

## **VDMA Conditions for the Delivery of Machinery inside Germany**

to be used with respect to:

- 1 a person acting, at the time of the conclusion of the contract, as a business person in a commercial or professionally independent capacity ("*Unternehmer*"); or
- 2 corporate bodies under public law or a special asset under public law.

### **I General**

- 1 Any deliveries and/or services shall be subject to the present conditions and any specific contractual agreements that may exist. Deviating conditions of purchase of the Purchaser do not become part of the contract even if an order is accepted.

Unless otherwise specifically agreed, a contract is concluded when confirmed in writing by the Supplier.

- 2 The Supplier reserves its property rights and copyrights pertaining to models, cost estimates, drawings, and other physical or non-physical information, including electronic information; they shall not be made available to a third party. The Supplier shall be obliged to make Purchaser information and documents described as confidential accessible to third parties only with the Purchaser's consent.

### **II Price and Payment**

- 1 Unless otherwise specifically agreed, prices apply ex works, including loading in the works and excluding packaging and unloading. The prices do not include value added tax at the then applicable rate.

- 2 Unless otherwise specifically agreed, payment shall be made without any deduction to the account of the Supplier as follows:  
1/3 down payment following receipt of the confirmation of the order;  
1/3 upon notification to the Purchaser that the main parts are ready for dispatch; and  
the remainder one month following the transfer of risk.

- 3 The Purchaser's right to retain payment or set off payment against any counterclaims he may have, shall be limited to undisputed or unappealable counterclaims.

### **III Delivery Period. Delayed Delivery**

- 1 The delivery period is as agreed between the parties to the contract. The Supplier shall be bound to observe the period set, provided that all commercial and technological questions between the parties to the contract are solved and the Purchaser has fulfilled all of his obligations, including, without limitation, provision of required official authorizations and/or approvals and transfer of a down payment. In the negative, the period for delivery shall be extended appropriately. This shall not apply to the extent that the Supplier is responsible for the delay.
- 2 The delivery period is accepted on the proviso that the Supplier receives its own supplies correctly and timely. The Supplier shall notify imminent delays as soon as possible.
- 3 The delivery period is deemed observed if, upon its expiry, the goods have left the works of the Supplier or the goods' readiness for dispatch has been notified. Except in the case of a justified refusal, any agreed acceptance procedure shall be carried out at the acceptance date, or failing that, following the Supplier's declaration of readiness for acceptance.

4 Should dispatch, or as the case may be, acceptance of the goods, be delayed for reasons for which the Purchaser is responsible, it shall be charged the cost incurred for such delay, starting one month following its declaration of readiness for dispatch or, as the case may be, acceptance.

5 If the delivery period is not observed due to force majeure, industrial action or other occurrences beyond the Supplier's control, the delivery period shall be extended accordingly. The Supplier shall inform the Purchaser as soon as possible of the commencement and end of such occurrence.

6 The Purchaser may withdraw from the contract without prior notice if it becomes irrevocably impossible for the Supplier to complete his performance prior to the passage of risk. In addition, the Purchaser may withdraw from the contract if, in the course of an order, performance of a part of the delivery becomes impossible and he has a legitimate interest in rejecting the partial delivery. If this is not the case, the Purchaser shall pay the contractual price attributable to the partial delivery. The same shall apply *mutatis mutandis* if the Supplier is unable to perform. Furthermore, Article VII No. 2 shall apply.

If the impossibility / inability materializes during a delay of acceptance or if the responsibility for the circumstances is solely or predominantly with the Purchaser, the latter shall still be obliged to pay the agreed consideration.

7 In the event that the Purchaser incurs damage as a result of a delay attributable to the Supplier, the Purchaser may claim a lump-sum compensation. It amounts to 0.5 percent for every full week of delay up to a maximum of 5% of the value of those parts of the overall delivery that cannot be used in time or in accordance with the contract as a result of the delay.

If, after the due date and taking into account the legal exceptions, the Purchaser fixes a reasonable period for performance, and if this period is not observed, the Purchaser shall be entitled to withdraw from the contract as is provided for by law. The Supplier may demand from the Purchaser to declare within an appropriate period, whether the Purchaser will assert its rights to withdraw from the contract.

Any additional claims based on delayed deliveries shall be solely subject to Article VII No. 2 of these conditions.

#### **IV Transfer of Risk. Acceptance**

1 The risk shall pass to the Purchaser when the goods have left the works even when partial deliveries are executed or other obligations have been assumed by the Supplier, e.g. dispatch costs or transportation and installation. If acceptance has been specifically agreed, the risk shall pass thereupon. Acceptance shall take place immediately at the date of acceptance, or failing that, following the Supplier's declaration of readiness for acceptance. The Purchaser shall not be entitled to refuse to accept the goods due to minor defects.

2 In the event that dispatch, or as the case may be, acceptance, is delayed or is not carried out at all due to circumstances not attributable to the Supplier, the risk shall pass to the Purchaser as of the day readiness for dispatch / acceptance has been declared. Insurance cover shall be provided by the Supplier as requested and paid for by the Purchaser.

3 Partial deliveries shall be permitted unless they are unreasonable for the Purchaser to accept.

#### **V Retention Of Title**

1 The Supplier reserves the title to the goods until all monies due from the delivery contract, and also with respect to any additional claims, have been received.

2 The Supplier shall be entitled to take out insurance cover for the goods against theft and damage resulting from breakage, fire, water or other risks, at the cost of the Purchaser, provided that the Purchaser cannot prove to have obtained such protection.

3 The Purchaser shall neither sell nor pledge the goods nor use them as a collateral. He shall notify the Supplier forthwith of any pledges or seizures or other acts of intervention by a third party.

- 4 Where the Purchaser is in breach of the contract, in particular if he defaults in payment, the Supplier, following a reminder, is entitled to take back the goods and the Purchaser shall be obliged to return them.
- 5 To be able to invoke the retention of title and demand the return of the goods, the Supplier shall first have to withdraw from the contract.
- 6 If a petition for insolvency or similar is filed, the Supplier shall be entitled to withdraw from the contract and demand that the goods be returned immediately.

## **VI Claims based on Defects**

Subject to the provisions of Article VII below, the Supplier's liability for defects as to quality or a defective title with respect to the delivery shall be as follows, to the exclusion of any other claims:

### Defects As To Quality

- 1 Parts that prove to be defective due to circumstances having occurred prior to the passing of the risk shall, at the discretion of the Supplier, be repaired or replaced fault-free, at no charge. Defects detected shall be notified to the Supplier without undue delay and in writing. Parts replaced shall become the property of the Supplier.
- 2 Upon agreement with the Supplier, the Purchaser shall grant the Supplier the time and opportunity required to carry out any repair work and/or replacements deemed required by the Supplier; otherwise the Supplier shall be released from its liability and any consequences thereof. Only in urgent cases putting at risk the safety of the works or, as the case may be, for the purpose of combating disproportionate damage - whereupon the Supplier shall be notified forthwith - shall the Purchaser be entitled to remove the defect by itself or have it removed by a third party and claim from the Supplier compensation for the necessary cost incurred.
- 3 From the direct repair and/or replacement cost the Supplier shall bear - to the extent that the complaint is found to be justified - the cost for the replacement part, including transport. It shall also bear the cost attributable to (dis)assembly and, if required in the individual case, the cost for skilled and unskilled labour, including travel expenses, provided that this would not result in an unreasonable burden for the Supplier.
- 4 To the extent provided for by law, the Purchaser shall have the right to withdraw from the contract if the Supplier, taking into account existing legal exceptions, lets expire an appropriate period set in which to carry out repair work or provide a replacement due to the defect as to quality without the required results being provided. In the case of insignificant defects, the Purchaser's right shall be limited to demand a reduction of the contract price. The right to otherwise demand a reduction of the contract price remains excluded.

Any other claims shall be subject exclusively to the provisions of Article VII. No. 2 of these Conditions.

- 5 No liability is assumed in the following cases (without limitation):  
Unsuitable or inappropriate use, defective installation and/or putting into operation by the Purchaser or a third party, normal wear and tear, inappropriate or careless treatment, faulty maintenance, unsuitable service fluids, defective building work, unsuitable building site, chemical, electrochemical or electrical influences, all for which the Supplier is not responsible.
- 6 The Supplier shall not be liable for consequences resulting from inadequate remedial repair work or replacements made by the Supplier or a third party. The same shall apply if the goods are altered without the Supplier's prior consent.

### **Defective title**

- 7 Should the use of the goods result in an infringement of domestic industrial property rights or copyright, the Supplier shall, as a rule, at its own expense make available to the Purchaser the right to continue to use the goods or to modify the goods in a way reasonably acceptable for the Purchaser so that they no longer infringe property rights.

Where doing so would be disproportionately uneconomical or impossible within a reasonable period of time, the Purchaser shall be entitled to withdraw from the contract. Where the above prerequisites apply, the Supplier shall be likewise entitled to withdraw from the contract.

Furthermore, the Supplier shall hold the Purchaser harmless for all undisputed or unappealable claims on the part of the holder of the property right in question.

- 8 Subject to the provisions of Article VII No. 2 above, the Supplier assumes no other obligations than those stipulated in Article VI No. 7 above with respect to property right or copyright infringements.

Claims exist only if:

- the Purchaser notifies the Supplier of claims received with respect to infringed industrial property rights without undue delay;
- the Purchaser duly supports the Supplier in his defense against claims lodged, or as the case may be, in his efforts to carry through modification work pursuant to Article VI No. 7 above;
- all defensive measures, including out-of-court settlements, are decided by the Supplier;
- the defective title is not attributable to instructions of the Purchaser; and
- the infringement is not attributable to an unauthorized modification of the Purchaser or type of use of the goods not provided for in the contract.

## **VII Supplier's Liability. Exclusion of Liability**

- 1 If the Purchaser cannot use the goods for the contractual purpose due to omitted or incorrect proposals or advice given by the Supplier prior to or following the conclusion of the contract or by reason of the breach of other collateral obligations, including but not limited to, operation and maintenance instructions, the provisions of Article VI and Article VII No. 2 shall apply *mutatis mutandis* and any other claims of the Purchaser shall be excluded.
- 2 The Supplier's liability for damage that has not occurred to the goods themselves - based on whatever legal grounds - shall be limited to:
- (a) intent;
  - (b) gross negligence on the part of the owner/corporate committees or executives;
  - (c) cases where the Contractor negligently causes death or personal injury;
  - (d) defects the Supplier has fraudulently concealed;
  - (e) where a specific guarantee undertaking ("*Garantieusage*") exists; or
  - (f) cases of defective goods causing death, injury or damage to property used privately pursuant to the German Product Liability Act.

In the case of a negligent breach of a condition which goes to the root of the contract, the Supplier shall also be liable for gross negligence on the part of its non-executive staff and slight negligence, whereas in the latter case liability is limited to reasonably foreseeable damage which is intrinsic to the contract.

Any other claims shall be excluded.

## **VIII Prescription Period**

All claims of the Purchaser shall - irrespective of the underlying legal reasons - be subject to a prescription period of twelve months. Claims for damages pursuant to Article VII No. 2 lit. (a)-(d) inclusive and (f) shall be subject to the statutory prescription periods. They shall apply also to a defective structure/building or goods that due to their customary type of application are used for a structure/building and which have caused its defectiveness.

## **IX Use of Software**

To the extent that software is included in the scope of delivery, the Purchaser is herewith granted the non-exclusive right to use the software and documentation supplied. Its use is permitted with respect to the goods supplied. The software shall not be used on more than one system.

The Purchaser shall be allowed to copy, revise or translate the software or convert the object code into the source code only as legally permitted by Sec. 69 et seq. of the German Copyright Act ("*UrhG*"). The Purchaser undertakes not to remove manufacturer identification labels - including, but not limited to copyright marks - without having obtained the prior express consent of the Supplier.

All other rights to the software and documentation, including any copies that may exist, shall remain with the Supplier and/or the software supplier. No sublicenses shall be granted.

**X Venue. Applicable law. Governing version**

- 1 The legal relationship between the Supplier and the Purchaser shall be solely governed by the law of the Federal Republic of Germany applicable to the legal relationship of parties domiciled in Germany.
- 2 The venue shall be the court competent at the place of the Supplier's place of business. The Supplier, however, shall be entitled to bring an action against the Purchaser at the principle place of business of the Purchaser.
- 3 The German version of the text shall be binding.

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