seller wrongfully allows the fruitless expiration of the fair and reasonable period of grace granted to him for remedial or replacement delivery regarding a defect under the purports of the delivery terms for which he was responsible. Buyer's right of cancellation of the contract shall also remain valid in any other cases where the remedial or replacement delivery due on the Seller's part have failed.
5. Exempt shall be all further claims on the Buyer's part, most notably claims for cancellation or abatement, and claims for damages of any sort, including damages which have not occurred in the delivery item per se. This exclusion of liability shall not apply in the case of premeditation, gross negligence on the part of the owner or senior employees, and the culpable violation of essential contractual duties. In the case of the culpable violation of essential contractual duties the supplier shall be liable - except in cases of premeditation or gross negligence on the part of the owner or senior employees - only for the reasonably foreseeable damages typical for such a contract. This exemption from liability shall furthermore not apply in cases where liability is incurred by defects in the delivery item for damages to life and property in privately used objects according to product liability law. Exemption from liability shall furthermore not apply in cases of absence of properties and characteristics expressly assured, if it had been the specific intent of said reassurance to guard the Buyer against damages not occurring in the delivery item per se.

X. Terms and conditions of installation, place of fulfillment, place of jurisdiction and applicable law

1. The supplier's terms and conditions of installation in their currently valid form shall apply in addition.
2. The place of fulfillment for the delivery is the supplier's principal place of business.
3. The place of jurisdiction for all disputes arising from the contractual relationship, when the customer is a registered trader, a legal person of public law or a separate estate under public law, shall be the principal place of business of the supplier, who is also entitled to institute legal proceedings at the principal place of business of the customer.
4. Only German law shall apply in all cases. Application of the Harmonized Hague Buying Laws of the UN Agreement Concerning Contracts for the International Sale of Goods is excluded, as is the application of foreign law.

XI. Miscellaneous

Should any part of these terms and conditions be or become null and void, this shall not impair the effectiveness of the other terms and conditions. An invalid term or condition must be replaced by one derived from the sense of the other terms and conditions.