

Terms for the delivery of machines

Applicable to:

1. Any person who carries out a commercial or self-employed activity at the time of conclusion of the contract (entrepreneur);
2. Legal persons under public law or a public special fund.

I. GENERAL

1. All deliveries and services underlie these terms and any other contractual agreements. Any deviating conditions of purchase of the customer do not become part of the contract through acceptance of the order.
A contract is formed – in the absence of any other special agreement – with the written confirmation of the supplier.
2. The supplier retains the property rights and copyright to patterns, cost estimates, drawings and other information of any physical or non-physical manner – also those in electronic form – which may not be made accessible to third parties. The supplier undertakes that he will not allow third persons any access to confidential information and documents supplied to him by the customer unless he has his express authorisation to do so.

II. PRICE AND PAYMENT

1. In the absence of any other special agreements, prices ex-works are applicable including loading in the factory. However these prices do not include packaging and unloading. All prices are subject to turnover tax at the statutory rate.
2. In the absence of any special agreement, payment is to be made to the supplier's account without any deductions, i.e.:
30 % advance payment following receipt of the confirmation of order,
60 % as soon as the customer has been informed that the main components are ready for dispatch,
the remaining balance within one month of passage of risk.
3. The right of the customer to hold back payments or to counterbalance payments with counter claims is only allowed in so far as his counter claims are undisputed or have been ascertained to be legally effective.
4. The Purchaser's right to set off against counterclaims from other legal relationships is only valid to the extent that they are undisputed or legally established.

III. PERIOD OF DELIVERY, DELAY IN DELIVERY

1. The period of delivery shall be agreed upon by the contracting parties. Compliance with the period of delivery by the supplier assumes that all commercial and technical matters have been clarified between the contracting parties and that the customer has fulfilled all obligations such as the furnishing of the necessary official certificates or permits or the payment of an advance payment. Should this not be the case, the delivery period shall be extended accordingly. This is not applicable in so far as the supplier is the reason for the delay.
2. Compliance with the delivery period is subject to correct and punctual delivery. The supplier is to inform the customer of any impending delays as soon as possible.
3. The delivery period has been met when the delivery item has left the supplier's factory or when the customer has been notified that it is ready for dispatch. In so far as acceptance is to take place, the acceptance date is decisive – except in the case of justified refusal to accept – or the notification of the customer that the delivery item is ready for dispatch.
4. Should dispatch / acceptance of the delivery item be delayed for reasons caused by the customer, he will be charged expenses arising due to the delay commencing one month after notification of the readiness for dispatch / acceptance.
5. If the non-compliance with the delivery period is due to force majeure, industrial disputes or any other events which are outside of the sphere of control of the supplier, the delivery period shall be extended accordingly. The supplier shall inform the customer of the start and the end of such occurrences as soon as possible.
6. The customer is entitled to withdraw from the contract without setting a time limit should the overall delivery become impossible before passage of risk. Furthermore, the customer is entitled to withdraw from the contract should the execution of one of the parts of the delivery become impossible and the customer is justifiably interested in the rejection of partial delivery. Should this not be the case, the customer is obliged to pay the contract price going on the partial delivery. The same is applicable to inability to perform of the supplier. Section VII.2 is also applicable
Should the impossibility or inability to perform arise during the default in acceptance, or if the customer alone is responsible for these circumstances or largely responsible, he is obliged to carry out counter-performance.

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IV. PLACE OF FULFILMENT, TRANSFER OF RISK, ACCEPTANCE

1. Place of fulfilment for all obligations of the contract is the site of supplier, as far as nothing different been agreed. The supplier takes the risk until the buyer takes over the machine(s).
2. If the supplier has to send the delivery item to a different place than to the place of fulfilment, because the customer instructed him to do so, the risk is taken by the customer, as soon as the delivery item is handed over to a forwarding agent, carrier or another party has received the item of delivery (decisively is the start of loading).
3. If the acceptance is delayed or doesn't happen caused by circumstances which are not caused by the supplier, the risk is on customer's side from the day the acceptance did happen or from the day when the items are ready for dispatch. The supplier has to take care of any kind of insurance the buyer wants and the customer has to pay these.
4. In case the supplier hasn't done the erection/installation, place of fulfilment for these items of delivery is the place, where the erection and/or installation has to be done due to the corresponding contract.
This means, that the supplier takes the risk concerning the items to be delivered until the acceptance. If the buyer is in default regarding the acceptance, the risk has to be taken over by him.
The customer is obliged that all the goods which are already delivered but not yet erected or mounted are protected from theft and damages.
5. Partial deliveries are permitted, as far as they are reasonable for the customer. The pre-named topics to No. 1.–4. are valid for partial deliveries also.

V. RESERVATION OF OWNERSHIP

6. The supplier shall reserve ownership of the delivery item until all payments from the supply contract have been made.
7. The supplier is entitled to insure the delivery item against theft, breakages, fire damage, water damage and any other damage at the expense of the customer in so far as the customer himself cannot prove that he has taken out any insurance.
8. The customer may not sell, pledge or transfer ownership of the delivery item. In the case of attachment or any other dispositions by third parties, the customer is to inform the supplier of these circumstances immediately.
9. In the case of violation of the contract by the customer, especially with regard to default in payment, the supplier is entitled to reclaim the delivery item following a reminder and the customer is obliged to hand over the delivery item.
10. Due to the reservation of ownership, the supplier can only reclaim if he has withdrawn from the contract.
11. The application for insolvency proceedings entitles the supplier to withdraw from the contract and to demand the immediate return of the delivery item.

VI. DEFECTS CLAIMS

The supplier warrants the following for redhibitory defects and defects in title of the delivery excluding any further claims – subject to section VII:

Redhibitory defects:

1. Depending on the wishes of the supplier, each part deemed defective as the result of a circumstance existing before passage of risk are to be improved / or replaced by perfectly functioning parts by the supplier. The supplier is to be notified in writing of the ascertainment of such defects immediately. Replaced parts shall remain the property of the supplier.
2. Following communication with the supplier, the customer must give the supplier the necessary time and chance to carry out the necessary improvements and substitute deliveries; otherwise the supplier is freed from the liability for any arising consequences. It is only in urgent cases of endangerment to operational safety or for the avoidance of disproportional damage – in which case the supplier is to be informed immediately – that the customer is entitled to rectify the defects himself or to have the defects rectified by a third party and to claim the necessary expenses from the supplier.
3. Any direct costs arising from the improvement/substitute deliveries including expenses arising from the dispatch are to be borne by the supplier – in so far as the complaint turns out to be justified. He is furthermore responsible for the expenses arising from the assembly and disassembly as well as the costs of the necessary supplying of the necessary fitters and auxiliary personnel. This includes travel expenses in so far as no disproportional charges to the supplier arise.
4. Within the framework of legal stipulations, the customer is entitled to withdraw from the contract should the supplier – taking into consideration the legal exceptional cases – fail to comply with an appropriate deadline for carrying out improvements or substitute deliveries. Should only an immaterial defect be present, the customer is only entitled to a reduction in the contract price. The entitlement to a reduction of the contract price is otherwise excluded.

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5. Section VII.2 of these terms exclusively determines further claims.
6. No guarantee is granted in the following cases in particular:
Unsuitable or improper use, defective assembly / putting into operation by the customer or third parties, natural wear and tear, defective or otherwise negligent treatment, inappropriate maintenance, unsuitable operating material, defective construction works, unsuitable building ground, chemical, electrochemical or electrical disturbances – in so far as they are not caused by the supplier.
7. Should the customer or a third party carry out improper improvements, the supplier is not liable for any resulting consequences. The same applies to any modifications on the delivery item carried out without the prior written consent of the supplier

Defects in title

8. Should the use of the delivery item result in the violation of domestic industrial property rights or copyrights, the supplier is obliged to furnish the customer with the rights to continued use or to modify the delivery item in such a way that industrial property rights are no longer violated – the supplier is responsible for any expenses associated with this.

Should this not be possible under economically appropriate terms or within an appropriate period of time, the customer is entitled to withdraw from the contract. The supplier is also entitled to withdraw from the contract under the aforementioned conditions.

Furthermore, the supplier will indemnify the customer of undisputed or legally effective claims by the appropriate holder of an industrial property right.
9. The supplier's obligations listed in section VI.7 are subject to section VII.2 in case of violation of industrial property rights or copyrights. They only exist should:
 - The customer immediately inform the supplier of any asserted violations of industrial property rights or copyrights,
 - The customer supports the supplier to an appropriate extent in the avoidance of the asserted claims / empower the supplier with the chance of carrying out modification measures in accordance with section VI.7,
 - All protection measures including out-of-court regulations be left up to the supplier,
 - The defect in title not be based on an instruction by the customer and
 - The violation not have been caused by the supplier making modifications to the delivery item of his own accord or not have used the delivery item in the manner stipulated in the contract.

VII. LIABILITY

1. Should it not be possible for the delivery item to be used by the customer in accordance with the stipulations in the contract due to the fault of the supplier arising from non-performance or defective execution of recommendations and advice either preceding or following the formation of the contract or by the violation of other contractual supplementary obligations – in particular the instructions for the operation and maintenance of the delivery item – the regulations in sections VI and VII.2 are applicable accordingly, excluding any further claims by the customer.
2. The supplier is only liable for damages not arising on the delivery item itself in the following:
 - a) Intent,
 - b) In the case of gross negligence on the part of the owner / of the agents or executive employee,
 - c) In the case of culpable injury to life, physical harm or damage to health,
 - d) In the case of defects about which the supplier has fraudulently maintained silence or the absence of such defect the supplier has guaranteed,
 - e) In the case of defects to the delivery item in so far as the product liability law for damage or injury to persons or property is liable for privately used items.

In the case of culpable violation of significant contractual obligations, the supplier is also liable for gross negligence of non-executive employees and in the case of slight negligence, in this case limited to reasonably foreseen damages typical of the contract.

Any further claims are excluded.

VIII. PRESCRIPTION

All claims made by the customer – for whatever legal reasons whatsoever – are struck by the statute of limitations in 12 months. Statutory time limits apply for claims for damages according to section VII.2 a–e. They also apply to defects on a

construction or for delivery items which, in accordance with their usual manner of use, have been used for a construction and have caused the defectiveness of this construction.

IX. USE OF SOFTWARE

In so far as the delivery includes software, the customer is awarded a non-exclusive right to use the delivered software including its documentation. Its use is permitted on the delivery item determined for it. Use of the software on more than one system is forbidden. The customer may only duplicate, edit or translate the software or convert the object code into the source code to the extent legally permitted (§§ 69 a ff. copyright law). The customer undertakes to not change any manufacturer's details – in particular copyright notices – without the prior expressed consent of the supplier. The supplier / software supplier shall retain all other rights to the software and the documentation including the copying of it. The granting of sub-licences is not permitted.

X. APPLICABLE LAW, PLACE OF JURISDICTION

1. The law of the Federal Republic of Germany pertaining to legal relationships between the parties is the exclusively applicable law to all legal relationships between the supplier and the customer.
2. Place of jurisdiction is the court responsible at that place where the supplier has its seat of business. The supplier is however entitled to bring a suit at the place where the customer has his main place of business.