

General Terms and Conditions of Sale and Delivery

on the basis of the terms of VDMA (German Machinery and Plant Manufacturing Association)

For use vis-à-vis

1. a person who, on conclusion of the contract, is acting in performance of his commercial or self-employed professional activity (entrepreneur);
2. legal entities under public law or a public property.

I. General

1. All deliveries and services are based on these General Terms and Conditions of Delivery as well as on any separate contractual agreements if applicable. Different conditions of purchase by Customer shall not become the subject matter of the contract, not even by the acceptance of the order. Any contract will be formed – in the absence of any particular agreement – by Supplier's written order confirmation.
2. Supplier reserves all ownership and copyrights to samples, cost estimates, drawings and similar information of a material and immaterial nature – even when in an electronic form; they may not be made available to third parties. Supplier agrees to make information and documentation defined as confidential by Customer available to third parties with Customer's consent only.
3. Statements and illustrations in Supplier's catalogues and brochures are not binding with regard to the execution. Supplier reserves all rights to modify the design. Supplier takes no responsibility for any deviations from the stated dimensions, weights, etc..
4. All performance statements are based on the use of Supplier's original products (e.g. grinding tools and coolant lubricants). The elimination or clarification of apparent faults or shortcomings in performance, which are due to the use of other makes of products not expressly permitted by Supplier, will be charged to Customer even during the period of guarantee.
5. Special specifications by Customer which cause additional expenses are only included in the quoted prices if they were submitted to Supplier with the inquiry. Any special requests regarding the design and construction, only received with the order, will not be accepted by Supplier. Products manufactured to Customer's specifications have to be approved by a representative of Customer at Supplier's works. Any claims which might occur after this approval regarding a non-observance of Customer's specifications will not be accepted.

II. Prices and Terms of Payment

1. In the absence of any particular agreement, the prices shall be ex works including loading at works, however, exclusive of packaging and unloading. The prices of domestic deliveries are exclusive of value added tax which will be added in the appropriate statutory amount.
2. In the absence of any particular agreement, payment shall be made without any discounts to Supplier's account as follows:
 - 1/3 down payment upon receipt of the order confirmation
 - 1/3 as soon as Customer has received the notice of readiness for shipment with respect to the main parts
 - 1/3 within 10 working days upon the passing of risk.
3. Customer may only withhold payments or set-off with counterclaims whose legal basis is not disputed or is final and absolute.

III. Delivery Time, Delay in Delivery

1. The delivery time ensues from the agreement between the parties to the contract. Compliance with the delivery date by Supplier requires that all commercial and technical issues between the parties to the contract have been settled and that Customer has performed all of his obligations, as e.g. furnishing the required official certificates or permits or making a down payment. If this is not the case, the delivery time shall be extended accordingly. The foregoing shall not apply if the delay is Supplier's responsibility.
2. Compliance of the delivery date shall be subject to the condition that deliveries to Supplier are correct and on time.
3. The delivery period has been observed if the subject of delivery has left the Supplier's works on its expiry or if notice of readiness for shipment has been given. The foregoing shall also apply if an acceptance is to be effected.
4. If the shipment and/or the acceptance of the subject of delivery is delayed on grounds for which Customer is responsible, the costs incurred by the delay shall be charged to Customer, beginning one month after notice of readiness for shipment and/or readiness for acceptance.
5. If the failure to meet the delivery deadline is attributable to acts of God, labor disputes or other events beyond Supplier's scope of influence, the delivery period shall be reasonably extended. Supplier shall inform Customer as soon as possible of the beginning and end of any such event.
6. Customer may rescind the contract without fixing a time limit if the entire performance of the contract prior to the passing of risk becomes definitely impossible for Supplier. Customer may also rescind the contract if performance of a part of the delivery of an order becomes impossible and Customer has a vital interest in refusing the partial delivery. If this is not the case, Customer must pay the price according to the contract attributable to the partial delivery. The same applies to Supplier's inability. Otherwise Section VII.2 shall apply. If impossibility or inability occurs while Customer is in default of acceptance or if Customer is solely or by far predominantly responsible for these circumstances, Customer shall remain obliged to pay consideration.
7. If Supplier is in default and Customer incurs a loss because of this, Customer shall only be entitled to demand a default compensation of max. 0.5 per cent of the price of the delayed delivery for each completed week of the delay, but not more than a total of 5 per cent of the value of the delayed delivery if this has been agreed expressly in writing in the contract. Any other claims of compensation are excluded.

IV. Passing of Risk, Acceptance

1. Risk shall pass to Customer when the subject of delivery has left the works, even if partial deliveries are made or if Supplier is to provide further services, e.g. shipping charges or delivery and installation. If an acceptance has been agreed, the acceptance shall be effected immediately at the acceptance date, alternatively after Supplier's notice of readiness for acceptance. Customer shall not be entitled to refuse acceptance if there is an insignificant defect.
2. Should delivery and/or acceptance be delayed or not take place as a result of circumstances which are not attributable to Supplier, risk shall pass to Customer as of the day of the notice of readiness for shipment and/or for acceptance. Supplier agrees to take out the insurance requested by Customer at Customer's expense.
3. Partial deliveries shall be permitted to such an extent as Customer can reasonably be expected to accept these.

V. Reservation of Title

1. Supplier reserves the title to the subject of delivery until receipt of all payments under the delivery contract.
2. Supplier is entitled to insure the subject of delivery at Customer's expense against theft, breakage, fire damage, water damage and other damage, unless Customer proves that it has taken out the insurance itself.
3. Customer may not sell, pledge, or assign as security the subject of delivery without prior consent in writing by Supplier. In the event of attachments and seizures or other dispositions by third parties, Customer shall immediately notify Supplier.
4. In the event of Customer acting in breach of contract, especially in the case of default in payment, Supplier shall have the right to the return of the subject of delivery following a reminder, and Customer shall be obliged to surrender possession.
5. Enforcement of reservation of title and seizure of the subject of delivery by Supplier shall not be regarded as rescission of contract.
6. An application to institute insolvency proceedings shall entitle Supplier to rescind the contract and to demand that the subject of delivery be returned without delay.
7. Processing or reconstruction of the subject of delivery by Customer shall always be effected for Supplier. If the subject of delivery shall be processed with other subjects which are not Supplier's subjects, Supplier shall acquire co-ownership in the new subject in proportion of the value of the subject of delivery to the other processed subjects at the moment of processing. Otherwise, the same shall apply for the subject developed from the processing as for the subject of delivery supplied with reservation of title.
8. The reservation of title shall apply in single, extended and prolonged form inclusive of the reservation of balance.

VI. Claims Arising from Defects

Supplier shall be liable for defects in materials and title of the delivery excluding any further claims – subject to Section VII – as follows:

Defects as to Quality of New Subjects of Delivery

1. All those parts that turn out to be defective for reason of a circumstance existing within 12 months from delivery prior to passing of risk shall, at Supplier's discretion, be repaired or replaced free of charge, to remedy the defect. Customer shall notify such defects to Supplier in writing without undue delay. Replaced parts shall become Supplier's property.
2. Following notification to Supplier, Customer must provide Supplier with the required time and opportunity to carry out all subsequent performance and replacements Supplier deems necessary; failing which Supplier shall not be liable for any consequences resulting from such failure. Customer shall only have the right to remedy the defect itself or have it remedied by third parties and demand compensation from Supplier for its necessary expenses in emergencies where plant safety is endangered and/or to avoid unreasonably greater damage, in which case Supplier shall be notified immediately.
3. In the event of remedial work and/or replacement, Supplier shall bear of the direct cost incurred – provided the notice of defect turns out to be justified – the costs for the replacement part including shipment. Supplier shall also bear the costs for dismounting and mounting and, if this can be rightly demanded according to the situation of the individual case, the costs for any required assignment of necessary fitters and helpers including traveling expenses, provided this will not result in an unreasonably high charge to Supplier. If Customer transfers the subject of delivery either totally or partially from the agreed installation site to a third site, Customer shall bear the additional costs which might result therefrom, especially all traveling costs of Supplier which may incur.
4. Customer shall have the right within the limits of the statutory provisions to rescind the contract if Supplier – taking into account the exceptions under statute – allows a reasonable period of grace set for it for subsequent performance with respect to a defect or replacement delivery in the case of a defect as to quality to expire unsuccessfully. If the defect is only insignificant, Customer may only demand a reduction of the contract price. Otherwise, the right to a reduction of the contract price shall be excluded. Any further claims are governed by Section VII.2 of these General Terms and Conditions.
5. Supplier shall not be liable especially in the following cases: Inappropriate or improper use, faulty assembly and/or start-up by Customer or third parties, normal wear and tear, faulty or careless handling, improper maintenance, use of unsuitable operating supplies, defective construction work, unsuitable subsoil, chemical, electro-chemical or electrical influences – provided these are not Supplier's responsibility.
6. In the event of improper subsequent improvement by Customer or a third party Supplier shall not be liable for any resulting consequences thereof. The same applies to changes to the subject of delivery made without Supplier's prior consent.

Defects as to Quality for Used Subjects of Delivery

7. Contrary to the foregoing provisions the guarantee for defects as to quality for used subjects of delivery is excluded. This shall not apply in the case of any fraudulent concealment or infringement of warranty. Otherwise, the contractual claims of Customer remain unaffected even in the event of delivery of used subjects.
- ## Defects in Title
8. If the use of the subject of delivery results in the infringement of industrial property rights or copyrights at home, Supplier shall generally procure at its own cost the right to continued use for Customer or alter the subject of delivery in such a manner reasonably acceptable for Customer that an infringement of industrial property or copyrights will no longer exist. If this is not possible under commercially reasonable terms or within a reasonable period, Customer shall be entitled to rescind the contract. Under the above-mentioned preconditions, Supplier shall also be entitled to rescind the contract. Supplier shall indemnify Customer against undisputed or final and absolute claims by the owners of the property rights concerned.
 9. Subject to Section VII. 2, Supplier's obligations detailed in Section VI.8 are final for the event of infringements of industrial copyrights.
 - They shall only apply if
 - Customer informs Supplier without undue delay of the alleged infringements of industrial property rights or copyrights,
 - Customer reasonably supports Supplier in the defense against asserted claims and/or enables Supplier to carry out the modifications pursuant to Section VI.7,
 - Supplier is reserved the right to undertake all defensive measures including out-of-court settlements,
 - the defect in title is not caused by specifications made by Customer, and
 - the infringement of industrial property rights or copyrights has not been caused by the fact the Customer arbitrarily modified the subject of delivery or has used it in a manner not conforming to the terms of the contract.

VII. Liability

1. In the event that Customer cannot use the subject of delivery as stipulated in the contract through Supplier's failure to implement or to correctly implement any suggestion made or advice given before or after conclusion of the contract or by Supplier's breach of any other accessory obligation, especially instructions on operation and maintenance of the subject of delivery, the provisions of Sections VI. and VII.2 shall apply correspondingly to the exclusion of any further claim by Customer.
2. Supplier shall only be liable for damage caused to other than the subject of delivery itself – irrespective for which legal reasons whatsoever – in the case of
 - a. intent,
 - b. gross negligence on the part of the owner / corporate bodies or executive officers,
 - c. culpable bodily injury, death and damage to health,
 - d. defects Supplier has fraudulently concealed or has guaranteed the absence thereof
 - e. defects of the subject of delivery if the Product Liability Act provides for liability in the event of injury to a person or damage to property for items in private use.

In the event of culpable breach of major contractual obligations Supplier shall also be liable for gross negligence on the part of non-executive employees and for negligence, in the latter case limited to reasonably foreseeable damage typical to the given type of contract. Any further claims shall be excluded.

VIII. Limitation

All of Customer's claims – regardless of the legal basis of claim – shall expire by limitation after 12 months. For claims for damages as per Section VII. 2. a – e, as well as for claims according to the Product Liability Act, the statutory periods shall apply. They shall also apply to defects of a building or for subjects of delivery that have been used for a building in accordance with their customary application and have caused the defectiveness thereof.

IX. Use of Software

In the event that that software is included in the scope of delivery, Customer shall be granted a non-exclusive right to use the delivered software including its documentation. It is submitted for use on the subject of delivery designed for it. Use of the software on more than one system is not permitted. Customer may only reproduce, recondition, translate or convert the software from the object language to the source language to the extent permissible by law (§§ 69 a and following UrhG; Copyright Act (D)). Customer agrees not to remove the manufacturer's product information – especially notices of copyright – and not to alter these without the prior express consent by Supplier. All other rights to the software and the documentations including the copies shall remain with Supplier and/or the software supplier. The grant of sublicenses is not permitted.

X. Applicable Law, Venue

1. All legal relations between Supplier and Customer shall be governed exclusively by the law of the Federal Republic of Germany.
2. The venue shall be the court that has jurisdiction at Supplier's registered offices. However, Supplier shall also be entitled to file an action at the court having jurisdiction at Customer's registered offices.

XI. Others

Should one of the provisions of these Terms and Conditions of Sale and Delivery is or become ineffective, the effectiveness of the other provisions shall not be affected by this.