

General terms and conditions of supply for the supply of machines from 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, the prices are valid ex works including loading in the factory, excluding packaging and unloading however. Sales tax in the respective legal amount is added to the prices.
2. Absent a special agreement, payment is to be made without deduction to account of the Supplier as follows, in the division **Stationary technology**

30 % Down payment after arrival of order confirmation,
40 % When notified that delivery is ready
30 % following the completion of installation, at the latest however 30 days after the notification of readiness to be delivered

In the division **Mobile technology**

30 % Down payment after arrival of order confirmation,
70 % When notified that delivery is ready

3. The Customer only has the right to hold back payments or offset them with counterclaims insofar as its counterclaims are undisputed or have been established as legally valid.

III. Delivery time, Delivery delays

1. The delivery time emerges from the agreements between the contractual parties. It is a precondition for adherence to it by the Supplier that all commercial and technical questions between the contractual parties have been clarified and the Customer has fulfilled all obligations incumbent upon it, such as, for example, supplying the required official certificates or approvals or making a down payment. If this is not the case, the delivery time is lengthened appropriately. This does not apply to the extent that the Supplier is responsible for the delay.
2. Adherence to the delivery time exists under the proviso of correct and timely delivery to us.

As soon as possible, the Supplier shall provide notification of delays that become apparent.
3. The delivery time is adhered to if, prior to its expiration, the delivery item has left the Supplier's factory or notification has been given of its readiness for dispatch. To the extent that an acceptance has to take place, the acceptance date - even when acceptance is justifiably refused - is decisive, alternatively the notification of its readiness for acceptance.
4. If the dispatch or incapacity of the delivery item is delayed on grounds for which the Customer is responsible, the costs that arose as a result of the delay shall be invoiced to it starting one month after the notification of readiness for dispatch or acceptance.

5. If non-adherence to the delivery time is due to force majeure, industrial action or other events that lie outside the Supplier's sphere of influence, the delivery time shall be lengthened appropriately. The Supplier shall notify the Customer of the beginning and end of such circumstances as soon as possible.
6. The Customer may withdraw from the contract without a notice period if the overall performance has conclusively become impossible for the Supplier prior to the transfer of risk. Furthermore, the Customer may withdraw from the contract if, during an order, the implementation of part of the delivery becomes impossible and it has a justifiable interest in rejecting a partial delivery. If this is not the case, the Customer must pay the contractual price arising from the partial delivery. The same applies in relation to the incapacity of the Supplier. For the rest, Section VII applies. 2.

If the impossibility or incapacity occurs during the acceptance delay or if the Customer is solely or predominantly responsible for these circumstances, it remains obligated to counterperformance.
7. After the due date, if the Customer sets the Supplier - taking into account the legal exceptions - a reasonable deadline for performance and if this deadline is not adhered to, the Customer is entitled to withdraw, within the framework of legal provisions. It undertakes, at the Supplier's request, to explain within a reasonable period whether or not it intends to make use of its right to withdraw.
Additional claims arising from a delay in delivery are defined exclusively in accordance with Section VII. 2 of these terms and conditions.

IV. Transfer of risks, acceptance

1. Risk is transferred to the Customer when the delivery item has left the factory, even if partial deliveries take place or the Supplier has taken on other services, for example the transport costs or delivery and set-up. Insofar as an acceptance must take place, this is decisive for the transfer of risk. It must take place immediately at the acceptance date, alternatively following the Supplier's notification concerning the readiness for acceptance. The Customer may not refuse acceptance when an insubstantial fault is present.
2. If the dispatch or acceptance does not take place as a result of circumstances for which the Supplier is not responsible, the risk transfers to the Customer on the day of the notification of readiness for dispatch or acceptance. The Supplier undertakes to take out the insurance requested by the Customer at the latter's expense.
3. Partial deliveries are permitted, insofar as these are reasonable for the Customer.

V. Reservation of proprietary rights

1. The Supplier reserves ownership of the delivery item until all payments have been received - including for any ancillary services that are additionally owed - that arise from the delivery contract.
2. The Supplier is entitled to insure the delivery item against theft, breakage, fire and water damage and other damage at the Customer's expense insofar as the Customer has not demonstrably taken out insurance itself.
3. The Customer may neither sell nor pledge the delivery item, nor make it over as security.
If pledges or confiscations or other decrees by third parties take place, the Customer must immediately notify the Supplier of this.
4. If the Customer's behaviour is contract-infringing, in particular if there are arrears in payment, the Supplier is entitled, after the initial warning, to take back the delivery item and the Customer is obligated to return it.
5. Due to the reservation of proprietary rights the Supplier may only request the return of the delivery item when it has withdrawn from the contract.
6. A petition for the opening of an insolvency procedure authorises the Supplier to withdraw from the contract and request the immediate return of the delivery item.

VI. Claims of fault

The Supplier shall be liable for material faults and defective title in the delivery, to the exclusion of additional claims - with the proviso of Section VII - , as follows:

Material fault

1. All parts that turn out to be faulty as a result of a circumstance prior to the transfer of risk are to be repaired or replaced without charge in a fault-free condition, at the Supplier's discretion. When such faults are noted, the Supplier is to be immediately notified in writing.
Replaced parts become the property of the Supplier.
2. For carrying out all repairs and spare parts deliveries that appear necessary to the Supplier, the Customer must, after agreement with the Supplier, grant the time and opportunity required; otherwise the Supplier is freed from liability from the consequences arising from this. Only in urgent cases that jeopardise operational security or to protect against excessively large damage, of which the Supplier is to be immediately informed, does the Customer have the right to arrange for the repair itself or through third parties and request reimbursement of the required expenses from the Supplier.
3. Of the direct costs arising from the repair or supply of spare parts the Supplier shall bear - insofar as the complaint emerges as justified - the costs of the spare part including dispatch. It shall also bear the costs of the dismantling and installation as well as any costs that may exist for making available the required fitters and assistants including travel costs, insofar as no excessive burden arises for the Supplier in this respect.
4. Within the framework of legal provisions, the Customer has the right to withdraw from the contract if the Supplier - taking into account the legal exceptions - allows to expire without result a reasonable deadline that has been set for it for the repair or delivery of a replacement as a result of a material fault. If only an insubstantial fault is present, the Customer shall only have a right to a reduction in the contractual price. The right to a reduction in the contractual price remains otherwise excluded.
Additional claims are defined exclusively in accordance with Section VII. 2 of these terms and conditions.

5. In particular, no liability shall be assumed in the following cases:

Inappropriate or improper use, defective installation or commissioning by the Customer or third parties, natural wear, faulty or negligent handling, improper maintenance, unsuitable production resources, faulty construction work, unsuitable construction base, chemical, electrochemical or electrical influences - insofar as the Supplier is not responsible for them.

6. If the Customer or a third party performs a repair unprofessionally, the Supplier shall have no liability for the resulting consequences. The same applies to changes made to the delivery item without the prior consent of the Supplier.

Defective claim

7. If the use of the delivery item leads to the infringement of intellectual property rights or copyrights domestically, the Supplier, at its own cost, shall procure for the Customer the right to continued use in principle or shall modify the delivery item, in a way that is reasonable for the Customer, in such a way that the intellectual property right infringement no longer exists.

If this is not possible under commercially reasonable conditions or is not possible within a reasonable period of time, the Customer shall be entitled to withdraw from the contract. Under the conditions referred to, the Supplier shall also be entitled to withdraw from the contract.

Furthermore, the Supplier shall indemnify the Customer from undisputed or legally-established claims of the intellectual property rights holder concerned.

8. The Supplier obligations referred to in Section VI. 7, with the proviso of Section VII. 2 shall be conclusive for the case of intellectual property right or copyright infringement.

They exist only if

- The Customer immediately notifies the Supplier of intellectual property right or copyright infringements that have been asserted,
- The Customer supports the Supplier to a reasonable extent in defending against the asserted claims or makes it possible for the Supplier to carry out the modification measures in accordance with Section VI. 7,
- The right to all countermeasures, including out-of-court arrangements, is reserved to the Supplier,
- The defective claim is not based on an instruction from the Customer and
- The legal infringement was not caused by the Customer independently altering the delivery item or using it in a way that was not in accordance with the contract.

VII. Supplier's liability, liability exclusion

1. If the delivery item cannot be used by the Customer in accordance with the contract through the fault of the Supplier as a result of omitted or defective execution of suggestions or advice given before or after the conclusion of the contract or through the infringement of other ancillary contractual duties - in particular instructions on the operation and maintenance of the delivery item -, the provisions of Sections VI and VII apply to the exclusion of additional claims. 2.

2. For damages that have arisen other than on the delivery item itself, the Supplier shall be liable - whatsoever the legal grounds - only

- a) when there is intent,
- b) when there is gross negligence of the owners/executive agencies or management personnel,
- c) when there is culpable injury to life, body, health,
- d) when there are faults that it fraudulently concealed,
- e) within the framework of a guarantee promise,
- f) when there are faults in the delivery item, insofar as liability exists in accordance with the Product Liability Act for personal or material damage on privately used objects.

When there is a culpable infringement of substantive contractual obligations, the Supplier shall be liable even in cases of gross negligence by non-management employees and simple negligence, in the last case limited to damage that is contractually typical and reasonably foreseeable.
Further claims are excluded.

VIII. Temporal limitation

All of the Customer's claims - whatsoever the legal grounds - expire after 12 months. For damages claims in accordance with Section VII. 2 a - d and f the legal deadlines apply. They also apply for faults in a structure or for delivery items which in accordance with their customary use were used for a structure and caused its defective condition.

IX. Software use

Insofar as software is included within the scope of the delivery, the Customer is granted a non-exclusive right to use the delivered software including its documentation. It is handed over for use on the delivery item for which it is defined. Use of the software on more than one system is prohibited.

The Customer may only copy, rework or translate the software or convert its object code into source code within the legally permitted scope (§§ 69 a ff. Copyright Act [UrhG]). The Customer undertakes not to remove manufacturer 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 the copies, remain with the Supplier or the software Supplier. The granting of sub-licences is not permitted.

X. Applicable law, court of jurisdiction

For all legal relationships between the Supplier and the Customer the decisive law governing legal relationships between domestic parties of the Federal Republic of Germany shall apply.
The court of jurisdiction is the court responsible for the registered office of the Supplier. The Supplier is however entitled to raise a complaint where the Customer's main office is based.

Special Anlagenbau Günther (ALBG) terms and conditions of supply

Warranty

For Anlagenbau Günther, the warranty obligation exists only for faults that occur during a period of 1 year up to a number of operating hours of 1,000 operational hours, from the time at which risk is transferred or the delivery is made. Wear and tear is excluded.

Reservation of proprietary rights

The delivery item remains the property of ALBG until the complete fulfilment of all claims existing against the Client at the time of the conclusion of the contract in relation to the purchased object, e.g. due to repairs or spare parts services or other services, or which arise subsequently in relation to the Client. In the case of non-fulfilment of the contractual obligations by the Client, ALBG is entitled to the assert its reservation of proprietary rights itself without legal recourse. In particular, the Client shall enable ALBG to take away the delivery item and acknowledge that doing so does not signify a withdrawal from the contract, but only a security in relation to the delivered item, unless ALBG declares otherwise. No claims for damages against Anlagenbau Günther shall arise for the Client in relation to such a taking away.

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