



Westa Fördertechnik Maschinen- und Gerätebau GmbH
Plant I: Gutenbergstr. 2 • 67307 Göllheim (Plant Manufacturing)
Telephone: 06351/1321-0 • Telefax: 06351/1321-25
Plant II: Woogweg 2-4 • 67307 Göllheim (Components for Transportation)
Telephone: 06351/1321-0 • Telefax: 06351/1321-22

General terms and conditions for the delivery of machines in domestic business dealings

I. General

1. These terms and conditions, as well as any contractually agreed upon conditions, are the basis for all deliveries and services. Divergent buying conditions by the orderer will not be content of the contract even by acceptance of the order.
The contract will come into effect with the written acknowledgement of the order by the provider– barring any special agreements.
2. Copyright of patterns, cost estimations, drawings and similar information of corporeal or incorporeal nature – also in electric form – lies with the provider. They are not to be given to third parties. If information and documents have been marked as private by the orderer, the supplier is obliged to only give them to third parties with the express permission by said orderer.

II. Price and Payment

1. Unless agreed upon otherwise, prices are effective at the plant, including loading at the plant. Excluded are packing materials and unloading. Added to the prices are the sales taxes in their lawfully applicable quantities.
2. Unless agreed upon otherwise, payment is to be forwarded without any deductions towards the provider's account in the following way:
 $\frac{1}{3}$ Deposit after the order acknowledgement has been sent
 $\frac{1}{3}$ as soon as the orderer has been informed that the main units are ready for shipment the rest within one month after the passing of risk.
3. The orderer only has the right to withhold payments if their counterclaims are undisputed or valid.
4. The orderer may only offset counterclaims with other interests if they are undisputed or established as valid.

III. Delivery period, Delivery delay

1. The delivery period is dependent on what the contract parties have agreed upon. Their adherence by the provider bases itself on the fact that all issues regarding mercantile and technical queries between contract parties have been absolved.



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Similarly, the orderer must have fulfilled all their obligations such as: supplying needed administrative certificates or approvals; fulfillment of the obligatory deposit. If this is not the case, shipment will be delayed accordingly. This does not apply if the cause for the delay lies with the provider.

2. Timely shipment has the caveat of correct and timely self supply. The provider will inform about delays as soon as they become apparent.
3. The delivery period has been adhered to if the delivery item has left the plant of the provider before the expiration of the deadline, or if the readiness for shipment has been notified. If an acceptance has to take place, the date for acceptance is relevant – this can alternatively also be the notification of readiness for acceptance. This is not the case for a valid refusal of acceptance.
4. If shipment, and/or acceptance of the delivery item is delayed because of the orderer, any costs resulting of this delay will be charged, starting one month after notification of readiness of shipment and/or readiness of acceptance.
5. If the delay is caused by an act of nature, industrial actions, or other events that are outside of the provider's range of influence, the delivery period lengthens accordingly. The provider will inform the orderer as soon as possible about the start and end of these circumstances.
6. The orderer may step back from the contract without setting a deadline, if it becomes completely impossible for the provider to fulfill all their services before the passing of risk. Furthermore, the orderer can step back from the contract if during an order the execution of part of the delivery becomes impossible, and they have a valid interest to deny the part shipment. If this is not the case, then the orderer will have to pay the contract price of the part shipment. The same applies for inability of the provider. Apart from that, section VII. 2 applies.

If inability or the impossible occurs during the default of acceptance, or if the orderer is solely or largely to answer for these circumstances, they will be kept accountable.

7. The orderer has the right to demand a blanket compensation for delay if they experience loss directly resulting out of the delay caused by the provider. This blanket compensation is 0.5% for every full week of delay, but can not exceed 5% of the worth of the part of the delivery that can't be used in time, or in a contractually agreed upon manner due to the delay.

The orderer is eligible to withdraw from the contract within the framework of legal regulations if the orderer has issued the provider an appropriate deadline (after consideration of the lawful exceptions) and this deadline is not being adhered to. If the provider requests it, the orderer binds themselves to declare within an appropriately set deadline whether they will make use of their right to withdraw. Further demands regarding the delay of shipment are solely at discretion of section VII. 2 of these terms and conditions.



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IV. Passing of Risk, Acceptance

1. The risk passes towards the orderer when the item of delivery has left the plant. This is, when parts have been delivered, or the provider has shouldered other services such as shipping prices and/or the delivery and assembly. If an acceptance has to be performed, it is binding for the passing of risk. The acceptance has to be fulfilled immediately at the date of the acceptance, or alternatively after the provider has notified their readiness of acceptance. The orderer can not decline the acceptance as long as there is not a substantial flaw present.
2. If delivery and/or acceptance is delayed or cancelled because of circumstances outside of the provider's range of influence, the risk will be passed towards the orderer on the day the notice of readiness for delivery or acceptance has been issued. The provider is obliged to cover insurances that the orderer demands – at the orderer's cost.
3. Deliveries in parts are valid as long as they are reasonable for the orderer.

V. Reservation of Ownership

1. The provider reserves ownership of the delivery item until all payments from the contract, including any costs that arose due to supplementary work, have been paid.
2. In case the orderer has not verifiably covered insurances against theft, breakage, fire damage, water damage and other damages, the provider is eligible to insure the item of delivery at the orderer's cost.
3. The orderer may not: sell the item of delivery, pledge the item of delivery, or give the item of delivery over to third parties for safekeeping. In case of pledge, confiscation or any other orders by third parties, the orderer has to immediately notify the provider.
4. In case the orderer goes against contract (especially in cases of delayed payment), the provider is in their rights to take the item of delivery back after a reminder has been issued. The orderer is obliged to surrender the delivery item.
5. Because of the reservation of ownership, the provider may only demand the item of delivery back if they have withdrawn from the contract.
6. The proposal of insolvency proceedings gives the provider the right to withdraw from the contract and demand the immediate surrender of the item of delivery.



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VI. Claim for Defects

Unless stated otherwise in section VII (amongst others), the provider is liable for material defects and legal defects in the following ways:

Material Defects

1. All parts that appear to be defective as a cause of circumstances before the passing of risk are to be repaired or replaced flawlessly by the provider. The provider must be notified immediately in written form if any such deficiencies have been noted. Replaced parts become property of the provider.
2. After contact with the provider, the orderer has to allow for appropriate time and opportunities for all repairs that seem necessary, as well as for all further deliveries of repair parts, to take place. If that is not the case, the provider is freed of liability for consequences that arise out of this oversight. Only in urgent cases of operational safety and/or in order to prevent disproportionately large damage may the orderer be in their rights to repair the defect by themselves or by a third party, and to demand compensation for the necessary expenditures by the provider. Regardless, the provider has to be notified immediately in such cases.
3. In case the reclamations turn out to be valid, the provider is obliged to shoulder the costs of the immediate repairs/repair deliveries – shipping costs included. Furthermore, the provider will shoulder any costs concerning assembly and disassembly, as well as the costs for necessary mechanics and aides, and their respective travelling costs – as far as it poses no disproportionate burden for the provider.
4. The orderer is within their rights to cancel the contract if the provider has not managed to fulfill the needed repairs or do the replacement deliveries for material defects within an appropriately set deadline (Under consideration of legitimate exceptional cases). If there is only an insignificant defect, the orderer is only eligible for a reduction of the contractually agreed upon price. Other than that, a reduction of the contractually agreed upon price is impossible. Further demands are solely subject to section VII. 2 of these terms and conditions.
5. No liability is assumed especially in the following cases:
Improper or inappropriate usage; faulty assembly and/or commissioning by the orderer or a third party; natural deterioration; faulty or negligent treatment; improper maintenance; inappropriate supplies; deficient construction work; inappropriate building ground; chemical, electro chemical, or electric influences – as far as they are not caused by the provider.



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6. If the orderer or a third party performs inappropriate repairs, the provider can not be made liable for any resulting damages. The same applies for any changes done to the delivered item without prior agreement by the provider.

Defects of Title

7. If the usage of the delivery item causes an infraction of commercial protective right or domestic copyrights, the provider will principally and at their own charge work to provide the orderer the right for continued usage, or will modify the delivery item in a way that is acceptable for the orderer and will no longer cause an infraction of commercial protective right.

If this is not possible under commercially appropriate conditions, or within an appropriate deadline, the orderer is within their right to withdraw from the contract. Under these same conditions, the provider is also within their rights to decline the contract.

Furthermore, the provider will excuse the orderer from undisputed or viable claims of the respecting proprietors.

8. The obligations for the provider in section VI. 8 are not valid if section VII. 2 regarding commercial protective rights and copyrights is effective.

The obligations for the provider in section VI. 8 are only valid, if

- the orderer immediately notifies the provider of any alleged commercial protective rights or copyrights;
- the orderer supports the provider to an appropriate extent when defending themselves against those alleged claims, and/or allows the provider to perform modifications according to section VI. 8;
- all defensive measures, including extrajudicial arrangements, are reserved for the provider;
- the legal defect is not based on an order by the orderer;
- the infringement has not been caused by the orderer who has modified the item of delivery unauthorized, or has used the item of delivery in a way that is not contractually intended.



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VII. Liability of the Provider, Legal Disclaimer

1. If the orderer is unable to contractually use the item of delivery because the provider has failed to give necessary instructions; or if these instructions and consultations (before and after the formation of the contract) have been faulty, sections VI and VII. 2 are made valid in the exclusion of other claims by the orderer. This is also the case if other contractual secondary obligations have been violated, especially the instructions for usage and maintenance of the item of delivery.
2. For damages that are not present on the item of delivery itself, the provider will only be liable for whatever legal reasons, if
 - a. the damage is a result of maliciousness,
 - b. the damage is a result of culpable negligence by either the owner / the organs, or chief executives,
 - c. the damage is a result of culpable injury of life, body, health,
 - d. the damage is a result of defects that have been maliciously concealed by the provider,
 - e. it is within the scope of a pledge for warranty,
 - f. there is a liability towards personal damage or material damage for privately used items according to the product liability act.

In case of culpable violation of crucial contractual obligations, the provider is liable also for gross carelessness of non-chief executives, as well as for slight negligence. The latter is reduced to damages that are typical for the contract, and reasonably predictable.

Further claims are excluded.

VIII. Statute of Limitations

All claims by the orderer – for whatever legal reasons – expire by limitation after 12 months. Claims of damages according to section VII. 2 a-d and f are only valid for the duration of legal deadlines. They are also valid for defects on structures or items of delivery that have been used according to their customary usage for structures, and have resulted in said structures' defects.



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IX. Usage of Software

In case software is included in the delivery, the orderer has a non-exclusive right to use the delivered software, including its documentations. The software will be ceded for usage on its appointed item of delivery. Usage of the software on more than one system is prohibited.

The orderer is only allowed to multiply, rework, translate, or change it from the object code to the source code within a legal extent (§§ 69 a ff. UrhG). The orderer binds themselves to not remove the manufacturer's data – especially their copyright annotations – or change it without prior explicit consent by the provider.

All other software rights and the documentations, including copies, are with the provider / the software provider. Sublicenses are prohibited.

X. Applicable Law, Place of Jurisdiction

1. For all legal relationships between the provider and orderer is solely the applicable law concerning the legal relationships between native parties of the federal republic of Germany responsible.
2. The place of jurisdiction is the court responsible for the place of business of the provider. However, the provider is within their rights to file a suit at the place of the central offices of the orderer.

Source: VDMA-Bedingungen für die Lieferung von Maschinen für Inlandsgeschäfte Stand August 2012