

General Conditions for the Supply of Machinery for Domestic and International Transactions

I. Scope

1. The supplier's conditions of sale and delivery shall exclusively be applicable to all contracts with enterprises, legal persons under public law and public special assets with regard to supplies and other performances, including contracts for work and services, counselling, proposals and other ancillary performances. They shall also apply to any future business relationships without new reference. Conditions of the customer, contrary to, deviating from or supplementing the supplier's sales conditions shall not be accepted by the supplier, unless he expressly agreed to their validity in writing. The supplier's conditions of sale and delivery shall even be applicable, if he, knowing the customer's conditions as contrary or deviating from his sales conditions or supplementing them, executes the delivery to the customer without reservations.
2. To be legally effective, any contracts regarding deliveries and performances, as well as any other agreements and relevant statements shall require written or telefaxed confirmation by the supplier. This shall also apply to supplementations and modifications. Verbal ancillary agreements or assurances by employees of the supplier, which exceed the written contract, must always be confirmed by the supplier in writing.

II. Offers

1. The offers of the supplier are subject to confirmation and not binding. Details regarding the delivery item or performance (such as weights, measurements and technical data), as well as their representations (e.g., drawings and illustrations) shall not become subject matters of the contract and shall only be approximately relevant unless expressly designated as binding.
2. The order shall be binding for the customer. The supplier is authorized to accept the contractual offer contained in the order within 4 weeks following the placement of the order. Acceptance shall normally be by sending an acknowledgment of the order, by execution of the order or in any other manner.
3. The supplier reserves any proprietary rights and copyrights to illustrations, drawings, calculations and other offer and contract documents – also in electronic form. Without the supplier's express written consent they shall neither be reproduced nor made available to third parties. This shall be especially applicable to documents designated „confidential“. They shall be returned without delay either on request or if no order is placed. Each contracting party promises to observe the secrecy of entrepreneurial and technical details of the other.

III. Scope of Delivery

1. The supplier's written acknowledgment of order shall be relevant for the scope of delivery and performance if the supplier is not provided a written objection immediately after the acknowledgment of order was received. In case of a binding offer by the supplier with a commitment in time and its acceptance within the time limit, the offer shall be relevant even if there is no timely acknowledgment of the order.
2. The supplier reserves the right to carry out modifications to the contract matter, required due to technical progress or rationalisation, at any time, in a customary extent also after a binding offer was submitted or after the effective conclusion of the contract, if, in consideration of the mutual interests, they are reasonable to the customer. Customary deviations in colour, weight, etc., always remain reserved.
3. Second-hand delivery items shall only be sold in the condition they are in and only with the available accessories. The customer has the right to inspect and test the delivery item prior to the conclusion of the contract. If – for whatever reason – he only partially makes use of this right or not at all he shall accept the condition of the delivery item, uninspected in this respect, as being contract-conform.

IV. Prices and Payment

1. In the absence of a special agreement prices are ex factory, including loading at factory, however, excluding packing, freight, insurance and other costs, which will be charged separately.
2. The legal value-added tax is not included in the supplier's prices; it will be shown separately in the invoice in the respective legal amount.
3. The prices shall be applicable for the scope of delivery listed in the acknowledgment of order. Additional or special performances will be charged separately.
4. In the absence of any offer-specific or customer-specific price agreement, prices and conditions, valid in accordance with the supplier's price list at the submission of a binding offer or at the conclusion of the contract, shall be applicable.
5. If, after the price agreement, there is a change in levies or other costs of outside services, included in the agreed price, or if their occurrence is new, the supplier shall be entitled to a respective price adjustment. The supplier further reserves the right to increase the agreed price if, due to a change in the market price or as a result of an increase in the requested payments of third parties included in the delivery, there is a change in the circumstances which considerably increases the price of the production or the purchase of the respective product considerably in comparison with that at the time of the price agreement. If, as a result of this, there is a price increase of more than 20 %, the customer shall be entitled to withdraw from the contract. This right must be claimed immediately following the notification regarding the price increase.
6. In the absence of a special agreement payment shall be effected cash without any deductions free ex supplier's payment office, i.e.:
1/3, plus value-added tax, down payment following receipt of the acknowledgment of order,
1/3, plus value-added tax, following the supplier's notification to the customer that the main part is ready for shipment or, if acceptance was agreed, ready for acceptance, the remainder, plus value-added tax, within one further month.
7. If the supply contract includes several items or if orders are executed as part deliveries the supplier reserves the right of part invoicing.
8. If not agreed otherwise, invoices regarding single parts, spare parts, repair work, maintenance work or setting-up work shall be paid cash without any deductions immediately after receipt of the invoice.
9. The acceptance of cheques or bills of exchange shall be non-obligatory and on account of performance. Payment will only be regarded as effected after they have been cashed.

10. If the customer fails to observe payment terms or if it becomes clear, after the conclusion of the contract, that the supplier's demand for payment is jeopardised by lacking operative capability of the customer, the supplier shall be entitled to rights pursuant to § 321 of the German Civil Code – BGB (defence of uncertainty). He shall be especially entitled to execute outstanding deliveries only against advance payment or by way of security.
11. If the period of payment is exceeded or in case of default in payment, the supplier shall charge interest of at least 8 percentage points above the respective base interest rate. The right of asserting further damages for the delay shall be reserved. The customer shall be in default 10 days, at the latest, after the due time for payment and receipt of the invoice or receipt of the performance, without the need of a specific reminder. The supplier will charge EUR 20.00 for every reminder.
12. The customer shall only be entitled to set-off rights if his counterclaims are undisputed, effectively established, ready for decision or accepted by the supplier. He shall only be entitled to a retention right insofar as his claim is based on the same contractual relationship and is undisputed, effectively established or ready for decision.

V. Delivery and Place of Performance

1. The supply contract shall be under the reservation of a correct and punctual self-supply of the supplier. The supplier shall inform the customer immediately of any insufficient self-supply and refund already received counter-performances in case of a revocation.
2. Unless otherwise indicated in the acknowledgment of order, delivery „ex factory“ is agreed. Place of performance of the shipment in this case shall be the supplier's registered office.
3. To the extent agreed, the supplier shall ship the delivery item to the agreed place of delivery. The supplier shall determine shipping route and means, as well as shipping agent and carrier. This will not alter the place of performance.
4. The customer shall bear the costs of the dispatch; reasonable shipping costs will be charged if the supplier delivers the item.
5. If an acceptance of the delivery item by the customer was agreed this acceptance shall be carried out immediately on the deadline for the acceptance, alternatively after the supplier's notification of acceptance readiness. The customer shall not be entitled to refuse acceptance in case of a non-significant fault. Putting the delivery item into operation shall constitute acceptance.
6. The supplier shall be entitled to reasonable part shipments.

VI. Time of Delivery

1. Delivery term and date of delivery shall only be binding if stated to this effect in the supplier's acknowledgment of order.
2. The commencement of the delivery term requires that the supplier will send the acknowledgment of order. However, the delivery term shall only commence if all commercial and technical execution details have been settled, all advance performances been provided by the customer (especially tools, documents, permits and clearances to be provided by the customer) and the agreed down payment been received.
3. The delivery term is considered met if the delivery item has left the factory before its expiration or the readiness for shipment or collection been advised. If an acceptance has been agreed the acceptance date shall – except in case of a justified refusal of acceptance – be relevant, alternatively the notification of the readiness for acceptance.
4. The delivery term shall be extended in case of actions within the scope of labour disputes, especially strike and lock-out, as well as at the occurrence of unforeseen disturbances outside the supplier's responsibility, by the duration of the disturbance, plus a reasonable start-up period. These include, among others, force majeure, breakdowns, disturbances in transport routes or delays in the delivery of essential primary products and materials, to the extent that such interruptions have a proven considerable influence upon the completion or delivery of the delivery item. This shall also be applicable if these circumstances occur at the pre-suppliers. The aforementioned circumstances shall also not be considered as responsibility of the supplier if they occur during an already existing delay. The supplier shall inform the customer of the start and end of such interruptions as soon as possible.
5. If the customer suffers a proven damage due to a delay resulting from an own fault of the supplier, he shall be entitled to a lump-sum default damage. For every complete week of delay it shall amount to 0.5 percent, but not exceed a total of maximum 5 percent of the value of that part of the complete delivery which, due to the delay, cannot be used in time or not in conformity with the contract, unless the supplier proves that considerably less damage was incurred or no damage at all. Any damages in excess of the above shall only be compensated in accordance with Section XI.
6. In so far as the assertion of customer's claims and rights requires that a reasonable extra time be granted, this extra time shall be at least 4 weeks.
7. If shipment, collection or acceptance is delayed for reasons within the responsibility of the customer the supplier shall be entitled to charge storing costs, commencing one month after notification of readiness for shipment, collection or acceptance. At the same time, all deliveries and performances already provided up to that time shall become due for payment. In addition, the supplier, after having granted a reasonable extension of time and its futile expiration, shall be entitled to dispose of the delivery item in any other way and to supply the customer within a reasonably extended period of time.
8. Meeting the delivery term requires that the customer fulfils his contractual obligations. If they are not fulfilled according to the contract or if there are still uncertainties or other execution problems in the execution of the order which require clarification and for which the supplier is not responsible, the delivery time shall be reasonably extended. All other rights of the supplier shall remain unaffected.

VII. Transfer of Risk and Taking Delivery (Receipt)

1. The risk shall pass to the customer when the delivery item has left the factory, which also applies to part shipments or if the supplier also assumed other performances, e.g., forwarding costs, transportation, installation or starting-up. At the customer's request and at his expense the supplier will insure the shipment against theft, damages due to breakage, fire and water, as well as other insurable risks. Where an acceptance has been agreed at the supplier's premises the risk shall already pass to the customer with the acceptance, alternatively with the acceptance readiness notification. The customer shall not refuse the acceptance in case of a non-significant fault.
2. If dispatch, collection or acceptance is delayed or does not take place due to circumstances, not attributable to the supplier, the risk shall pass to the customer as from the day the readiness of dispatch, collection or acceptance was notified; however, at customer's request and expense the supplier shall be obliged to effect any insurance desired by the customer.
3. Without prejudice to the rights according to Section IX., delivered items shall be received by the customer even in the presence of non-significant faults.

VIII. Reservation of Ownership

1. The supplier reserves his ownership in the delivery item (reserved goods) until all claims in respect of the current business relationship with the customer – whatever the legal basis – have been fully settled. This shall also apply to claims arising in the future or to conditional claims and also when payments are made regarding specifically designated claims. At open account the reserved property secures the respective balance claim (balance reservation). Where payment of the purchase money obligation on the basis of the cheque-bill exchange procedure has been agreed with the customer the reservation shall also cover the customer's payment of the bill, which was accepted by the supplier and shall not cease as a result of the cheque being credited.
2. The customer is obligated to handle the reserved goods with care and to adequately insure them at his own expense at replacement value against theft, damages due to breakage, fire and water, as well as other damages. Any necessary maintenance and inspection work has to be carried out by the customer in due time and at his own expense. The supplier shall be informed of any damage, destruction or change in ownership regarding the reserved goods without delay.

3. Treatment and processing of the reserved goods shall be carried out with the supplier being manufacturer within the meaning of § 950 of the German Civil Code (BGB), without committing him. The treated and processed goods are considered reserved goods within the meaning of the above Paragraph 1. Processing, joining and mixing the reserved goods with other goods by the customer shall entitle the supplier to a proportional co-ownership in the new item at a ratio of the value of the reserved goods to the value of the other goods used. If the supplier's ownership ceases as a result of joining or mixing, the customer shall already now transfer to the supplier his applicable rights of ownership in the new stock or the item within the scope of the value of the reserved goods and maintain them for him free of charge. The co-ownership rights of the supplier shall be deemed reserved goods within the meaning of Paragraph 1.
4. Within the scope of proper business practices the customer shall only be entitled and authorized to a resale of the reserved goods or to any other sale in this respect if he himself reserves his ownership in the reserved goods vis-à-vis his customers until the purchase price has been fully paid. The customer shall already now assign to the supplier all his thus accruing claims –amounting to the final invoiced amount, plus value-added-tax – against his customers or third parties for security. They serve as security in the same manner as the reserved goods. When selling goods in which the supplier holds co-ownership shares as per the above Paragraph 3, a share shall be assigned which corresponds to the co-ownership share.
5. The customer shall remain authorized to collect the claim also after assignment as long as he will pass the incoming amounts to the supplier without delay. Under no circumstances shall the customer be permitted to assign claims to third parties. However, the customer's direct debit authorization shall cease in case of its revocation by the supplier, but at the latest at the suspension of payments, in case of default in payment or if the opening of insolvency or composition proceedings has been requested. The supplier shall only resort to his right of revocation if circumstances surface after the conclusion of contract, according to which his payment claims from this or other contracts within the scope of the business relationship are jeopardised by lacking operative capability of the customer. In this case the customer shall immediately advise of the assigned claim, as well as its debtor, make available all details required for the collection, hand over pertaining documents and inform the debtors of the assignment.
6. The customer shall not be entitled to any other dispositions concerning the reserved goods. He shall especially not pledge the delivery item nor assign it for security. In case of seizure and attachment or other orders by third party he shall point out the ownership of the supplier and inform him of this situation immediately. The customer shall also be liable for costs of third-party claim proceedings, necessary according to § 771 of the German Code of Civil Procedure (ZPO), as far as these costs cannot be recovered from the opposite party.
7. The supplier undertakes to release the securities, to which he is entitled, on request of the customer in so far as the value of the securities shall exceed the claims, plus accessory claims to be secured, by more than 20 %; the supplier shall select the securities to be released.
8. If the customer acts in breach of contract, especially in case of default in payment, the supplier may forbid the customer the use of the reserved goods. In addition, the supplier shall be entitled to repossession of the delivery item and the customer shall be obligated to surrender it. The same is applicable if it becomes clear after the conclusion of the contract that the supplier's claims for payment from this or other contracts within the scope of the business relationship may be jeopardised by lacking operative capability of the customer. This temporary assertion of the reservation of ownership, as well as the seizure of the delivery item by the supplier, shall not constitute a revocation of contract. A return to the customer shall only be effected if all due payments have been secured. The supplier may, at his legitimate reasonable discretion, choose to realize the reserved goods and to credit the realization proceeds – minus reasonable realization costs – to the customer's accounts payable. The customer shall bear the costs of seizure, storage, return and realization of the reserved goods.
9. The supplier may rescind the contract and request the immediate return of the delivery item if a petition for insolvency proceedings was filed regarding the customer's assets, if a statutory declaration according to § 807 of the German Code of Civil Procedure (ZPO) was made or if the insolvency proceedings were refused for lack of assets.

IX. Liability for Defects in the Delivery

The supplier shall be liable for defects in the delivery item while excluding any further claims subject to Section XI. as follows:

1. The supplier shall not assume any guarantees within the meaning of an increase in liability limits or assume special liability obligations unless the assumption was agreed on in writing and the term "guarantee" used specifically. For instance, especially samples, specimens and details concerning the quality of the delivery item serve solely as specification and shall not constitute any guarantees.
2. The supplier shall not be committed to check the delivery item for defects. The customer must at once inspect the delivery item for quality and quantity variances and shall immediately submit a written report to the supplier of obvious defects, however, within 7 days, at the latest, after delivery of the delivery item, otherwise his guarantee rights shall be excluded. In the case of non-obvious defects this shall apply correspondingly subject to the proviso that the defect has to be reported within 7 days as from its discovery. The deadline shall be observed by the customer's verifiable timely posting of the notice of defects. The customer shall have the full burden of proof for any prerequisites of claims, especially for the defect itself, for the time of the establishment of the defect, as well as for the timeliness of the notice of defect.
3. If the customer performed an acceptance of the delivery item any notification of material defects, which were obvious at the acceptance, shall be excluded.
4. For defects in the delivery item the supplier shall at first provide subsequent performance, where it shall be at his discretion to choose between rectification of the defect (remedy of defect) and delivery of an item free from defects (compensation delivery). The supplier shall be able at least twice to rectify existing defects or resort to compensation delivery; he may change from remedy of defect to compensation delivery. Substituted parts shall become the property of the supplier.
5. The customer shall only be entitled to declare his revocation of the contract or claim damages according to Section XI. within the scope of legal stipulations if the supplier – in consideration of the legal exceptional cases – fails to meet a granted reasonable deadline for subsequent performance or if the subsequent performance has failed. A deadline for subsequent performance shall be reasonable if it equals half the original delivery term, but is at least 2 weeks. The right of reducing the price (price reduction) is categorically excluded.
6. Of the subsequent performance costs– if the notice of defect is proven justified – the supplier shall bear the costs of the replacement part, including the lowest shipping cost, as well as the reasonable costs for assembly and disassembly. This shall not be valid if there is an increase in expenses because the delivery item was moved to a different location than the place of performance or delivery, unless this would be in accordance with its contractual use.
7. Claims regarding defects in the delivery item shall become statute-barred after 12 months, commencing on the delivery of the delivery item or – if an acceptance was performed – as from that time, alternatively as from the notification of acceptance readiness, unless the law stipulates a longer statutory period for constructions or delivery items which, according to their common purpose, are used for a building construction. The period of limitation for the customer's rights of recourse according to § 478, 479, of the German Civil Code (BGB) remains unaffected. As far as there are claims for damages due to a defect Section XI. shall be applicable.
8. The remedy or compensation delivery shall not constitute a new commencement of the statutory period. However, it will be extended by the duration of the interrupted utilisation resulting from the remedy work.
9. No guarantee shall be assumed in the following cases: Faulty or careless handling, improper maintenance, unsuitable or improper use, faulty installation or start-up by the customer or third parties, natural wear and tear, unsuitable operating materials, substitute materials, faulty construction work, unsuitable building ground, chemical, electrochemical or electrical influences, as far as they cannot be attributed to a fault of the supplier.
10. Following an arrangement with the supplier the customer shall grant the supplier the required time to perform any repairs and compensation deliveries which the supplier deems necessary at his reasonable discretion otherwise the supplier shall not be liable for any resulting consequences. Only in urgent cases of endangering the safety of operation and for warding off disproportionately high damages, in which cases

the supplier must be notified immediately, the customer shall be entitled to eliminate the defect himself or by third parties and to claim compensation of the necessary costs from the supplier.

11. There shall be no liability on the side of the supplier for consequences resulting from any improper remedial activities by the customer or third parties. The same applies to any modifications to the delivery item without the supplier's prior consent.
12. If spare parts are delivered within the guarantee period the above shall be correspondingly applicable regarding guarantee.
13. If the delivery item is a second-hand item (e.g., a second-hand machine) any liability for defects shall be excluded, if the supplier did not fraudulently conceal the defect or guarantee its absence. This shall not be applicable to customer's damage claims for negligent injury to life, body or health or to other damages due to a grossly negligent or wilful neglect of duty by the supplier. Where, as an exception, a liability for defects may be possible for second-hand delivery items the above shall be applicable accordingly.

X. Liability for Secondary Obligations

In the case of omitted or faulty information, recommendations and consultations either prior to or after the conclusion of contract, as well as for breach of other contractual secondary obligations and in case of faulty operating and maintenance instructions the provisions of the Sections IX. and XI. shall be applicable and any further claims be excluded.

XI. Liability for any other Impairments of Performance

1. The customer may withdraw from the contract if the supplier is finally unable to carry out the complete performance prior to the transfer of risk. The customer may even rescind the contract if, with an order of similar items, the execution of a part of the delivery becomes impossible as to its quantity and if he has a justified interest in refusing a partial delivery; if this is not the case the customer may reduce the counter-performance correspondingly.
2. Prerequisite and extent of the liability for the delay in performance correspond with the Sections IV. and VI.
3. If impossibility occurs during the default in acceptance or as a fault of the customer then the customer shall be obligated to counter-performance.
4. The supplier's liability for compensation for damages – irrespective of their type and on whatever legal bases, especially due to a breach of contractual or non-contractual obligations (such as default, impossibility, breach of obligations according to § 280, and following, of the German BGB, deficiency loss and consequential damages), for negligence at the conclusion of contract, as well as for breach of contractual or legal secondary obligations – shall be limited, also with regard to the supplier's executive personnel and other vicarious agents, to intent and gross negligence. The supplier will also be liable in a case of ordinary negligence regarding a breach of significant contractual obligations which may jeopardise the purpose of the contract. Further claims for damages are excluded.
5. The above exclusion of liability shall not apply in case of negligent injury to life, body and health. In this case the supplier shall be liable for every degree of negligence. Also unaffected shall be damage claims for faults which have been fraudulently concealed or the absence of which has been guaranteed, as well as for defects for which liability exists pursuant to the product liability law.
6. Where the supplier is liable in case of ordinary negligence the extent of his liability shall be limited to the contract-typical, reasonably foreseeable damage. However, this shall not apply where there is a liability because of injury to life, body and health or in accordance with the product liability law or where there is a more extensive liability resulting from an undertaken guarantee. The same applies if the supplier is liable for gross negligence by non-executive personnel or other vicarious agents.
7. Where liability for defects is excluded, especially in the case of second-hand delivery items according to Section IX., the supplier shall also not be liable for damages if there are defects in the delivery item.
8. If a liability for damages which are not based on the injury to life, body and health, is not excluded for ordinary negligence, these claims shall become statute-barred within 12 months as from the accrual of the claim or, for damages due to a defect, as from the delivery of the item. This shall not be applicable for damages due to defects, if the law stipulates a longer statutory period for constructions and delivery items which, according to their general purpose, are used for a construction or if the supplier is liable according to the product liability law.
9. These provisions shall also be applicable in respect of the personal liability for damages of the employees, labourers, staff, representatives and vicarious agents of the supplier.

XII. Use of Software

1. If software is part of the scope of delivery the customer shall be granted, in terms of time, an unlimited, non-exclusive right to use the supplied software, including its documentation. It is surrendered for use on the appropriate delivery item. The use of the software on more than one system is not permitted.
2. The customer shall use the software only to the extent permitted by law (§§ 69 a, and following, of the German Copyright Act – UrhG). He shall only pass it to third parties together with the delivery item and only completely, as it was handed over to him, which means the original data medium, including the documentation and only by simultaneous assignment of the rights of use. Any security backups made by the customer shall be destroyed or also be handed over. Any other rights in the software and the documentation, including the copies, shall remain with the supplier; sublicensing is not permitted.
3. The customer undertakes not to remove or change notices of the manufacturer – especially copyright information.
4. The above shall also be applicable if the delivery item or parts thereof are copyrighted in any other manner.

XIII. Final Provisions

1. If a customer who is residing outside the Federal Republic of Germany (foreign customer) or his representative is either collecting the delivery item or transporting or shipping it abroad, the customer shall provide the supplier with the export certificate required for tax purposes. If such a certificate is not provided the customer shall have to pay the invoice amount, plus value-added-tax, applicable for the shipment within Germany.
2. For shipments from the Federal Republic of Germany to other EU Member States the customer shall inform the supplier of his value-added-tax identification number, under which he will perform the purchase taxation within the EU. Otherwise, in addition to the agreed purchase price, he will also have to pay the amount of the value-added-tax, legally due by the supplier.
3. The invalidity of any clause in these terms and conditions shall not constitute an invalidity of the remaining clauses.
4. Jurisdiction for any disputes resulting from this contractual relationship shall be at the supplier's discretion either his head office or branch office or the customer's head office.
5. In supplementation of these terms and conditions the German non-unified substantive law shall be applicable to any legal relationships between supplier and customer. The provisions of the Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall not be applicable.