



VDMA conditions for the supply of machinery for domestic supplies

For use vis-à-vis:

1. A person who, at the time of conclusion of the contract, is acting in the exercise of his/her commercial or independent professional activity (entrepreneur);
2. Legal entities under public law or a special fund under public law.

I. General information

1. All deliveries and services are subject to these conditions as well as any separate contractual agreements. Deviating purchasing conditions of the customer shall not become part of the contract, even by acceptance of the order.

In the absence of a special agreement, a contract shall be concluded with the written order confirmation of the supplier.

2. The supplier reserves the property rights and copyrights to samples, cost estimates, drawings and similar information of a physical and non-physical nature - also in electronic form; they may not be made accessible to third parties. The supplier undertakes to make information and documents designated by the customer as confidential available to third parties only with the customer's consent.

II. Price and payment

1. In the absence of a special agreement, the prices are ex-works including loading at the factory, but excluding packaging and unloading. Value added tax at the respective statutory rate shall be added to the prices.
2. In the absence of a special agreement, payment shall be made without any deduction to the account of the supplier, namely: 1/3 advance payment after receipt of the order confirmation, 1/3 as soon as the customer has been notified that the main parts are ready for dispatch, the balance within one month after the transfer of risk.
3. The customer shall only have the right to withhold payments insofar as its counterclaims are undisputed or have been legally established.
4. The customer shall only have the right to offset counterclaims from other legal relationships insofar as they are undisputed or have been legally established.

III. Delivery time, delay in delivery

1. The delivery time is determined by the agreements of the contracting parties. Compliance with the delivery period by the supplier requires that all commercial and technical questions between the contracting parties have been clarified and that the customer has fulfilled all obligations incumbent upon it, such as the provision of the necessary official certificates or approvals or advance payment. If this is not the case, the delivery period shall be extended accordingly. This shall not apply if the supplier is responsible for the delay.
2. Compliance with the delivery period shall be subject to correct and timely delivery to the supplier. The supplier shall inform the customer about any impending delays as soon as possible.
3. The delivery period shall be deemed to have been complied with if the delivery item has left the supplier's works or notification of readiness for dispatch has been given by the time the delivery period expires. Insofar as acceptance is to take place, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - alternatively the notification of readiness for acceptance.
4. If dispatch or acceptance of the delivery item is delayed for reasons for which the customer is responsible, the costs incurred as a result of the delay shall be charged to the customer, starting one month after notification of readiness for dispatch or acceptance.



5. If non-compliance with the delivery time is due to force majeure, industrial disputes or other events beyond the supplier's control, the delivery time shall be extended accordingly. The supplier shall notify the customer about the beginning and end of such circumstances as soon as possible.
6. The customer may rescind the contract without notice if the supplier is finally unable to perform the entire contract before the risk passes to the customer. Furthermore, the customer may withdraw from the contract if, in the case of an order, the performance of part of the delivery becomes impossible and the customer has a justified interest in refusing partial delivery. If this is not the case, the customer shall pay the contract price attributable to the partial delivery. The same shall apply in the event of the supplier's inability to perform. Section VII.2 shall be applicable in all other respects.

If the impossibility or incapacity occurs during the delay in acceptance or if the customer is solely or predominantly responsible for these circumstances, the customer shall remain obliged to counter-performance.

7. If the supplier is in default and the customer incurs damage as a result, the customer shall be entitled to claim liquidated damages for default. This shall amount to 0.5% for each full week of delay, but in total to a maximum of 5% of the value of that part of the total delivery which cannot be used on time or in accordance with the contract as a result of the delay.

If the customer sets the supplier a reasonable deadline for performance after the due date - taking into account the statutory exceptions - and if the deadline is not met, the customer shall be entitled to withdraw from the contract within the scope of the statutory provisions. At the supplier's request, the customer undertakes to declare within a reasonable period of time whether it will exercise its right to withdraw from the contract.

Further claims arising from delayed delivery shall be determined exclusively in accordance with section VII.2 of these conditions.

IV. Transfer of risk, acceptance

1. The risk shall pass to the customer when the delivery item has left the factory, even if partial deliveries are made or the supplier has assumed other services, e.g. the shipping costs or delivery and installation. If an acceptance procedure is required, this shall be decisive for the transfer of risk. It must be carried out without delay on the acceptance date, alternatively after the supplier's notification of readiness for acceptance. The customer may not refuse acceptance in the event of a non-essential defect.
2. If dispatch or acceptance is delayed or does not take place due to circumstances beyond the supplier's control, the risk shall pass to the customer on the date of notification of readiness for dispatch or acceptance. The supplier undertakes to take out the insurance policies requested by the customer at the latter's expense.
3. Partial deliveries are permissible insofar as they are reasonable for the customer.

V. Retention of title

1. The supplier retains title to the delivery item until receipt of all payments - also for any additional ancillary services owed - arising from the delivery contract.
2. The supplier shall be entitled to insure the delivery item against theft, breakage, fire, water and other damage at the customer's expense, unless the customer can prove that it has taken out the insurance itself.
3. The customer may neither sell, pledge nor assign the delivery item as security. In the event of seizure, confiscation or other dispositions by third parties, the customer shall immediately notify the supplier thereof.
4. In the event of a breach of contract by the customer, in particular in the event of default in payment, the supplier shall be entitled to take back the delivery item after issuing a reminder and the customer shall be obliged to surrender the delivery item.
5. On the basis of the retention of title, the supplier can only demand the return of the delivery item if it has withdrawn from the contract.



VI. Claims for defects

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

Material defect

1. All parts, which prove to be defective as a result of a circumstance prior to the transfer of risk, shall be repaired or replaced free of defects at the supplier's discretion. The supplier must be notified immediately in writing whenever such defects are discovered. Replaced parts shall become the property of the supplier.
2. The customer shall, after consultation with the supplier, give the supplier the necessary time and opportunity to carry out all repairs and replacement deliveries which appear necessary to the supplier; otherwise the supplier shall be released from liability for the consequences arising therefrom.

Only in urgent cases of danger to operational safety or to prevent disproportionately large damage, in which case the supplier must be notified immediately, shall the customer be entitled to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary expenses from the supplier.

3. The supplier shall bear - insofar as the complaint proves to be justified - the expenses necessary for the purpose of subsequent performance, insofar as this does not result in a disproportionate burden on the supplier. Insofar as the expenses the buyer has taken the object of sale to a place other than the place of performance after delivery, any additional costs place of performance, any additional costs incurred as a result shall be borne by the buyer. In the event of the sale of a newly manufactured item, the supplier shall also reimburse, to the extent of its statutory obligation, the expenses incurred by the customer within the scope of recourse claims in the supply chain.
4. Within the scope of the statutory provisions, the customer shall be entitled to withdraw from the contract if the supplier - taking into account the statutory exceptions - allows a reasonable period of time set for it to remedy the defect or to make a replacement delivery due to a material defect to expire fruitlessly. If there is only an insignificant defect, the customer shall only be entitled to a reduction of the contract price. The right to reduce the contract price shall otherwise be excluded.
5. Further claims shall be determined exclusively in accordance with section VII. 2 of these conditions.
6. No liability shall be assumed in particular in the following cases: unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences - insofar as the supplier is not responsible for them.
7. If the customer or a third party carries out improper repairs, the supplier shall not be liable for the resulting consequences. The same applies to changes made to the delivery item without the prior consent 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 shall, at its own expense, generally procure the right for the customer to continue using the delivery item or modify the delivery item in a manner reasonable for the customer in such a way that the infringement of property rights no longer exists.

If this is not possible under economically reasonable conditions or within a reasonable period of time, the customer shall be entitled to withdraw from the contract. Under the aforementioned conditions, the supplier shall also be entitled to withdraw from the contract.

In addition, the supplier shall indemnify the customer against undisputed or legally established claims of the holders of the industrial property rights concerned.



9. The obligations of the supplier set out in Section VI. 8, subject to Section VII.2, shall be conclusive in the event of an infringement of industrial property rights or copyrights.

They shall be applicable only if

- the customer notifies the supplier without undue delay of any asserted infringement of industrial property rights or copyrights,
- the customer supports the supplier to a reasonable extent in the defence against the asserted claims or enables the supplier to carry out the modification measures in accordance with Section VI. 8,
- the supplier retains the right to all defence measures including out-of-court settlements,
- the defect of title is not based on an instruction of the customer and
- the infringement of rights was not caused by the fact that the customer modified the delivery item on its own authority or used it in a manner not in conformity with the contract.

VII. Liability of the supplier, exclusion of liability

1. If the delivery item cannot be used by the customer in accordance with the contract as a result of culpably omitted or faulty suggestions or advice given by the supplier before or after conclusion of the contract or as a result of culpable breach of other contractual collateral obligations - in particular instructions for operation and maintenance of the delivery item - the provisions of Sections VI and VII.2 shall be applicable to the exclusion of further claims by the customer.
2. The supplier shall only be liable for damage not occurring to the delivery item itself - on whatever legal grounds - only
 - a. in the case of intent and gross negligence,
 - b. in the event of culpable injury to life, limb or health,
 - c. in the case of defects which it has fraudulently concealed,
 - d. within the scope of a guarantee promise,
 - e. in the event of defects in the delivery item, insofar as liability exists under the Product Liability Act for personal injury or property damage to privately used items.

In the event of culpable breach of material contractual obligations, the supplier shall also be liable in the event of simple negligence, but limited to reasonably foreseeable damage typical for the contract.

Further claims are excluded.

VIII. Statute of limitation

All claims of the customer - on whatever legal grounds - shall become statute-barred after 12 months; this shall also apply to the limitation of claims under a right of recourse in the supply chain pursuant to § 445b, Paragraph 1 of the BGB (German Civil Code), provided that the last contract in this supply chain is not a purchase of consumer goods. The suspension of the statute of limitations pursuant to § 445b, Paragraph 2 of the BGB remains unaffected. For claims for damages according to Section VII. 2 a-c and e, the statutory time limits shall be applicable. They shall also apply to defects in a built structure or to delivery items which have been used for a built structure in accordance with their customary use and have caused its defectiveness.



IX. Software usage

Insofar as software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the software supplied, including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

The customer may only reproduce, revise, translate or convert the software from the object code into the source code to the extent permitted by law (§§ 69 a ff. of the UrhG (Copyright Act)). The customer is under obligation not to remove manufacturer's details - in particular copyright notices - or to change them without the supplier's prior explicit consent.

All other rights to the software and the documentation, including copies, shall remain with the supplier or the software supplier. The granting of sub-licences is not permitted.

X. Applicable law, place of jurisdiction

1. All legal relations between the supplier and the customer shall be governed exclusively by the law of the Federal Republic of Germany applicable to legal relations between domestic parties.
2. The place of jurisdiction shall be the court having jurisdiction for the registered office of the supplier. However, the supplier shall be entitled to bring an action at the customer's principal place of business.