



Terms and conditions for the supply of machines, accessories and spare parts

Applicable to:

1. A person who - when signing the contract – acts as a contractor when executing its trade or independent business;
2. Entities under public law or a separate asset under public law.

I. General

1. All supplies and services shall be subject to these terms and conditions as well as separate agreements, if any. Deviating terms and conditions of purchase of the purchaser shall not become subject of the contract – even by accepting the order.
2. All offers of the supplier shall always remain without obligation. The information concerning the weight, dimensions, capacities, consumption data, prices and services contained in the catalogues, leaflets, circular letters, advertisements, figures and lists of prices are of approximate character only unless otherwise expressly specified binding. The supplier shall have the property and copyrights in samples, cost estimates, drawings and similar information of physical and non-physical kind – also in electronic form – they must not be disclosed to third parties. The supplier agrees not to disclose information and documents designated confidential by the purchaser to third parties unless the consent of the purchaser has been obtained.

II. Prices and payment

1. Unless otherwise agreed, the prices shall be applicable ex works, including loading in the works, however excluding packaging and unloading. The legally applicable Value Added tax shall be added to the prices. Unless otherwise agreed, the prices shall be expressed in Euro.
2. Unless otherwise agreed, payment shall be effected without any deduction to the account of the supplier as follows:
 40% down payment on receipt of the order confirmation
 60% as soon as the purchaser is informed that the major components are ready for despatch; in the home country to the suppliers account. Abroad against an irrevocable letter of credit confirmed by the bank.
3. The purchaser shall have the right to withhold payments or set off against counter-claims only in so far its counter-claims are undisputed or have become legally effective.

III. Term of delivery, delivery delay

1. The term of delivery shall be specified in the agreements between the parties. To enable the supplier to keep these terms it is necessary that all commercial and technical issues have been clarified between the parties and the purchaser has met all his obligations, for instance, obtaining the necessary certificates issued by authorities, the documents to be provided by the purchaser, permits, releases or effecting a down payment. In case of failure to do so, the term of delivery shall be extended accordingly. This shall not be applicable if the delay is attributable to the supplier. A requirement to keep the term of delivery is that all contractual obligations have been met by the purchaser.
2. Adhering to the term of delivery shall be subject to the correct delivery to the supplier of parts ordered in due time.
3. The term of delivery shall be deemed kept if the goods have left the suppliers plant or the purchaser has been notified of their readiness for despatch before expiry of the delivery date. As far as an acceptance procedure is required, the date of acceptance shall be decisive – except in case of justified rejection of acceptance. Supplementary also the notice of readiness for acceptance. In the case that an acceptance procedure has been agreed upon, the acceptance criteria must be stipulated in the purchase contract.
4. In the case that shipment and/or acceptance are delayed for reasons which are within the purchaser's responsibility, any cost incurred due to the delay shall be borne by him, beginning one month after notice of the readiness for shipment and/or acceptance.
5. If the failure to keep the term of delivery is due to Force Majeure, industrial disputes or other events beyond the control of the supplier,

the term of delivery shall be extended accordingly. The supplier shall inform the purchaser of the beginning and end of such circumstances as soon as possible.

6. The purchaser shall have the right to withdraw from the contract without stipulating a term if it is finally impossible for the supplier to render all services prior to the transfer of risk. Furthermore, the purchaser shall have the right to withdraw from the contract if an order execution of a partial supply becomes impossible or he has justified interests in rejecting the partial consignment. If not, the purchaser shall pay the proportional contract price for the partial consignment. The same shall be applicable in case of default of the supplier. In addition to which section VII.2 shall be applicable.
 If impossibility or defaults occur during the period of rejection of acceptance or if these circumstances are the sole or predominant responsibility of the purchaser he shall remain obliged to fulfil the contract.
7. In case the supplier is in default resulting in damage to the purchaser, he shall have the right to claim a lump sum indemnification for default which shall amount to 0.5 % for each completed week, however, to a maximum of 5 % of the value of that part of the whole delivery which – as a whole or partially – cannot be utilised in accordance with the contract due to the delay. Should the purchaser grant an appropriate period of grace to the supplier – with due consideration given to the exceptional cases provided by law – and if this grace period is not kept, the purchaser shall have the right to withdraw from the contract within the provisions of legal regulations.
 Further claims resulting from the delay in delivery shall be determined exclusively in compliance with Section VII.2 of these terms and conditions

IV. Transfer of risk, acceptance

1. Risk shall be transferred to the purchaser as soon as the object of delivery has left the works and if partial deliveries have been agreed or the supplier has accepted other services, such as, for instance, shipment costs or supply and installation. As far as an acceptance procedure is required, it shall be decisive for the transfer of risk. The acceptance procedure shall be carried out immediately at the date of acceptance, supplementary also on the supplier's notice of readiness of acceptance. The purchaser shall not have the right to reject acceptance due to a minor defect.
2. In case that the delivery and/or acceptance are delayed and/or not carried out at all due to circumstances beyond the control of the supplier, the risk shall be transferred to the purchaser at the date of the notice of readiness for shipment and/or acceptance. The supplier shall agree to take out – on the purchasers account - those insurances which are required by the purchaser.
3. Partial delivery shall be permitted as far as reasonably acceptable to the purchaser.

V. Reservation of title

1. The supplier reserves title of ownership on the goods to be delivered until all payments resulting from the contract have been received.
2. The supplier has the right to have the delivery items insured – on the purchasers account – against theft, breakage, fire, water and other damage unless the purchaser establishes that he has taken out such insurance.
3. The purchaser shall not sell, pledge or assign the delivery item as a security. He shall inform the supplier immediately in case of seizure, confiscation or other possession orders by third parties.
4. In the case of infringement of the contract by the purchaser, in particular in case of delay in payment, the supplier shall have the right to re-possess the goods following the issue of a payment reminder, and the purchaser shall be obliged to hand over the goods.
5. In case of an application for the opening of insolvency proceedings, the supplier shall have the right to withdraw from the contract and to request immediate return of the delivered goods.





VI. Warranty

The supplier shall grant a guarantee for material or legal deficiency – subject to Section VII – as follows; all other claims are excluded.

Material deficiencies

- All those components shall be repaired or supplied free of charge and to the discretion of the supplier which are found to be defective due to a circumstance which occurred prior to the date of transfer of risk. The supplier shall be informed immediately in writing if such defects are detected. Replaced components shall become the property of the supplier.
- The purchaser shall – on agreement with the supplier – grant the time and opportunity required repair and supply those replacement parts which the supplier deems necessary; otherwise the supplier shall be released from the liability for subsequent consequences. Only in urgent cases, to eliminate hazards for the operational safety and/or to eliminate disproportionate damage does the purchaser have the right to eliminate the defect himself or have the defect eliminated by third parties -whereby the supplier is to be informed immediately- and to claim compensation from the supplier for the expenses incurred.
- Of the costs incurred due to repair and/or supply of replacement, the supplier shall bear – providing that the complaint proves to be justified – the cost of the replaced item including shipment as well as all appropriate costs of demounting and installation. In addition, the costs for the provision of engineers and labourers, if, dependent upon the situation in each individual case, this can be rightly demanded.
- Within the provisions of legal regulations, the purchaser shall have the right to withdraw from the contract if an appropriate period of grace set by him for repair or replacement elapses fruitlessly by default of the supplier – with due consideration to legal exceptions. In case of a minor defect, the purchaser shall have the right to reduce the contract price only. The right to reduce the contract price otherwise shall be excluded.
- No guarantee claims will be accepted in particular in the following cases:
Unsuitable or non-designated use, faulty installation and/or start-up by the purchaser or third parties, natural wear and tear, faulty or careless handling, improper maintenance, unsuitable operating means, defective construction work, unsuitable soil, chemical, electro-chemical or electrical effects – unless attributable to the supplier.
- Should the purchaser or a third party carry out repairs improperly, the supplier shall not be held liable for the consequences resulting therefrom. The same applies to modifications carried out to the delivered goods without prior approval of the supplier.

Legal deficiencies

- Should the use of the delivered goods result in an infringement of trade protection rights or copyrights in the home land, then the supplier shall in any case procure, for the purchaser, at his own cost the right for further use or modify the delivered goods in a manner acceptable to the purchaser that the infringement ceases to exist. If this is impractical under economically appropriate conditions or within an appropriate period of time, the purchaser shall have the right to withdraw from the contract. Under the conditions specified, the supplier shall also have the right to withdraw from the contract. Furthermore, the supplier shall indemnify and hold harmless the purchaser against undisputed or legally effective claims of the persons involved.
- The obligations of the supplier identified in Section VI 7 are subject to Section VII.2, in the case of infringement of protection and copyrights – be binding and final.

They are applicable only if:

- The purchaser informs the supplier immediately of claims raised in terms of protection and copyright infringement,
- The purchaser assists the supplier to an appropriate extent in the defence of the claims raised and/or enables the supplier to carry out the modification work mentioned in Section VI.7,
- All defence measures, including out-of-court regulations; are unconditionally reserved for the supplier.
- Legal deficiency is not based on an instruction issued by the purchaser; and
- Legal infringement is not caused by unauthorised modification of the goods by the purchaser or used it for purposes other than those stipulated in the contract.

VII Liability

- If the delivered goods cannot be used by the purchaser as stipulated in the contract – for reasons of default by the supplier due to failure to execute or faulty execution of suggestions made prior to and after signing the contract, and consultation or due to the violation of other contractual covenants, in particular instructions for the operation and maintenance of the goods delivered – the provisions of Sections VI

and VII.2 shall be applicable accordingly. All other claims of the purchaser shall be excluded.

- The supplier shall be liable for damage which did not occur on the goods delivered themselves – for any legal reason whatsoever - only

- In case of intent,
- In case of gross negligence by the owner/ bodies or executives,
- In case of negligent damage to life, body and health,
- In case of defects which were fraudulently concealed or the non-existence of which were guaranteed,
- In case of defects on the goods delivered inasmuch as liability for damage to persons and property on privately used objects is accepted, in compliance with the product liability act.



As regards negligent infringement of fundamental contractual obligations the supplier shall be liable also in the case of gross negligence by non-executive employees and in regard to minor negligence in the latter case; limited to contract typical damage and predictable within reason.

Any other claims are excluded.



VII. Statutory limitation period

All claims by the purchaser – for any legal reason whatsoever – are statutory limited to 12 months (6 months in two-shift operation). The legal terms shall be applicable for intentional or malicious behaviour as well as for claims in accordance with the product liability act. They shall also be applicable to the defects of a building or for the goods delivered which were used – according to their usual application – for a building and were the cause for its defectiveness.



VIII. Software application

As far as software is included in the scope of delivery, the purchaser shall be granted a non-exclusive right to use the software including the associated documentation. It is transferred for the application in the delivery object provided for this purpose. It shall not be allowed to use the software in more than one system.

The purchaser shall copy, review, translate the software only to the extent permitted by law (§§ 69 a, and the following of the Copyright Act) or convert it from the object code into the source code. The purchaser shall agree not to eliminate the notes of the manufacturer – in particular copyright notes – unless the prior express approval of the supplier has been obtained.

Any other right in the software and documentation including copies shall remain with the supplier and/or the supplier for the software. No granting of sub-licences shall be permitted.



IX. Applicable law, place of jurisdiction

- The decisive laws of the Federal Republic of Germany governing legal proceedings between national companies is exclusively valid for all legal proceedings between supplier and purchaser.
- The place of jurisdiction shall be the court at the residence of the supplier. However, the supplier shall have the right to institute legal proceedings at the purchaser's principal place of business.



Valid as of 15.01.2018

