

Terms and Conditions of Business based on the German VDMA conditions

To be used with:

1. a person who, when concluding the contract, acts in the exercise of their commercial or self-employed professional activities (entrepreneur / contractor);
2. corporate bodies under public law or a special fund under public law.

I. General

1. All deliveries and services / performances are subject to these conditions as well as possible separate agreements. Deviating conditions of purchase by the purchaser shall not be part of the contract, and the acceptance of the order shall not be regarded as the acceptance of such deviating conditions. In the absence of a special agreement, a contract shall be regarded as established with the issuance of the written order confirmation by Bornemann Maschinenbau GmbH (hereinafter referred to as the "supplier").
2. The supplier reserves property rights and copyrights of the samples, estimates, drawings and similar information of a physical and non-physical nature, including in an electronic format. Such information must not be made available to third parties. The supplier agrees to make information and documents, which have been classified as confidential by the purchaser, available to third parties only with the purchaser's permission.

II. Price and payment

1. In the absence of a special agreement, the prices shall apply ex factory, including loading in the factory, but excluding packaging and unloading. The prices are quoted excluding turnover tax at the applicable rate in case of domestic business.
2. In the absence of a special agreement, payment without any discount shall be made to the supplier's bank account according to the following schedule:
50% deposit after the order has been received,
40% after the purchaser has been notified of the readiness for delivery of the main parts, and
10% within 14 days of the transfer of risk.
3. The purchaser shall only be entitled to withhold payments if his counterclaims are undisputed or have been legally ascertained.
4. The purchaser's right to offset due payments against counterclaims from other legal relationships shall only apply if his counterclaims are undisputed or have been legally ascertained.

III. Delivery time, delayed delivery

1. The delivery time results from the agreements between the contractual parties. The observance of the delivery time by the supplier shall be subject to all commercial and technical queries between the contractual parties having been clarified and the purchaser having fulfilled all of his obligations, such as the submission of the certificates or approvals that are required by the authorities or the payment of a deposit. If the above conditions have not been fulfilled, the delivery time shall be extended accordingly. This does not apply if the supplier is responsible for the delay.
2. The observance of the delivery deadline shall be subject to the receipt of correct and timely deliveries by the supplier himself. The supplier shall notify the purchaser of looming delays as soon as possible.
3. The delivery deadline shall be regarded as observed if the object of delivery has left the factory or if the readiness for delivery has been announced by the delivery deadline. If an acceptance has to be carried out, and except for the justified rejection of the acceptance, the acceptance date shall be relevant, or otherwise the notification of readiness for acceptance.
4. If the shipment or acceptance of the object of delivery is delayed for reasons, for which the purchaser is responsible, he shall be invoiced with the costs that were incurred because of the delay, starting one month after the notification of the readiness for shipment or acceptance.
5. If the non-observance of the delivery time is due to force majeur, labour disputes or other events that are outside the supplier's control, the delivery time shall be extended accordingly. The supplier shall notify the purchaser of the beginning and end of such circumstances as soon as possible.
6. The purchaser shall be entitled to withdraw from the contract without a notice period if the supplier is finally and definitely unable to make the entire delivery before the transfer of risk has taken place. Furthermore, the purchaser can withdraw from the contract if the execution of a part of the delivery of an order becomes impossible and if he has a justified interest in rejecting the partial delivery. If this is not the case, the purchaser shall be obliged to pay the proportional contract price that applies to the partial delivery. The same applies to the supplier's inability to perform. Otherwise, section VII.2 shall apply. If the impossibility of delivery occurs during the delayed acceptance or if the purchaser is solely or predominantly responsible for the circumstances, he shall remain obliged to render his counterperformance.

IV. Transfer of risk, acceptance

1. The risk shall be transferred to the purchaser when the object of delivery has left the factory, and also if partial deliveries are made or the supplier has taken on other performances, for example the cost of shipment or delivery and installation. If an acceptance is to be carried out, it shall be the relevant point in time for the transfer of risk. The acceptance shall be carried out immediately by the acceptance deadline or otherwise after the supplier has notified the purchaser of the readiness for acceptance. The purchaser must not reject the acceptance because of an insignificant defect.
2. If the shipment or acceptance is delayed or not carried out at all due to circumstances that are outside the supplier's control, the risk shall be transferred to the purchaser on the date of the notification of readiness for shipment or acceptance. The supplier agrees to obtain the insurances that are required by the purchaser at the purchaser's cost.
3. Partial deliveries are permissible if they are reasonably acceptable to the purchaser.

V. Retention of title

1. The supplier reserves the title to the object of delivery until all payments from the delivery contract have been received.
2. The supplier shall be entitled to insure the object of delivery against theft, breakage, fire, water damage and other damage at the purchaser's cost if the purchaser has not evidently obtained such insurance himself.
3. The purchaser must neither sell or pledge the object of delivery nor must he hand it over as a security. In the event of pledging, attachment or other disposition by third parties, the purchaser must notify the supplier immediately.
4. If the purchaser acts contrary to the contract, and especially if his payments are delayed, the supplier, following on a respective notice, shall be entitled to take the object of delivery back, and the purchaser shall be obliged to surrender the object of delivery to the supplier.
5. Due to the retention of title, the supplier can only request the surrender of the object of delivery if he has withdrawn from the contract.
6. The filing of insolvency proceedings shall entitle the supplier to withdraw from the contract and to demand the immediate return of the object of delivery.

VI. Defect claims

The supplier shall be liable for material and legal defects of his delivery under the exclusion of further claims subject to section VII "Warranty" as follows:

Material defects

1. All parts, which prove to be defective due to circumstances that occurred before the transfer of risk, shall be reworked or replaced free from defects by the supplier at his discretion and free of charge. The purchaser shall notify the supplier of such

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- defects in writing immediately. Replaced parts shall become the supplier's property.
2. The purchaser shall give the supplier the necessary time and opportunity to carry out all rework and replacement deliveries that the supplier regards as necessary in coordination with the supplier. Otherwise the supplier shall be indemnified from his liability for any consequences resulting thereof. Only in urgent cases when the operational safety is threatened or for the defence against disproportionately great damage when the supplier must be notified immediately, the purchaser shall be entitled to correct the defect himself or have it corrected by third parties and to demand compensation for the necessary expenses from the supplier.
 3. If the complaint proves to be justified, the supplier shall bear the direct costs or the costs of the replacement delivery of the replacement part including shipment. He shall also bear the costs of the disassembly and assembly as well as the costs of possibly required engineers and supporting personnel including travel costs, unless this poses a disproportionate burden for the supplier.
 4. Within applicable laws and regulations, the purchaser shall be entitled to withdraw from the contract if the supplier, subject to legal exceptions, does not carry out the rework or replacement delivery that was required due to a material defect by a reasonably set deadline. In the event that the defect is insignificant, the purchaser shall only be entitled to a reduction of the contract price. Otherwise, the entitlement to a reduction of the contract price shall be excluded.
 5. Further entitlements are specified in section VII.2 of these conditions.
 6. The supplier shall not be liable in the following cases, in particular:
unsuitable or inappropriate use, faulty assembly or commissioning by the purchaser or by third parties, natural wear and tear, incorrect or negligible treatment, incorrect maintenance, unsuitable operating resources, defective construction work, unsuitable foundation soil, chemical, electrochemical or electrical influences - unless the supplier is responsible for them.
 7. If the purchaser or a third party undertakes incorrect corrections, the supplier shall not be liable for possible consequences resulting thereof. The same applies to alterations to the object of delivery that are carried out without the supplier's prior permission.

Defects of title

8. If the use of the object of delivery results in the infringement of commercial / industrial protection rights or copyrights domestically, the supplier shall provide the purchaser with the principle right to the continued use of the object of delivery or modify the object of delivery in a way that is both acceptable to the purchaser and eliminates any issue of infringement of property rights. If this is impossible under acceptable economic conditions or within a reasonable period of time, the purchaser shall be entitled to withdraw from the contract. Under the above conditions, the supplier shall also be entitled to withdraw from the contract. Furthermore, the supplier shall indemnify the purchaser of undisputed or legally ascertained claims by the respective owners of the property rights.
9. Subject to section VII.2, the obligations that are mentioned in section VI.8 shall be the final obligations with regard to any infringement of property rights or copyrights. They only apply if:
 - the purchaser notifies the supplier of claimed infringements of property rights or copyrights immediately,
 - the purchaser supports the supplier to a reasonable extent with the defence against such claims or allows the supplier to implement the modification measures according to section VI.7,
 - the supplier has been able to reserve all means of defence including out-of-court agreements,
 - the defect of title does not rest on an instruction by the purchaser, and
 - the infringement of the rights has not been caused by the fact that the purchaser altered the object of delivery without permission or used it in a manner that was against the provisions of the contract.

VII. Liability

1. If the object of delivery cannot be used according to the contractual use by the purchaser due to the supplier's fault as a result of the omitted or incorrect implementation of proposals and consultations before or after the conclusion of the contract or the non-observance of other contractual side obligations, especially instructions for operating and maintaining the object of delivery, the provisions of sections VI. and VII.2 shall apply accordingly and subject to the purchaser's exclusion.
2. The supplier shall be liable for damage, which has occurred to other items than the object of delivery itself, and for whatever legal reasons, only:
 - a. if he has acted intentionally,
 - b. in the event of gross negligence by the owner / executive boards or senior executives,
 - c. in the event that life, body and health of people have been culpably injured,
 - d. for defects that the supplier has intentionally concealed,
 - e. under an assurance of warranty,
 - f. for defects of the object of delivery as long as the liability is according to the German Product Liability Act for personal injury or damage to property (for objects in private use).

In the event that material contractual obligations are culpably contravened, the supplier shall be liable also for gross negligence by non-executive employees and for slight negligence. In the latter case, his liability shall be limited to damage that is typical for the type of contract as well as being reasonably to be expected. All further claims shall be excluded.

VIII. Statute of limitation

All entitlements of the purchaser, for whatever legal reason, shall become statute-barred after 12 months. For compensation claims according to section VII.2a, the legal periods shall apply. These periods shall also apply to defects of a building or to objects of delivery, which were used according to their typical use for a building and have caused its defectiveness.

IX. Software use

If software is a part of the scope of delivery, the purchaser shall have a non-exclusive right to use the provided software including its documentation. The software is provided for use on the specified object of delivery. The use of the software on multiple systems is not permitted. The purchaser may copy, review or translate the software or convert the object code to the source code only to the legally permitted extent (article 69a et seq. German Copyright Act). The purchaser agrees not to remove the manufacturer details, especially copyright notes, or to change them without the expressive prior permission of the supplier.

All other rights to the software and documentation including the copies shall remain with the supplier or software supplier. The granting of sublicences is not permitted.

X. Applicable law, place of jurisdiction

1. All legal relationships between the supplier and purchaser shall exclusively be subject to the laws of the Federal Republic of Germany, which are relevant for the legal relationships between domestic parties.
2. The place of jurisdiction is Hildesheim, Germany. However, the supplier shall be entitled to file a lawsuit at the location of the company's headquarters.