

General Terms and Conditions of Delivery for the Supply of Machines on the basis of the Verband Deutscher Maschinen- und Anlagenbau e. V. (German Engineering Federation)



I. General

1. All supplies and services are based on these conditions as well as any separate contractual agreements. Divergent purchasing conditions from the Customer do not form part of the contract, even if the order is accepted.
A contract is formed - absent any special agreement - upon written confirmation of the order by the Supplier.
2. The Supplier reserves intellectual property rights and copyright over models, cost proposals, drawings, and other such information whether in physical or non-physical form - including electronic form; they may not be made available to third parties. The Supplier undertakes to make information and documents marked as confidential by the Customer available to third parties only with the Customer's consent.

II. Price and payment

1. Absent a special agreement, prices are ex works including loading at the factory, but excluding packaging and unloading. Sales tax at the respective statutory rate shall be added to the prices.
2. In the absence of a special agreement, payment is to be made without any deduction to account of the Supplier as follows:
in the division of **stationary technology**

40 % down payment after receipt of order confirmation, net immediately
50 % upon notification of readiness for delivery and receipt of the partial invoice, net immediately
10 % after the end of assembly, but no later than 30 days after notification of readiness for delivery. If assembly is delayed for reasons for which we are not responsible. Net immediately.

In the division of **mobile technology**

30 % Down payment after receipt of order confirmation, net immediately
70 % upon notification of readiness for delivery, net immediately

3. The customer only has the right to hold back payments or to offset them against counterclaims insofar as his counterclaims are undisputed or have been legally established.

III Delivery time, delay in delivery

1. The delivery time shall result from the agreements between the contracting parties. Compliance with the delivery time by the supplier presupposes that all commercial and technical questions between the contracting parties have been clarified and that the customer has fulfilled all obligations incumbent on him, such as the provision of the necessary official certificates or approvals or the payment of a deposit. If this is not the case, the delivery time shall be extended accordingly. This shall not apply if the supplier is responsible for the delay.

2. Compliance with the delivery time is subject to correct and timely delivery to the supplier. The supplier shall inform the customer as soon as possible of any impending delays.

3. The delivery time shall be deemed to have been met if the delivery item has left the supplier's works by the time it expires or readiness for dispatch has been notified. If 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 dispatch or acceptance of the delivery item is delayed for reasons for which the customer is responsible, the customer shall be charged for the costs incurred as a result of the delay, starting one month after notification of readiness for dispatch or acceptance.

5. If non-compliance with the delivery time is due to force majeure, labor disputes or other events beyond the supplier's control, the delivery time shall be extended accordingly. The Supplier shall inform the Purchaser of the beginning and end of such circumstances as soon as possible.

6. The customer may withdraw from the contract without setting a deadline if the entire performance becomes definitively impossible for the supplier before the transfer of risk. In addition, the customer may withdraw from the contract if, in the case of an order, the execution of part of the delivery becomes impossible and the customer has a justified interest in rejecting the partial delivery. If this is not the case, the customer must pay the contract price for the partial delivery. The same applies if the supplier is unable to deliver. Otherwise, Section VII. 2 shall apply.

If the impossibility or inability occurs during the delay in acceptance or if the customer is solely or predominantly responsible for these circumstances, he shall remain obliged to provide consideration.

7. If the customer sets the supplier a reasonable deadline for performance after the due date - taking into account the statutory exceptions - and the deadline is not met, the customer shall be entitled to withdraw from the contract within the framework of the statutory provisions. At the Supplier's request, the Purchaser undertakes to declare within a reasonable period of time whether it will exercise its right of withdrawal. Further claims arising from delay in delivery shall be determined exclusively in accordance with Section VII. 2 of these Terms and 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. shipping costs or delivery and installation. If acceptance is required, this shall be decisive for the transfer of risk. It must be carried out immediately 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 minor defect.

2. If dispatch or acceptance is delayed or does not take place as a result of circumstances for which the supplier is not responsible, the risk shall pass to the customer from the day of notification of readiness for dispatch or acceptance. The Supplier undertakes to take out any insurance requested by the Purchaser at the latter's expense.

3. Partial deliveries are permissible insofar as reasonable for the Purchaser.

4. If the systems/components are put into operation by the customer for test purposes/test operation/production operation before acceptance, it is mandatory to carry out a transfer of risk and burden. If the customer does not agree to a transfer of risk and encumbrances, the machine may not be put into operation.

V. Reservation of proprietary rights

1. The supplier reserves proprietary rights to the delivery item until receipt of all payments - including for any additional ancillary services owed - under the delivery contract.

2. The supplier is entitled to insure the delivery item against theft, breakage, fire, water and other damage at the customer's expense, unless the customer has demonstrably taken out the insurance himself.

3. The customer may not sell, pledge or assign the delivery item as security. In the event of seizure, confiscation or other dispositions by third parties, he must inform the supplier immediately.

4. In the event of breach of contract by the customer, in particular default in payment, the supplier shall be entitled, after the first reminder, to take back the delivery item and the customer shall be obliged to surrender it.

5. Due to the reserves proprietary rights, the supplier can only demand the return of the delivery item if he has withdrawn from the contract.

6. The application for the opening of insolvency proceedings entitles the supplier to withdraw from the contract and to demand the immediate return of the delivery item.

VI Claims for Faults

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 defects

1. All those parts which prove to be defective as a result of a circumstance occurring before the transfer of risk shall be repaired or replaced free of defects at the discretion of the supplier. The discovery of such defects must be reported to the supplier immediately in writing.

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 the supplier deems necessary; otherwise the supplier shall be released from liability for the resulting consequences. 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 Purchaser have the right to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary expenses from the Supplier.

3. If the complaint proves to be justified, the Supplier shall bear the expenses necessary for the purpose of subsequent performance, provided that this does not result in a disproportionate burden on the Supplier. Insofar as the expenses increase due to the fact that the Buyer has moved the purchased item to a place other than the place of performance after delivery, any additional costs incurred as a result shall be borne by the Buyer. In the case of the sale of a newly manufactured item, the Supplier shall also reimburse the expenses incurred by the Purchaser within the scope of its statutory obligation in the context of recourse claims in the supply chain.

4. Within the framework of the statutory provisions, the purchaser has the right to withdraw from the contract if the supplier - taking into account the statutory exceptions - allows a reasonable deadline set for the rectification or replacement delivery due to a material defect to elapse 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 terms and 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 they are not the responsibility of the Supplier.

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 of Title Claims

8. If the use of the delivery item leads to an infringement of industrial property rights or copyrights in Germany, the supplier shall, at his own expense, procure the right for the purchaser to continue using the delivery item or modify the delivery item in a manner reasonable for the purchaser 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 Purchaser against any undisputed or legally established claims of the owners of the industrial property rights concerned.

9. Subject to Section VII. 2, the obligations of the Supplier specified in Section VI. 8 are conclusive in the event of an infringement of industrial property rights or copyrights.

They shall only apply if

-the Purchaser informs the Supplier immediately of any asserted infringements of industrial property rights or copyrights,

-the Purchaser supports the Supplier to a reasonable extent in the defense against the asserted claims or enables the Supplier to carry out the modification measures in accordance with Section VI. 8,

-the Supplier reserves the right to take all defensive measures, including out-of-court settlements,

-the defect of title is not based on an instruction of the Purchaser and

-the infringement of rights was not caused by the fact that the Purchaser modified the delivery item without authorization or used it in a manner not in accordance 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 provided by the supplier before or after conclusion of the contract or as a result of culpable breach of other contractual ancillary obligations - in particular instructions for operation and maintenance of the delivery item - the provisions of Sections VI and VII.2 shall apply to the exclusion of further claims by the customer.

2. The supplier shall only be liable for damage that has not occurred to the delivery item itself - for whatever legal reasons

a) in the event of intent,

b) in the event of gross negligence on the part of the owner/the executive bodies or executive employees,

c) in the event of culpable injury to life, limb or health,

d) in the case of defects which he has fraudulently concealed,

e) within the scope of a guarantee promise,

f) in the event of defects in the delivery item, insofar as the Product Liability Act provides for personal injury or damage to privately used objects.

In the event of culpable breach of material contractual obligations, the supplier shall also be liable for gross negligence of non-executive employees and in the case of slight negligence, in the latter case limited to reasonably foreseeable damage typical of the contract.

Further claims are excluded.

VIII. Statute of limitations

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

IX. Use of software

If 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. UrhG). The Customer undertakes not to remove manufacturer's details - in particular copyright notices - or to change them without the prior express consent of the Supplier.

All other rights to the software and the documentation, including copies, shall remain with the Supplier or the software supplier. The granting of sublicenses 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 responsible for the Supplier's registered office. However, the Supplier shall be entitled to bring an action at the Purchaser's principal place of business.

Special Anlagenbau Günther (ALBG) terms of delivery

Warranty

Anlagenbau Günther is only obliged to provide a warranty for defects that occur during a period of 1 year up to 1,000 operating hours from the time of transfer of risk or upon delivery. Wear and tear excluded.

Retention of title

The delivery item shall remain the property of ALBG until all claims existing against the customer at the time of conclusion of the contract, which subsequently arise against the customer in connection with the object of purchase, e.g. due to repairs or spare parts services as well as other services, have been satisfied in full. In the event of non-fulfillment of the contractual obligations by the Customer, ALBG shall be entitled to assert its rights to retention of title even without recourse to legal assistance. In particular, the Customer authorizes ALBG to remove the delivery item and acknowledges that such removal does not constitute a withdrawal from the contract, but merely a securing of the delivery item, unless ALBG declares otherwise. Such removal shall not give rise to any claims for damages against Anlagenbau Günther on the part of the customer.

This is a translation of the German copy. If there are errors in the translation, the original German text applies.