

# VDMA Conditions of Sale and Delivery

## 1.0 Offer and conclusion of agreement

1.1 The following conditions apply to all services, recommendations, advisory and ancillary services, offers. Sales of tools, appliances, machines, units, replacement parts and installation work of any kind. They are also valid for all repeat orders. The purchaser's conditions are also not binding, even if the supplier does not explicitly object to them. The contract only comes into effect when the order is confirmed in writing by the supplier, even if the order was given to an affiliate or a representative. Subsidiary agreements and modifications require our written confirmation.

1.2 Details regarding dimensions, weights, performance, operating costs and other technical data such as images, descriptions and drawings are only approximate for the object and purpose of the contract, insofar as they are not binding and do not represent any guarantee of characteristics.

1.3 The supplier reserves the right of ownership and copyright to quotations, drafts, drawings and other documents; they must only be made available to third parties by agreement with the supplier.

1.4 If the delivered items are supplied according to drawings, models, samples or other documents provided by the purchaser, the latter guarantees that property rights of third parties are not infringed and undertakes to immediately exempt the supplier of all third party claims relating to this.

1.5 Materials provided by the purchaser for carrying out the contract must be supplied free of charge to the factory stipulated by the supplier in the agreed quantity, or failing that with an adequate excess quantity to allow for possible waste, and in perfect and agreed condition. Should this not occur, the supplier shall have the right to charge for expenses incurred as a result and at its discretion not to undertake, to suspend or proportionately to extend production.

1.6 The supplier reserves the right to make modifications to design and form as well as deviations from samples and previous deliveries, as long as the delivered item is not significantly altered and the modification may be deemed reasonable for the purchaser.

## 2.0 Price

2.1 Unless otherwise agreed, calculation shall be made at the prices and conditions valid on the day of delivery or pick-up. Prices are ex-works, excluding packaging, insurance and freight costs. VAT shall be added at the respective applicable rate.

2.2 Delivery shall be made in the name of and at the risk of the purchaser, even in the event of freight paid delivery.

2.3 Unforeseen, order-related variations in costs of raw materials, wages, energy and others shall entitle us to make price adjustments.

2.4 On-site requirements and services must be carried out by the purchaser according to our information on time before installation commences. If it is not completed on time, the purchaser shall bear the costs for delays, journeys and travel time.

2.5 If the submission of an estimate is required before the execution of repairs, this must be expressly indicated. Costs for producing an estimate must be reimbursed if the repair is not commissioned.

## 3.0 Payment conditions

3.1 In the absence of any special agreement, payments must be made in cash without any deduction and free of charges to the supplier's payment office; payments to third parties are made at the purchaser's risk. In the event of late payment without deferment, bank rates of interest plus statutory VAT shall be charged without notice.

3.2 Only checks and bills of exchange are accepted for payment purposes. If they are issued in another location (out-of-town cheques), the supplier is not responsible for filing a protest. Discount, exchange and withdrawal costs shall be paid by the purchaser. Complaints do not entitle the purchaser to withhold due payments. Rights of retention and offsetting with counterclaims that are disputed and not legally binding are excluded; if the purchaser is in arrears in full or in part with two successive instalments of the purchase price or with a sum of at least 1/10 of the purchase price, the full remaining balance is due without notice. The same applies if the agreed bills of exchange or checks are not handed over on time or are not honoured; also in the event of a change of ownership, business or company name or liquidation, except through inheritance or acquisition in consideration of the laws of inheritance; and also in the event of other substantial changes in the financial relations of the purchaser, in the event of cessation of payment, application for settlement or bankruptcy and in the event of enforcement.

3.3 In these cases, the supplier is also entitled to withdraw the delivered item at the supplier's expense, without recourse to any right of retention, for a guarantee or for disposal on the open market at the best possible rate at the purchaser's expense and risk, without the purchaser being released from the agreement.

In these cases, the supplier can also demand damages because of non-fulfilment, at a rate of 15% of the purchase price without particular proof or at a higher amount against proven damage. The supplier can withdraw from the agreement under the same conditions. The same applies if the supplier receives unfavourable information regarding the creditworthiness of the purchaser that the purchaser cannot disprove. In the latter case the supplier can also demand payment in advance or the provision of a guarantee or cash on delivery.

3.4 If debts are reduced to a proportion in bankruptcy, insolvency or similar proceedings, a claim to agreed reductions and/or bonuses does not apply.

3.5 The purchaser can only offset or claim a right of retention against the supplier's claims, if the purchaser's counterclaim is undisputed or there is a non-appealable enforceable judgement.

## 4.0 Delivery periods

4.1 Delivery periods and deadlines are subject to alteration, if a particular delivery time is not agreed. The delivery period begins with the dispatch of the order confirmation, nevertheless not before the provision of documents, samples, models, authorisations, and approval from the purchaser and not before receipt of an agreed deposit.

4.2 The delivery period is deemed met, if the item has left the factory by the end of the stipulated period or if the purchaser has been informed that it is ready for dispatch. The delivery period is extended by an appropriate amount, even if already the subject of delay, in the event of industrial disputes (in particular strikes and lock-outs) as well as in the event of unforeseen obstacles (such as, for example, malfunctions, goods becoming scrap, delivery blocks, lack of transport, government measures), which lie beyond the control of the supplier, as long as such obstacles demonstrably have a significant influence on the completion or delivery of the item. This also applies if the same circumstances occur with sub-suppliers.

4.3 Compliance with the delivery period implies the timely fulfilment of contractual obligations by the purchaser.

4.4 If the dispatch is delayed by request of the purchaser, then he will be charged for the costs arising from storage, in the event of storage at the supplier's factory, at a rate of at least 0.5% of the invoice amount for each month, beginning one month after readiness for dispatch is reported.

4.5 The supplier is however entitled to dispose of the item after an appropriate time period has been set and passed and to supply the purchaser with an appropriately extended period.

#### **5.0 Transfer of risk and acceptance**

5.1 The risk is transferred at the latest upon dispatch to the purchaser, even if part deliveries occur or the supplier has undertaken other services, e.g. dispatch costs, or transport and installation.

5.2 Unless otherwise agreed, all dispatches occasioned by us are insured via the supplier at the purchaser's expense against theft, breakdown, damages in transit, fire and water damage as well as other insurable risks.

5.3 If the dispatch is delayed as a result of circumstances which are the responsibility of the purchaser, or due to cases of force majeure (figure 4.2), the risk is handed over to the purchaser from the day on which the dispatch is ready.

5.4 Delivered items shall be accepted by the purchaser, even if they exhibit insignificant defects, without prejudice to the rights stated in figure 8.

5.5 An approval or inspection of the item shall only take place when this has been expressly agreed or the corresponding material standards provide for this. Unless otherwise agreed, the tests on the item are carried out by the supplier himself. In any event, approvals and inspections shall take place at the supplier's, after notification of dispatch readiness. Should the purchaser fail to carry out the approval or delays it unreasonably or abandons it, the supplier shall be entitled to dispatch the item without approval or to store it at the expense and risk of the purchaser.

5.6 Part deliveries are permissible.

#### **6.0 Withdrawal from the agreement**

6.1 The supplier is entitled to withdraw from the agreement by written declaration in the event of force majeure and in the event of non-fulfilment of contractual obligations by the purchaser, without prejudice to all claims for damages. The same applies if fulfilment can no longer be reasonably expected of the supplier due to unforeseen events in the sense of figure 4.2.

6.2 The purchaser is entitled to withdraw from the agreement by written declaration if delivery becomes impossible or if in spite of setting an appropriate extension period the delivery does not take place through the supplier's own fault. If the impossibility arises during the delay in acceptance or through the fault of the purchaser, the purchaser shall remain obliged to perform his part of the agreement.

6.3 All ongoing claims by the purchaser are excluded, insofar as it is permitted by law, in particular claims to transformation, cancellation, reduction or to damages of any kind, and also of such damages which have not occurred to the delivered item itself.

#### **7.0 Reservation of ownership**

7.1 The supplier reserves the right to the ownership of the delivered items, until the purchaser has settled all outstanding accounts, including future and conditional ones, under the business relationship, plus interest and expenses. This also applies if individual or all outstanding accounts have been incorporated into a current account and the balance has been established and acknowledged.

7.2 Without prejudice to the purchaser's payment obligation we are entitled to either sell the repossessed item on the open market at the best possible rate and receive the proceeds or to credit the repossessed item at the agreement price - less discounts, reductions and other deductions and by deducting a depreciation of 15% from the contract price. In the event of attachments or other interventions by third parties the purchaser is obliged to inform the supplier immediately. The purchaser may neither pledge the delivered item nor assign it as a security. The reservation of ownership is not rescinded by third party payments, in particular by payments of substitution rates, in this respect the rights of the supplier pass to the payers. If the purchaser has adequately insured the removed machines, the supplier can insure the delivered machines and items at the expense of the purchaser against damages in the usual manner against theft, breakdown, water and other damages.

7.3 The purchaser is entitled to sell on the item in the normal course of business and under conditions which agree with these sales conditions. Should he find himself in financial difficulties and has not balanced his account with the supplier, he may dispose of the item only with the express agreement of the supplier. Disposals without this agreement are invalid if they are not subsequently authorised.

7.4 The purchaser hereby assigns all existing or potential debts and services in exchange from the divestment or other legal reasons in respect of the reserved property to the supplier. Items taken in payment by the purchaser in the event of re-sale, including bills of exchange and checks, immediately pass into the supplier's ownership upon acceptance and are held in trust by the purchaser for the supplier; should a third party be in possession of the item, the handover shall be replaced by the assignment of the claim for surrender. The purchaser remains authorised to recover debts, even after the assignment, but the supplier is free to immediately recover debts from the account

debtor. The supplier will avoid doing so, so long as the purchaser duly fulfils his obligations. The supplier can demand information on all debts and their debtors from the purchaser as well as the disclosure of all other documents necessary for collection of payment and their surrender. Likewise the assignment to a third party debtor must be disclosed on demand (open assignment). Should the delivery item be re-sold together with other goods that do not belong to the supplier, the purchaser's debt against the account debtor shall be considered as assigned to the value of the delivery price agreed between the supplier and the purchaser.

7.5 The installation of delivered goods under retention of title is always carried out by the purchaser for the supplier. Should the goods under retention of title be processed with other items not belonging to the supplier, the supplier shall acquire co-ownership of the new item in proportion to the value of the goods under retention of title to the new item. Compensation from insurance benefits or other claims are likewise considered as assigned to the supplier.

7.6 Should the purchaser avail himself of the intervention of a financing company or a credit institution, he must disclose to them the agreed reservation of ownership along with the relevant details. In spite of the reservation of ownership the purchaser bears the risk of destruction or deterioration of the delivered items.

7.7 If the purchaser breaches the agreement, we are entitled to withdraw after providing notice and the purchaser is obliged to surrender. The enforcement of the reservation of ownership as well as any attachment of the delivered item by us is not considered as cancellation of an agreement. After withdrawing the item we are entitled to proceed with this according to regulations in figure 7.2 of the conditions.

7.8 Should the purchaser not fulfil his payment obligations, discontinue his payments or file for insolvency with regard to his property and initiate insolvency proceedings, the remaining sum shall fall due, including bills of exchange with a later maturity date. Should the remaining balance not be paid immediately, the purchaser's right to use the delivery item shall expire and the supplier shall be entitled by reason of the reservation of ownership to demand the surrender of goods under retention of title by the purchaser without issuing a deadline.

All expenses arising from the repossession of the delivered item are paid by the purchaser. The supplier is entitled to take action, without prejudice to the payment obligations of the purchaser with the repossessed item according to figure 7.2.

## **8.0 Warranty, liability**

The supplier is liable for defects excluding further claims without prejudice to figure 6.2 as follows:

8.1 If the item is defective, the supplier shall deliver a replacement or repair according to his choice. The purchaser is obliged to report the discovery of defects immediately in writing. Replaced parts are our property. The warranty period amounts to one year in single-shift-operation (in the event of multiple-shift-operation it is correspondingly shorter). The supplier provides no warranty for used machines.

8.2 The supplier is entitled to refuse to redress defects so long as the purchaser has not fulfilled his obligations towards us or has not done so on time.

8.3 Should the dispatch, installation or start-up be delayed, through no fault of the supplier, then the liability shall expire at least 12 months after the transfer of risk, at the earliest however at the end of the legal period.

8.4 In the event of the shipment of the delivered item outside the borders of the Federal Republic of Germany, repair is limited to the free delivery of replacement parts.

8.5 No warranty is provided for damages that have arisen from the following causes: inappropriate or incorrect usage, incorrect installation or start-up by the purchaser or third parties, natural wear and tear, poor maintenance, unsuitable physical conditions, unsuitable equipment, replacement materials, modifications or repairs not approved by the supplier, chemical, electro-chemical or electrical influences, insofar as they are not attributable to the supplier. Servicing, setup and adjustment work do not fall under the terms warranty or guarantee.

8.6 For essential third-party products our liability is limited to the assignment of liability claims, which we hold against the supplier of the third-party product.

8.7 According to arrangements to be made with the supplier, the purchaser must provide the time and opportunity to perform all repairs and replacements which we deem necessary in our reasonable judgment, otherwise we will be relieved of any liability for defects. Only in urgent cases where there is risk to work safety or to avoid disproportionately large damage, whereby we must be immediately notified, or if we fail to remedy the defect, shall the purchaser have the right to have the defect resolved himself or by a third party at our expense or to demand reimbursement of the costs incurred from us.

8.8 Interferences and modifications without our written agreement or incorrectly carried out repairs to delivered machines, units or control systems etc. by the purchaser or third party shall immediately release the supplier from any liability claims.

8.9 Further claims by the purchaser, in particular a claim for compensation for damages, which did not occur to the delivery item itself, are excluded.

8.10 We are liable for processing defects including damages to processing material, which are attributable to us, at a maximum to the processing value of the legitimately disputed piece of work.

## **9.0 Liability for other breaches of obligation**

Should other contractual obligations be breached by the supplier and should the purchaser not be able to use the delivered item according to the contract for this reason, then the regulations in figures 6.2 and 8 shall apply accordingly, excluding further claims by the purchaser.

## **10.0 Invalidity of individual provisions and recognition of the purchaser's conditions of acquisition and purchase**

10.1 The invalidity of an individual provision does not affect the legal effectiveness of the remaining provisions. The invalid provisions shall be reworded and/or be adjusted to the changed circumstances, so that the outcome intended is achieved as far as possible.

10.2 The purchaser's conditions shall be recognised insofar as they do not contradict these sales and delivery terms and conditions and in the event of obscurities and/or errors they shall be replaced by those of the supplier.

#### **11.0 Place of fulfilment and place of jurisdiction**

The place of fulfilment is the supplier's place of business. The law of the Federal Republic of Germany applies for the contractual relationships, excluding the standardised trade law (The Hague Trade Law Treaty).

The place of jurisdiction is the location of the supplier; this also applies in the event of all procedures regarding documents and bills of exchange, which are in some way connected with the delivery. The supplier can also file a suit at the purchaser's place of jurisdiction.