

TERMS AND CONDITIONS FOR THE SALE OF USED MACHINERY

(based on the conditions recommended by VDMA e.V.)

I. Offer

Any documents that may belong to an offer, such as illustrations, drawings, weight and dimensional data, are only approximate unless they are expressly designated as binding. The Supplier reserves the property rights and copyrights to cost estimates, drawings and other documents; they must not be made accessible to third parties and constitute trade secrets within the meaning of Sec. 2 No. 1 GeschGehG (German Trade Secret Protection Act). The Supplier is obliged to make plans designated by the Customer as confidential available to third parties only with the Customer's consent.

II. Scope of supply

The Supplier's written order confirmation is decisive for the scope of delivery and all other agreements. Additional agreements and amendments require the written confirmation of the Supplier.

III. Price and Payment

1. Unless otherwise agreed, prices are Ex Works EXW (ICC® Incoterms 2010) including loading at the factory, but excluding packaging and unloading. Value added tax at the respective statutory rate will be added to the prices.
2. Unless otherwise agreed, payment shall be made in cash without any deduction free Supplier's paying agent, namely
1/3 down payment after receipt of the order confirmation,
1/3 as soon as the Customer has been informed that the main parts are ready for dispatch,
the remaining amount within one month after transfer of risk.
3. The Customer shall only be entitled to withhold payments or offset them against counterclaims arising from other legal relationships to the extent that his counterclaims are undisputed, acknowledged or legally established.

IV. Delivery time, delivery delay

1. The delivery period begins with the dispatch of the order confirmation, but not before provision of the documents, approvals, releases to be procured by the Customer and not before receipt of an agreed down payment.
2. The delivery period shall be deemed to have been met if by the time of its expiry the delivery item has left the factory or readiness for dispatch has been notified. Insofar as an acceptance has to take place, the acceptance date is decisive - except in the case of justified refusal of acceptance – alternatively, the time of notification of readiness for acceptance.
3. The delivery period shall be extended appropriately in the event of measures within the framework of industrial disputes, in particular strikes and lock-outs, as well as in the event of unforeseen obstacles which are beyond the Supplier's control, insofar as such obstacles demonstrably have a considerable influence on the completion or delivery of the delivery item. This also applies if the circumstances occur at subcontractors ("*Vorbehalt der Selbstbelieferung*"). The above-mentioned circumstances are also not the responsibility of the Supplier if they occur during an already existing delay. The Supplier will inform the Customer of the beginning and end of such obstacles as soon as possible.
4. If dispatch is delayed at the request of the Customer, he will be charged the costs incurred by the delay, beginning one month after notification of readiness for dispatch. The Supplier is, however, entitled to dispose otherwise of the delivery item after the setting and expiry of a reasonable deadline and to supply the Customer within a reasonably extended period.
5. Compliance with the delivery period presupposes that the Customer has fulfilled his contractual obligations.

TERMS AND CONDITIONS FOR THE SALE OF USED MACHINERY

(based on the conditions recommended by VDMA e.V.)

6. The Customer can withdraw from the contract without setting a deadline if the entire performance becomes finally impossible for the Supplier before the passing of risk. Furthermore, the Customer can withdraw from the contract if, in the case of an order, the execution of a part of the delivery becomes impossible and the Customer has a justified interest in refusing the partial delivery. If this is not the case, the Customer must pay the contractual price for the partial delivery. The same applies in the event of incapacity on the part of the Supplier. Otherwise, Section VIII.2 shall apply.

If the impossibility or incapacity occurs during the delay in acceptance or if the Customer is solely or predominantly responsible for these circumstances, the Customer shall remain obliged to pay consideration.

V. Transfer of risk and acceptance

1. The risk shall pass to the Customer when the delivery item has left the factory, even if partial deliveries are made or the Supplier has assumed other services, e.g. shipping costs or delivery and installation. At the request of the Customer, the Supplier will insure the consignment at the Customer's expense against theft, breakage, transport, fire and water damage and other insurable risks.
2. If dispatch is delayed due to circumstances not attributable to the Supplier, the risk shall pass to the Customer on the day of notification of readiness for dispatch. The Supplier undertakes to take out the insurance policies requested by the Customer at the Customer's expense.
3. Delivered items, even if they have minor defects, must be accepted by the Customer notwithstanding its rights in section VII.
4. Partial deliveries are permitted as far as reasonable for the Customer.

VI. Retention of title

1. The Supplier shall retain title to the delivery item until receipt of all payments under the delivery contract.
2. The Supplier is entitled to insure the delivery item at the expense of the Customer against theft, breakage, fire, water and other damage, unless the Customer can prove that he has taken out the insurance himself.
3. The Customer may neither pledge the delivery item nor assign it as security. In case of seizure, confiscation or other dispositions by third parties, the Customer must inform the Supplier immediately.
4. If the Customer acts in breach of contract, in particular in case of default of payment, the Supplier is entitled to take the delivery item back after a warning letter and the Customer is obliged to hand it over.
5. The Supplier can only demand the return of the delivery item due to the reservation of title if he has withdrawn from the contract.
6. An application for the opening of insolvency proceedings on the assets of the Customer entitles the Supplier to withdraw from the contract and demand the immediate return of the delivery item.
7. The Customer is entitled to resell the delivery item in the ordinary course of business. However, in order to secure the claims of the Supplier against the Customer, the Customer hereby assigns to the Supplier all claims arising from the resale against the Customer or against third parties. The Customer is authorized to collect these claims even after the assignment, provided he acts in accordance with the contract and is not illiquid ("*zahlungsunfähig*"). The authority of the Supplier to collect the claims himself remains unaffected by this; however, the Supplier undertakes not to

TERMS AND CONDITIONS FOR THE SALE OF USED MACHINERY

(based on the conditions recommended by VDMA e.V.)

collect the claims as long as the Customer duly meets his payment obligations to the Supplier and is not illiquid ("zahlungsunfähig"). Otherwise, the Supplier may, after setting a reasonable deadline, demand that the Customer informs him of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors of the assignment. If the realizable value of all securities existing in favour of the Supplier exceeds the claims to be secured by a total of more than 10%, the Supplier shall be obliged to release securities of his choice at the request of the Customer.

VII. Claims for defects

The Supplier is liable as follows, to the exclusion of further claims, notwithstanding Section VIII, for defects in the delivery, which also includes the absence of expressly warranted characteristics:

Defects of quality

1. All those parts which prove to be defective as a result of a circumstance occurring prior to the transfer of risk – in particular due to defective materials or poor workmanship – shall, at the discretion of the Supplier, be put into a defect-free condition or replaced by defect-free parts. The discovery of such defects must be reported to the Supplier in writing without delay. Replaced parts become the property of the Supplier.
2. No warranty is particularly given in cases where the defect is due to one of the following reasons:

Unsuitable or improper use, faulty assembly or commissioning by the Customer or third parties, regular wear and tear, faulty or negligent handling, improper maintenance unsuitable operating materials, replacement materials, defective construction work, unsuitable foundation soil, chemical, electrochemical or electrical influences - unless the Supplier is responsible for them.
3. After consultation with the Supplier, the Customer shall grant the Supplier the necessary time and opportunity to carry out all subsequent performance actions and/or spare parts deliveries which the Supplier deems necessary at its reasonable discretion, otherwise the Supplier shall be released from liability for the consequences arising therefrom. The Supplier is entitled to make subsequent performance dependent on the payment of due parts of the contract price. However, the Customer shall be entitled to retain a part of the contract price which is reasonable in relation to the defect. Only in urgent cases of danger to operational safety and to prevent disproportionately large damage, in which case the Supplier shall be notified immediately, or if the Supplier is in default in remedying the defect, shall the Customer have the right to remedy the defect himself or have it remedied by third parties and to demand reimbursement of the necessary expenses from the Supplier.
4. Of the direct costs arising from the supplementary performance or spare parts delivery, the Supplier shall bear - insofar as the complaint proves to be justified - the costs of the replacement part including dispatch as well as the reasonable costs of dismantling and installation, the costs of any necessary provision of his fitters and assistants including travel costs, insofar as this does not result in a disproportionate burden on the Supplier. Otherwise, the Customer shall bear the costs.
5. If the Customer or a third party removes the defect improperly, the Supplier shall not be liable for the resulting consequences. The same applies to changes to the delivery item made without the prior consent of the Supplier.
6. If, however, a demand for rectification of defects by the Customer turns out to be unjustified, the Supplier can demand reimbursement of the costs incurred from the Customer.

Defects of title

7. If the delivery item infringes German industrial property rights or German copyrights, the Supplier shall, at its own expense, generally procure the right of further use for the Customer or modify the delivery item in a manner acceptable to the Customer in such a way that the infringement of property rights no longer occurs.

TERMS AND CONDITIONS FOR THE SALE OF USED MACHINERY

(based on the conditions recommended by VDMA e.V.)

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

In addition, the Supplier shall indemnify the Customer from undisputed or legally established claims of the respective owners of the property rights.

8. Subject to Section VIII. 2, the obligations of the Supplier mentioned in this section are conclusive in the event of an infringement of industrial property rights or copyrights. Such obligations only apply, if
 - a) the Customer informs the Supplier without undue delay of asserted infringements of property rights or copyrights,
 - b) the Customer supports the Supplier to a reasonable extent in defending the asserted claims or enables the Supplier to carry out the modification measures in accordance with Section this VII. 7
 - c) the Supplier reserves the right to all defensive measures including out-of-court settlements,
 - d) the defect of title is not based on an instruction of the Customer and
 - e) the infringement of rights was not caused by the fact that the Customer has arbitrarily changed the delivery item or used it in a manner not in accordance with the contract.

VIII. Liability

1. If the delivery item cannot be used by the Customer in accordance with the contract due to the fault of the Supplier as a result of omitted or faulty implementation of suggestions and advice given before or after conclusion of the contract or due to the violation of other contractual secondary obligations - in particular instructions for operation and maintenance of the delivery item - the provisions of Sections VII and VIII. 2 shall apply accordingly, excluding further claims of the Customer.
2. For damages that have not occurred to the delivery item itself, the Supplier is liable - for whatever legal reasons - only
 - a) for intent,
 - b) for gross negligence on the part of its organs or executive employees,
 - c) for culpable injury to life, body or health,
 - d) in case of defects which he has fraudulently concealed or whose absence he has guaranteed,
 - e) in the event of defects in the delivery item, insofar as liability exists under the Product Liability Act for personal injury or property damage to privately used items.
3. In the event of culpable violation of essential contractual obligations, the Supplier shall also be liable for gross negligence ("*grobe Fahrlässigkeit*") of non-executive employees and for simple negligence ("*einfache Fahrlässigkeit*"), in the latter case limited to reasonably foreseeable damage typical for the contract. Essential contractual obligations are such obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely.

TERMS AND CONDITIONS FOR THE SALE OF USED MACHINERY

(based on the conditions recommended by VDMA e.V.)

Further liability claims, in particular claims for damages arising from culpa in contrahendo, other breaches of duty or tortious claims (“*deliktische Ansprüche*”) regarding compensation for property damage (“*Sachschäden*”) are excluded. The above exclusions or limitations of liability shall also apply in favour of the Supplier's employees, representatives and other vicarious agents.

IX. Limitation period

All claims of the Customer - for whatever legal reasons - shall become statute-barred 6 months after delivery in the case of delivery items that were sold as used machines and 12 months after delivery in the case of delivery items that were overhauled or prepared by the Supplier for the purpose of sale. For claims for damages according to section VIII.2.a.-e. the statutory periods shall apply.

X. Software usage

If software is included in the scope of delivery, the Customer is granted a non-exclusive and non-transferable right to use the delivered software including its documentation. It shall be provided for use on the delivery item intended for this usage. Use of the software on more than one system is prohibited.

Except for archiving purposes (“*Archivierungszwecke*”), the Customer is not permitted to make copies of the software, to change or decompile the software or to use any form of reverse engineering. The Supplier shall provide the information required for interoperability on request. The Customer undertakes not to remove manufacturer's details - in particular copyright endorsements - or to change them without the prior express consent of the Supplier.

All other rights to the software and the documentation, including copies, shall remain with the Supplier or the software Supplier, as the case may be.

XI. Machine Data

All data (machine data) on the delivery items are the exclusive property of the supplier and are his property. The supplier may therefore use, pass on, process or change the machine data without restriction. Machine data are raw data without any conclusion to a natural person. Therefore it is neither the intention nor the motivation of the supplier to collect personal data of the customer and personnel working on the delivery item.

VII. Open Source Software

The delivered software may contain open source components in whole or in part. These are subject to the relevant license conditions of the used open source components. The relevant license conditions can be requested at the following email address: opensource@multivac.de and are part of the granting of rights of use. The customer undertakes to observe these terms of use while using the open source components.

XIII. Confidentiality

1. Notwithstanding the overriding provisions of any separately concluded confidentiality agreement, the following shall apply: The purchaser shall not disclose any confidential information (including business secrets), which it learns in connection with this contract and its performance, to any third parties. Confidential information in this context is information which is marked as confidential or the confidentiality of which is evident from the circumstances, irrespective of whether it has been communicated in written, electronic, embodied or oral form, including, but not limited to, technical specifications of the delivery items, information on the supplier's business partners and contents of the supplier's research and development.
2. Confidential information, as defined by this clause, does not include information that

TERMS AND CONDITIONS FOR THE SALE OF USED MACHINERY

(based on the conditions recommended by VDMA e.V.)

- a. was obvious or known to the purchaser at the time of transmission or has subsequently become so;
 - b. has been made available to the purchaser by third parties without any breach of law or
 - c. was developed by the purchaser themselves without the use of confidential information.
3. The purchaser is prohibited from obtaining confidential information by means of reverse engineering. In this context, "reverse engineering" shall mean all actions, including observing, testing, examining and disassembling as well as, if necessary, reassembling, with the aim of obtaining confidential information.
4. The obligation to maintain secrecy pursuant to subsection 1 shall also not apply, beyond the scope of § 5 GeschGehG (*German Business Secret Protection Act*), if the purchaser is obligated to disclose the confidential information by law or by virtue of a final or non-appealable decision of the authorities or a court. In this case, the purchaser shall immediately inform the supplier of the obligation to disclose. Furthermore, the purchaser shall make it clear in the course of the disclosure that, if this is the case, the disclosed information concerns business secrets and shall work towards making use of the provisions of §§ 16 ff. GeschGehG.
5. If the purchaser breaches its obligations under subsections (1) and (2), it shall owe a contractual penalty to be determined by the Supplier at its reasonable discretion, the appropriateness of which shall be reviewed by the competent regional court in the event of a dispute, unless it is not responsible for the breach of duty.

XIV. Force Majeure

In case of an event Force Majeure, the affected contractual party shall not be liable on account of the delay or impossibility thus determined. The delivery time will be extended appropriately. Events of Force Majeure shall include but are not limited to war, rebellion, coup, excesses, embargo, public authority decree, sabotage, (go-slow) strikes, lock-outs, epidemics, pandemics, fire, storms, natural disasters, general lack in plant or raw materials, lack of harbour and offloading capacity, serious transport accidents and other reasons that a contractual party has no influence over.

XI. Data Privacy

The Supplier and the Customer undertake to observe all applicable data protection regulations when processing personal data and to take the necessary technical and organisational measures for data security.

XII. Place of jurisdiction and applicable law

1. German law shall apply with the exception of the UN Convention on the International Sale of Goods of 11.04.1980.
2. The place of jurisdiction is the court responsible for the Supplier's registered office if the Customer is an entrepreneur, a legal entity under public law or a special fund under public law. However, the Supplier is also entitled to bring an action at the Customer's head office.
3. The invalidity of individual provisions shall not affect the validity of the remaining provisions.

(Valid from: November 2021)