

TERMS AND CONDITIONS FOR THE SALE OF USED MACHINERY



(following the recommended conditions of the German Association of Machine and Plant Builders (VDMA) e.V.)

I. General Information

1. These conditions, or also any separate contractual agreements, form the basis of all deliveries and services. Any purchasing conditions, which deviate from these, on the part of the purchaser do not become part of the contract, even if the order is accepted. These conditions also apply to all future commercial relationships between the supplier and purchaser, even if they have not explicitly been agreed once more. They do not apply to consumers in the sense of § 13 BGB.

A contract comes into being - unless there is a special agreement to the contrary - with the supplier's written order confirmation.

Verbal agreements with employees of the supplier before or during the formation of the contract require the written confirmation of the supplier in order to become effective, unless a specific legal power of representation has been granted to these employees

The ineffectiveness of individual provisions does not affect the effectiveness of the remainder of these conditions.

2. The supplier reserves its property rights to offers (including order confirmation), in particular to the illustrations, samples, cost estimates, drawings, calculations and similar documents and information contained or transmitted – even in electronic form. Documents relating to offers are to be treated confidentially by the purchaser; they are trade secrets of the supplier. The purchaser may therefore only use them within its organization and may not make their content available to third parties.

Unless expressly agreed otherwise, the purchaser shall treat as confidential prototypes, experimental and test facilities or tools and other development items which it may receive from the supplier and may only use them for the purpose agreed with the supplier. The purchaser is prohibited from observing, examining, dismantling or testing ("reverse engineering") beyond the agreed purpose. If the supplier provides the purchaser with confidential information relating to the quotation documents, prototypes, experimental and test facilities or tools or other development objects, the supplier reserves all rights to the confidential information provided to the purchaser if a patent is granted (§ 12 sec. 1 sentence 4 German Patent Act).

II. Price and Payment

1. Unless there is a special agreement to the contrary, prices are ex works including loading in the factory, but excluding packaging and unloading. Value Added Tax is added to the prices at the particular rate legally applicable.

2. Unless there is a special agreement to the contrary, payment is to be made without any deduction to the account of the supplier as follows:
1/3 payment after receipt of the order confirmation,
1/3 payment, when the purchaser is informed that the main parts are ready for dispatch, the remaining amount within one month of the transfer of risk.
3. The right to withhold payments or to offset these against counterclaims is only available to the purchaser if his counterclaims are uncontested or have been established with the force of law.

IV. Delivery time, delivery delay

1. The delivery time results from agreement between the contractual parties. It is a precondition for the supplier's compliance with this delivery time, that all the commercial and technical queries between the contractual parties have been clarified, and that the purchaser has fulfilled all the obligations incumbent upon him, such as for example supplying the required official certificates or approvals or fulfilling the requirements of payment. If this is not the case, the delivery time is extended appropriately. This does not apply, if the supplier is responsible for the delay.
2. Compliance with the delivery term is subject to the provision, that correct and timely delivery is made by our suppliers. The supplier will notify any impending delays as soon as possible.
3. The delivery term is deemed as being met, if the delivery item has left the suppliers factory by the time the term has expired, or if readiness for dispatch has been notified. Insofar as acceptance is to take place, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - or alternatively the notification of readiness for acceptance.
4. If the dispatch or acceptance of the delivery item is delayed for reasons, for which the purchaser is responsible, the costs arising from the delay will be invoiced to the purchaser, and these costs will commence one month after notification of readiness for dispatch.
5. The purchaser can withdraw from the contract without any fixed time being set, if the supplier finds it impossible before the transfer of risk to fulfil final performance of the contract. The purchaser can also withdraw from the contract, if one part of the delivery cannot be used by him for the order, and if the purchaser has a justified interest in refusing the partial delivery. If this is not the case, the purchaser must pay the contractual price, which is apportioned to the partial delivery. The same applies in the case of failure by the supplier. Section VII.2 also applies in this regard.

If the impossibility or failure becomes apparent due to a default during the acceptance or if the purchaser is solely or overwhelmingly responsible for these circumstances, he remains obliged to make reparations.

V. Transfer of risk

1. The risk transfers to the purchaser, when the respective delivery item has left the factory, and also in such cases, where partial deliveries are to be made, or where the supplier has assumed other services such as for example dispatch costs or delivery to site and installation, e.g. shipping costs or delivery and installation.
2. If the dispatch is delayed or has to be aborted due to circumstances, which are not the responsibility of the supplier, the risk is transferred to the purchaser from the day, on which the readiness for dispatch is notified to the purchaser. The supplier commits himself to complete the necessary insurance at the expense of the purchaser if he requires this.
3. Partial deliveries are permitted, insofar as these are deemed reasonable by the purchaser.

VI. Retention of title

1. The supplier reserves the title rights to the delivery item, until all outstanding claims of the supplier against the purchaser have been paid in full.
2. The supplier is entitled to insure the delivery item at the expense of the purchaser against theft, breakage, fire, water and other damage, if there is not verifiable proof that the purchaser himself has completed the necessary insurance.
3. The Customer may neither pledge the delivery item nor assign it as security. In case of seizure, confiscation or other dispositions of the delivery item by third parties, the purchaser must inform the supplier immediately.
4. If there is any conduct by the purchaser, which is in violation of the contract, particularly as regards default on payment, the supplier is entitled to recover the delivery item after issuing an overdue notice, and the purchaser is obliged to surrender the item.
5. Due to the retention of title, the supplier can only reclaim the delivery item if he has withdrawn from the contract.
6. An application to initiate insolvency proceedings entitles the supplier to withdraw from the contract and to demand the immediate return of the delivery item if the supplier has already performed the contract. In all other respects, Section 321 of the German Civil Code (BGB) shall apply.
7. The purchaser is entitled to resell the delivery item in the proper course of business. In order to secure the outstanding claims, which are due on his part to the supplier, the purchaser assigns however to the supplier all claims, which arise from realising the value of the delivery item, against the buyer of the item or any third parties. The purchaser is empowered to redeem these claims, even after their assignment to the supplier, as long as he conducts himself in line with the contract and providing there is no imminent insolvency. The authority of the supplier to redeem these claims himself remains unaffected by this; the supplier commits himself however not to redeem these claims, as long as the purchaser complies with his payment obligations in a proper manner and providing there is no imminent insolvency. Otherwise the supplier can demand after a reasonable period of time, that the purchaser makes known to him all the claims, which have been assigned to the supplier, and the debtors for these claims, as well as giving all the information required to redeem the claims and handing over the associated documents, and that the purchaser informs the debtors of the assignment of the claims. If the realisable value of all existing securities in favour of the supplier exceeds the claims, which require to be secured, by a total of

more than 10 %, the supplier is obliged on the demand of the purchaser to release securities in accordance with the purchaser's choice.

VII. Claims for deficiencies

The supplier provides a warranty for material and legal deficiencies in the delivery but to the exclusion of other claims - subject to Section VII - as follows:

Material deficiencies

1. All those parts which prove to be deficient as a result of a condition prior to the transfer of risk, are to be rectified or replaced without charge according to the choice of the supplier. Such deficiencies must be notified in writing to the supplier, as soon as they are established. Replaced parts become the property of the supplier.
2. Insofar as the parties have agreed on a quality of the delivery item, objective requirements for the delivery item shall not apply.
3. In order to comply with the agreed contractual conditions and to carry out the necessary measures for rectification of the defects, it may be absolutely necessary for the supplier, that the purchaser will cooperate with the supplier. In particular, if the delivery item is installed on purchaser's side for its intended use. That all the rectifications and replacement deliveries, which appear to the supplier as being necessary, can be carried out as required, the purchaser undertakes to do everything necessary, in particular to grant necessary time and opportunity to rectify the defect. The supplier is entitled to make the owed rectification dependent on the customer paying the due contract price. It is only in urgent cases, where operating safety is endangered or where disproportionately great damage has to be prevented, that the purchaser has the right, after informing the supplier, to rectify the deficiency himself or have it rectified by third parties, and to demand reimbursement of the required expenditure from the supplier.
4. The supplier bears the immediate costs, which arise from the rectification or replacement delivery, as well as the costs of the replacement parts including dispatch - insofar as the complaint proves to be justified. The supplier also bears the costs of dismantling and reinstallation, as well as those for any required provision of facilities, together with the costs of the technicians and ancillary staff, including travel costs, as long as this does not involve any disproportionate burden on the supplier.
5. The purchaser has the right within the framework of the legal provisions to withdraw from the contract, if the supplier - allowing for the legal cases of exception - allows a reasonable period of time for the rectification or replacement delivery of a material deficiency to elapse without a positive result. If only one insignificant deficiency is pending, the right is available to the purchaser of a reduction in the contract price. The right to a reduction in the contract price is otherwise excluded. Other claims are determined in accordance with Section VII.2 of these conditions.
6. The warranty shall be determined in accordance with the principles set forth in this section, but shall not include cases where the deficiency is due to one of the following reasons:

Unsuitable or inappropriate use, faulty installation or operation by the purchaser or third parties, natural wear and tear, faulty or careless handling, improper servicing, unsuitable working equipment, deficient construction work, unsuitable foundations for installation, or chemical, electrochemical and electrical influences - unless these are the responsibility of the supplier.

7. If the purchaser or a third party makes improper repairs, there is no liability on the part of the supplier for the consequences which arise.

The same applies to alterations of the delivery item, which are carried out without the prior permission of the supplier.

8. If however, a request by the purchaser to remedy a defect turns out to be unjustified, the supplier can demand reimbursement from the purchaser for the costs incurred as a result.

Legal deficiencies

9. If the delivery item infringes German commercial property rights or German copyright, the supplier will procure at his cost the right for the purchaser to continue to use the delivery item, or he will modify the delivery item in a manner acceptable to the purchaser in such a way, that there is no longer an infringement of property rights.

If this is not possible under economically viable conditions or within an acceptable period of time, the purchaser is entitled to withdraw from the contract. A right to withdraw from the contract is also available to the supplier under the stated preconditions.

In addition to this, the supplier will also exempt the purchaser from any uncontested or legally justified claims by the relevant owners of the property rights.

10. The obligations mentioned in Section VI.8 on the part of the supplier are, subject to Section VII.2, final in the case of infringement of property rights or copyright.

They only exist, if

- a. the purchaser informs the supplier without delay of the alleged infringements of property rights or copyrights,
- b. the purchaser supports the supplier to a reasonable extent in defence against the alleged claims or enables the supplier to perform the modification measures in accordance with Section VI.8
- c. all defence measures, including extra-judicial provisions, remain reserved for the supplier,
- d. the legal deficiency is not based on an instruction from the purchaser and
- e. the infringement of the right was not caused by the purchaser altering the delivery item on his own authority or by using it in a manner, which is not in accordance with the contract.

VIII. Liability

1. If the delivery item cannot be used by the purchaser in accordance with the contract due to the culpability of the supplier as a consequence of the inadequate or faulty execution of suggestions and advice, which took place before or after the formation of the contract, or due to the infringement of other secondary contractual obligations - in particular the instructions for operating and servicing the delivery item -, then the provisions of Sections VI and VII.2 apply accordingly, but to the exclusion of other claims.

2. In the case of damage, which has not occurred on the delivery item itself, the supplier is only liable - irrespective of the legal reasons - in the following cases:
- a) in the case of malicious intent,
 - b) in the case of gross negligence of the supplier's executive bodies or executive employees,
 - c) in the case of culpable injury to life, body or health,
 - d) in the case of deficiencies, which were concealed maliciously or the absence of which were guaranteed,
 - e) in the case of deficiencies in the delivery item, insofar as liability is assumed in accordance with product liability law for personal or property damage to items which are used privately.

In the case of culpable infringement of essential contractual obligations, the supplier is also liable for gross negligence by non-supervisory employees and for minor negligence, limited in the latter case to contractually typical and reasonably foreseeable damages. Material contractual obligations are those obligations the fulfilment of which is essential for the proper performance of the contract and the compliance with which the contractual partner regularly relies on and may rely on.

Further liability claims, in particular claims for damages arising from culpa in contrahendo, other breaches of duty or tortious claims for compensation for material damage are excluded. The above exclusions or limitations of liability shall also apply to the benefit of the supplier's employees, representatives and other vicarious agents.

IX. Statute of limitations

All claims by the purchaser - irrespective of the legal reasons - shall become statute-barred 6 months after delivery in the case of delivery items that were sold as used machines and 12 months after delivery in the case of delivery items that were overhauled or prepared by the supplier for the purpose of sale. The statutory time periods apply in the case of compensation claims under Section VII.2.a.-e. They also apply to deficiencies in a building structure or to delivery items, which have been employed in their usual method of use for a building structure, and which have caused the deficiencies of the same structure.

X. Software use

In those cases where software is included within the scope of delivery, a non-exclusive and non-transferable right is granted to the purchaser to use the supplied software and its documentation. It is ceded to the purchaser for use on the delivery item, for which it is intended. Use of the software on more than one system is prohibited, unless the supplier expressly agrees to such use.

The customer is not permitted, except for archiving purposes, to make copies of the software, to modify or decompile the software or to use a form of reverse engineering. The supplier shall provide the information required for interoperability on request. The purchaser undertakes not to remove manufacturer information - in particular copyright notices - or to change it without the prior express consent of the supplier.

All other rights to the software and the documentation, including copies of these, remain with the supplier or software provider.

XI. Machine Data

All data (machine data) on the delivery items are the exclusive property of the supplier as manufacturer and are his property. The supplier may therefore use, pass on, process or change the machine data without restriction. Machine data are raw data without any conclusion to a natural person. Therefore, it is neither the intention nor the motivation of the supplier to collect personal data of the customer and personnel working on the delivery item.

XII. Open-Source Software

The delivered software may contain open-source components in whole or in part. These are subject to the relevant license conditions of the used open-source components. The relevant license conditions can be requested at the following email address: open-source@multivac.de and are part of the granting of rights of use. The customer undertakes to observe these terms of use while using the open-source components.

XIII. Confidentiality

1. Notwithstanding the overriding provisions of any separately concluded confidentiality agreement, if any, the following shall apply: The purchaser is obliged to treat as confidential supplier's trade secrets which it learns during the initiation, conclusion or performance of the contract and not to disclose them to third parties. The supplier shall identify trade secrets by marking the respective information as "Confidential" (or similar designations). Even without such labelling, the purchaser shall maintain confidentiality if the circumstances indicate that the respective information constitutes a trade secret for the supplier. Trade secrets of the supplier are in particular the offer and any documents thereto as well as prototypes (and the like, Section I. 2 thereto); contractual systems or machines for series production at purchaser's premises together with the associated documentation are trade secrets of the supplier until delivery at purchaser's site. Notwithstanding the aforesaid, the provisions of Section IX shall apply to any (co-) supplied software together with its documentation.
2. Confidential information, as defined by this clause, does not include information that
 - a. was generally known to the purchaser at the time of transmission or has subsequently become so without any breach by the purchaser;
 - b. has been made available to the purchaser by third parties without any breach of law or
 - c. were already known by the purchaser at the time of transmission or were developed by the purchaser themselves without the use of confidential information.
3. The purchaser shall not be in breach of any confidentiality obligations if it discloses a trade secret of the supplier to the extent that it is required to do so by an order of a court or an authority or by a statutory regulation, whereby the purchaser must take all reasonable steps to prevent or limit the disclosure as far as possible. To the extent legally permissible, the purchaser is obliged to notify the supplier immediately about such disclosure.

4. Furthermore, the use or disclosure of trade secrets within § 5 GeschGehG does not constitute a breach of the obligation to maintain secrecy.
5. If the purchaser breaches its obligation to maintain secrecy, it shall owe a contractual penalty to be determined by the supplier at its reasonable discretion, the appropriateness of which shall be reviewed by the competent regional court in the event of a dispute, unless it is not responsible for the breach of duty.

XIV. Force Majeure

In case of an event Force Majeure, the affected contractual party shall not be liable on account of the delay or impossibility thus determined. The delivery time will be extended appropriately. Events of Force Majeure shall include but are not limited to (i) war (whether declared or undeclared), hostilities, military uprising, insurrection, act of public enemy, extensive military mobilization, riot; (ii) civil war, rebellion and revolution, military or usurped power, coup, act of terrorism, sabotage or piracy; (iii) currency and trade restriction, embargo, sanction; (iv) regulations and/or orders of whatsoever nature of any governmental authority, or compliance with such acts, laws rules, regulations, expropriation, seizure of works, requisition or nationalization; (v) plague, epidemic, pandemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; (vii) general labour disturbances such as boycott, strike, lockout, go-slow, occupation of factories and premises; (viii) general lack in plant or raw materials, lack of harbour and offloading capacity, serious transport accidents and other reasons that a contractual party has no influence over.

XI. Data protection

The supplier and the Customer undertake to observe all applicable data protection regulations when processing personal data and to take the necessary technical and organisational measures to ensure data security.

XII. Applicable law, place of jurisdiction

1. German law applies with the exception of the UN Convention on Contracts for the International Sale of Goods of 11.04.1980.
2. The place of jurisdiction is the court responsible for the area, where the supplier has its headquarters, if the purchaser is a company entrepreneur, a legal person in public law or a special fund under public law. The supplier is however entitled to bring legal action at the court responsible for the area, where the purchaser has its headquarters.

(Valid from: March 2023)