

General Conditions for the Delivery of Machines, Systems, Tools and Spare Parts

I. Scope of Application, Differing Terms and Conditions of the Purchaser

1. All offers and statements of acceptance, all deliveries and services and all contracts related to machines, parts, systems, tools and spare parts (also referred to collectively below as "goods," or "deliverables") between OTTO BIHLER Maschinenfabrik GmbH & Co. KG ("**supplier**") and the purchaser shall be governed by these **General Conditions for the Delivery of Machines, Systems, Tools and Spare Parts** ("**Terms and Conditions of Delivery**").
2. These terms and conditions of delivery shall apply exclusively. Conflicting or differing terms and conditions of the purchaser shall not be recognized unless the supplier has explicitly agreed to this in a special case.
3. These terms and conditions of delivery shall apply during ongoing business relations and also to all contracts subsequently concluded between the supplier and purchaser regarding the delivery of machines, parts, systems, tools and spare parts, even if no explicit mention is made of these terms and conditions of delivery in a specific case.

II. Written / Text Format, Offer, Order, Conclusion of Contract, Documents, Technical Modifications and Additions

1. The supplier's offers are made subject to confirmation unless they are explicitly designated in writing or agreed to as binding. The supplier's offer for machines and parts for which the supplier is unable to guarantee any delivery of spare parts and/or repairs due to the availability situation ("**discontinued parts**") shall lose its effectiveness if and to the extent that the inventory has been used up by the time the order is received. The supplier shall notify the purchaser promptly if the order includes discontinued parts so that the purchaser will still be able to provide sufficient coverage with spare parts if the purchaser accepted the offer before such notification was given. A valid contract does not come into effect until the purchase order received by the supplier has been confirmed in writing by the supplier, but in any case, no later than when delivery has been accepted by the purchaser.
2. The documents belonging to the offer, such as drawings and similar information in physical or non-physical state, information about weight and dimensions, cost estimates and calculations ("**documents**"), are only approximately authoritative unless they are explicitly designated as binding. In particular, they do not constitute any guarantee of quality and may be further developed over the course of subsequent implementation of the project. The supplier reserves all property rights, copyright and other protective rights to the documents – including those in electronic format. The documents provided to the purchaser must not be duplicated or used in any other manner for commercial gain and/or made accessible to third parties without the express written consent of the supplier. The supplier undertakes to make documents identified by the purchaser as confidential or otherwise recognizably confidential documents accessible to third parties only with the purchaser's consent.
3. Technical modifications or expansions to the deliverable after the contract is concluded that necessitate additional expenses and/or a postponement of delivery require an additional contract by the purchaser and a written confirmation of this additional contract by the supplier. The supplier shall propose a cost estimate covering the additional expenses and if applicable shall provide information regarding the postponement of delivery as soon as the relevant scope is apparent.

III. Prices, Price Change, Payment, Purchaser's Right of Retention or Offsetting, Maturity Interest, Deterioration in Financial Situation

1. Unless otherwise agreed, prices are ex works including loading in the factory, but not including packaging, unloading, assembly, installation and placing in operation at the purchaser's facility, and not including applicable statutory value added tax. Prices for spare parts are always quoted without assembly at the purchaser's facility. Assembly by the supplier's service technicians shall be invoiced per cost based on the "Conditions for Personnel Services in Technical Customer Service" applicable at the relevant time (these can be found [here](#)). If supporting work of the purchaser is required for assembly, the purchaser shall be responsible for the expenses incurred for personnel and machines.
2. Unless otherwise agreed, the prices quoted in the order confirmation shall apply as fixed prices until the agreed delivery date. If no fixed price agreement has been made and delivery takes place more than four months after the contract is concluded, the supplier is entitled in the event of price changes to adjust the prices appropriately according to the changes in salaries, wages and costs of material and production that have occurred in the interim.
3. If no fixed price has been agreed, the prices for tools and tool setups shall apply as approximate values that may be adjusted up or down, since they are calculated based on foreseeable expenses.
4. Unless otherwise agreed, payments are to be made after the invoice date without deduction and without payment charges of the supplier
 - a) For machines without tool and for standard products
 - (i) 1/3 of the value of the order upon receipt of the supplier's order confirmation by the purchaser,
 - (ii) the remainder upon delivery.
 - b) For machines with tool (systems)
 - (i) 1/3 of the value of the order upon receipt of the supplier's order confirmation by the purchaser,
 - (ii) 1/3 after expiration of half of the agreed delivery time, the remainder upon delivery.
 - c) For spare parts and in all other cases upon delivery.
5. The purchaser may claim the right to retention only insofar as it is based on receivables from the same contractual relationship that are uncontested or defined by enforceable final judgment. The purchaser may only charge up against counterclaims that are uncontested or defined by enforceable final judgment.
6. In the event that the purchaser is in default of payment, maturity interest in the amount of 9 percentage points over the base interest rate shall be applied. The right to assert claims for further damages remains unaffected.
7. If the supplier becomes aware after the contract has been concluded that its claim to compensation from the purchaser is or is becoming endangered, the supplier can demand that the purchaser provide a security for it. If the purchaser is not insignificantly in arrears with the payment of the purchase price, if a significant deterioration occurs or is threatening to occur in the purchaser's financial situation, or if the purchaser does not provide a requested security within a reasonable time, the supplier is entitled to withdraw from the contract after invoicing for its expenses and loss of profit. The same applies if an application is filed for the initiation of insolvency proceedings regarding the purchaser's assets. Further statutory claims of the supplier in the event of termination of or withdrawal from the contract due to reasons for which the purchaser is responsible remain unaffected by the preceding provisions.

IV. Delivery Time, Delivery Deadlines/Periods, Acceptance, Partial Deliveries/Services, Force Majeure, Delayed Delivery, Delayed Acceptance, Purchaser's Obligations

1. The delivery period begins when the contract is concluded in accordance with section II.1., but not before any documents, approvals and releases to be provided by the purchaser in accordance with the offer have been produced and not before the agreed down payment has been received. If a specific calendar-based delivery date is given in the order confirmation, it shall be extended by the time that elapses until the conditions above have been met, unless the supplier is responsible for the delay.
2. The delivery period has been met if the deliverable has left the factory by the time this period has elapsed, or the supplier has indicated to the purchaser that it is ready to ship. If an acceptance will be conducted, compliance with the delivery period shall be determined by the acceptance deadline, or alternatively by notification that the goods are ready for acceptance, except in the case of justified refusal of acceptance.
3. Partial deliveries are permitted to an extent that is reasonable for the purchaser and if agreed accordingly.
4. In the event of force majeure or other unforeseen events (disruption of operations, mobilization, war, riots, lawful strike, lawful lockout, import and export bans, administrative measures, epidemics, pandemics, etc.) that temporarily prevent the supplier from delivering or finishing the goods within the delivery period without any fault on its part or imputable to it, the delivery period shall be extended by the duration of the disruptions in services that resulted in these circumstances, including during any delay. The same applies if sub-suppliers are subject to such circumstances or if administrative or other approvals required for implementing deliveries or documents of third parties are not received promptly by the supplier. The purchaser shall be informed regarding such extensions of the delivery period by the supplier. If the event lasts longer than four (4) months, the supplier shall be released of its duty to deliver in this respect. The supplier and purchaser are both entitled to withdraw from the contract in this case. This shall not affect any statutory rights of withdrawal.
5. In the event of delayed delivery, the supplier shall be liable without restriction for intent and gross negligence. In the event of minor negligence, the liability of the supplier shall be limited to damage foreseeable at the time the contract was concluded and typical for the contract, but to no more than 0.5% of the respective net order value of the overdue delivery for each complete week of delayed delivery and to a maximum of 5% of the respective net order value of the overdue delivery.
6. If completion or shipping of the deliverable is delayed at the purchaser's request, or if the purchaser is in default of acceptance, the supplier shall be entitled to invoice the purchaser, beginning one week after the supplier has reported that the deliverable is ready to ship, for the costs incurred by the supplier or third parties for storage of the unaccepted goods, in the case of storage in the supplier's factory for each full week of delay or default of acceptance, but at least 0.5% of the respective net order value of the unaccepted goods. The supplier shall further be entitled to demand that the purchaser accept the unaccepted goods within a reasonable grace period. Once this period has elapsed without success, the supplier is entitled to withdraw from the contract and make use of the unaccepted goods in some other manner. The assertion of further claims remains untouched.
7. If assembly (as well as installation and placing in operation) of the goods at the purchaser's facility has been agreed, the purchaser is obligated to carry out the following duties of cooperation:
 - a) The purchaser shall at its own expense promptly provide: (i) supporting personnel and skilled workers in the number considered necessary by the supplier and communicated to the purchaser in writing, (ii) the devices and consumables required for assembly, (iii) unloading and conveyance of means of transport to the installation site.
 - b) All construction work must be sufficiently completed before assembly so that assembly can begin immediately after delivery and be carried out without interruption. The foundation must be completely dry and hardened. The areas in which the assembly will take place must be sufficiently protected against the effects of weather, well lit and heated.
 - c) The purchaser shall provide a dry and lit area that can be locked and monitored for safeguarding of materials, tools, and similar items.
8. Delivery times named for spare parts do not include a service technician of the supplier available on site at the purchaser's facility. If one is needed, this must be arranged through a separate order with the supplier's service department.

V. Preparation for Assembly and Commissioning

1. If the supplier has explicitly agreed to a delivery or an installation, assembly or commissioning service with the purchaser and set the time for it, the purchaser is obligated promptly and at its own expense to take all arrangements at the work site communicated to it in writing by the supplier to be able to carry out the designated work. The purchaser is obligated in particular to provide the following items promptly at the work site:
 - All earthwork, construction work and other ancillary work that does not fall within the scope of the supplier's sector, including the necessary skilled workers, auxiliary personnel, building materials and tools required for it.
 - A foundation that meets the requirements of the supplier's installation plan.
 - The equipment and consumables required for installation and commissioning, such as scaffolding, lifting gear, lubricants and fuel cells, etc.
 - Electrical connections, energy supplies, heating, water, compressed air connections, exhaust and adequate lighting.
 - Necessary suitable auxiliary personnel in sufficient quantity and for sufficient duration.
 - Sufficiently large, suitable, dry rooms that can be locked for safeguarding machine parts, devices, materials and tools, etc. and appropriate work and break rooms for the supplier's employees including appropriate sanitary facilities. The purchaser must furthermore take the measures to protect the supplier's possessions and employees at the construction site which it would take to protect its own possessions and personnel.
 - Protective clothing and protective devices that are necessary due to special circumstances at the work site.
2. Before work begins and without being asked specifically to do so, the purchaser shall make the necessary information available to the supplier regarding the location of hidden electrical, gas and water lines together with similar systems as well as the required structural data.
3. If the preparatory measures taken by the purchaser do not meet the specifications agreed in writing, the supplier is entitled to refuse to do the work or to cease working until the agreed condition has been reached. This applies in particular if the permitted floor loads or the foundation do not meet the requirements of the supplier's installation plan. If the purchaser intends to prevent the supplier from attaching the designated safety devices, especially protective fence, etc., to the deliverable, the supplier is entitled to render the deliverable non-functional.
4. If the supplier is unable to carry out the work or carry it out completely or in a reasonable amount of time through the fault of the purchaser, the supplier is entitled, in addition to fulfillment of the contract by the purchaser during and for the duration of the delay, to demand compensation, in particular compensation for the additional expenses arising due to having to make multiple trips and for wasted or additional working time of its employees. In determining the damage, the additional expenses for employees and the additional expenses for multiple trips of the supplier shall be taken into consideration according to the supplier's applicable "Conditions for Personnel Services in Customer Service" ([link](#)).
5. Promptly before the beginning of assembly and commissioning work, the supplier shall provide the purchaser with its "Checklist before Commissioning" ([link](#)). The purchaser is obligated to fill in this list completely and conscientiously and to send it back to the supplier by the specified return deadline. If the purchaser returns the list late, this will automatically result in measures according to paragraph (4) above.

VI. Place of Performance, Transfer of Risk, Insurance, Acceptance

1. Unless otherwise agreed in writing, the place of performance for deliveries, services and payment shall be the supplier's headquarters.
2. Unless otherwise agreed in writing, risk shall be transferred to the purchaser as soon as the supplier has handed over the goods to the freight forwarder, shipping company or person otherwise designated for shipping. Risk shall be transferred at this time even if the supplier has still taken on other services, such as shipping costs or delivery and installation. If the purchaser does not accept the goods in a timely manner, risk shall be transferred to the purchaser with the notification that the goods are ready for shipment ("Free Carrier" – Incoterms 2020), provided that transfer of risk is not agreed in a specific case to be upon delivery to the purchaser ("Delivered At Place/ DAP" – Incoterms 2020).
3. Upon request from the purchaser and at the purchaser's expense, the shipment will be insured against theft, damage due to breakage, transport, fire or water as well as other foreseeable risks.
4. Delivered objects shall be accepted by the purchaser even if they exhibit slight defects. This shall not affect the rights from section VIII. The same applies to partial deliveries.

VII. Retention of Title, Insurance

1. The supplier shall retain ownership of the deliverable until complete payment of all receivables from the contractual relationship and other receivables that the purchaser has earned from the purchaser in direct connection with the deliverable goods, irrespective of their legal grounds.
2. If the validity of this retention of title is linked to special preconditions or formal regulations in the purchaser's country, the purchaser is obligated to fulfill them at its own expense.
3. The purchaser is obligated to handle the goods subject to retention of title carefully, to insure them against fire, water and other material damage as well as theft at their new value and to keep them under insurance protection. On request, the insurance policy shall be made available to the supplier for inspection. The purchaser already now assigns to the supplier any claims that may be filed with its insurer if an event occurs causing damage, provided such claims are related to the supplier's ownership or co-ownership, and the supplier accepts the assignment. The supplier shall declare reassignment to the purchaser, provided that this reassignment shall take effect if and as soon as the retention of title has expired due to full payment of all receivables from the supplier.
4. The supplier is entitled to insure the deliverable against fire, water and other material damage as well as theft for the duration of the retention of title and at the purchaser's expense if the purchaser itself has not demonstrably taken out insurance.
5. As long as the retention of title is in force, the pledging, mortgaging, hiring or other assignment or modification of the goods subject to retention of title that could adversely affect the supplier's security require the prior written consent of the supplier. If the goods subject to retention of title are seized by third parties, for example due to enforcement measures or similar measures, the purchaser is obligated to inform the third parties of the supplier's ownership and to notify the supplier in writing immediately.
6. If the supplier has effectively withdrawn from the contract due to default of payment or inability to pay on the part of the purchaser, or due to the initiation of insolvency proceedings regarding the purchaser's assets, the purchaser is obligated upon request from the supplier to surrender the goods subject to retention of title still under the supplier's ownership.

VIII. Liability for Defects, Subsequent Performance, Costs of Subsequent Performance, Self-Remedy

The supplier's liability for defects is based on the law, supplemented by the following provisions:

1. The purchaser must examine the delivered goods immediately. Defects that are discovered are to be reported to the supplier immediately in writing. The provisions of § 377 HGB (German Commercial Code) apply.
2. At the supplier's discretion, the purchaser can demand the defect to be corrected free of charge ("*rework*"), a replacement delivery free of charge or, in the case of work contracts, production of a new product free of charge ("*new production*") ("*subsequent performance*"). Replaced parts become the property of the supplier. In the event of a replacement delivery or new production, the purchaser must if requested return the originally delivered object to the supplier.
3. The supplier shall hold spare parts in reserve for an appropriate period of time based on its experience with and knowledge of its goods.
4. No guarantee of availability of spare parts is provided for discontinued parts and rework is generally only possible if spare parts are still available.
5. If no more identical spare parts are available for rework, the purchaser is entitled to have spare parts with the same functionality installed at its facility. This shall not apply to discontinued parts.
6. Claims of the purchaser for defects expire after twelve months from delivery or, in the case of work services, from acceptance by the purchaser in the supplier's factory.
7. The warranty provided for repaired parts or overhauled used parts is only for a duration of six months.
8. The purchaser shall set a reasonable grace period for subsequent performance. If the subsequent performance fails, the purchaser can demand a reduction in the purchase price or, in the case of serious defects that affect functionality significantly, reverse transaction of the contract.
9. The supplier shall not be liable for damage resulting from unsuitable or improper use, faulty assembly and/or placing in operation by the purchaser or third parties, natural wear, faulty or negligent handling, strain or load beyond what is described by the supplier, unsuitable operating materials, replacement materials, faulty construction work, unsuitable building site, chemical, electrochemical or electrical effects, failure to observe the supplier's operating instructions or improper modifications or repair work by the purchaser or third parties without the prior written consent of the supplier, unless the supplier is responsible for this damage.
10. The purchaser has the right to remedy the defect itself or have it remedied by third parties and to demand compensation from the supplier for the necessary costs only in urgent cases of endangerment to operational safety and to avert disproportionately great damage, in which case the supplier is to be notified immediately, or if the supplier is in default of rectifying the defect and an appropriate grace period that was set has expired with no positive result.
11. The purchaser is entitled to claims for damages and reimbursement of expenses only to the extent that the supplier's liability is not excluded or limited in accordance with section IX. Further claims of the purchaser or claims other than those regulated in this section VIII regarding defects are excluded unless they are based on mandatory legal provisions.
12. No warranty can be provided for services. The supplier is liable only within the framework of mandatory statutory provisions. New parts installed as part of a service are subject to the warranty within the framework of these Terms and Conditions of Delivery.
13. As a service, the supplier shall check components it has delivered that are being used by the purchaser. This shall not result in any extension of the duration of the warranty. The supplier cannot provide any warranty for the result of a check because the result of a check may vary depending on the test environment.

IX. Liability, Limitation Periods, Liability for Tool Designs / Tools

1. The supplier shall be liable without restriction for intent or gross negligence.
2. In the event of a slightly negligent breach of a primary obligation or of an accessory obligation whose breach will put the achievement of the contractual purpose at risk or which must be fulfilled before the contract can be implemented properly, and on the observance of which the purchaser had reason to rely ("*cardinal obligation*"), the supplier's liability shall be limited to damages which were foreseeable at the time the contract was concluded and are typical for this type of contract. The supplier shall not be liable for slightly negligent breach of obligations that are not cardinal obligations.
3. Liability for fraudulent concealment of defects in the case of assumption of a guarantee for condition, for claims based on the German Product Liability Act and for damages due to breach resulting in loss of life, physical injury or damage to health remain unaffected by the preceding section IX.2.
4. With the exception of claims based on tortious acts or other claims with mandatory longer periods of limitation prescribed by law, the purchaser's claims to compensation for damages for which the liability is limited according to this section IX shall be limited to one year, counting from the beginning of the statutory period of limitation.
5. Performance specifications for tools are approximate values in consideration of the necessity of new development in tool design. For tool designs for which the supplier provides only design suggestions, design drawings or the manual for the design, the supplier assumes liability for productive and functional capacity only if the supplier itself has tested the designed and manufactured tool. The supplier's liability for tool design and tools built by the supplier is based on the provisions of this section IX. Liability for damage foreseeable at the time the contract was concluded and typical for the contract in the case of a slightly negligent breach of a primary obligation or of an essential accessory obligation shall extend in accordance with section IX. 2. sentence 1 to no more than the net total value of the order.

X. Industrial Property Rights / Copyright, Know-How

1. The supplier warrants that the deliverable (machine and standard products) is free from industrial property rights, copyright and / or other rights of third parties. Each contractual partner shall notify the other contractual partner without delay in writing if claims are made against it due to the infringement of such rights. The supplier shall defend, indemnify, and hold harmless the purchaser against all legitimate claims brought by third parties provided (i) the purchaser informs the supplier without delay in writing, (ii) the supplier retains sole control of the defense against any such claim and is able to take responsibility for any and all associated settlement negotiations and (iii) the purchaser shall make available to the supplier the required information, documents and powers of attorney for its legal defense without delay and at its own expense.
2. In the event that the deliverable infringes an industrial property right, copyright and / or other right of a third party, the supplier shall at its discretion and at its own expense modify or replace the deliverable in a manner suitable for the purchaser so that rights of third parties are no longer infringed but the deliverable still fulfills its agreed contractual functions, or obtain a right of use for the purchaser by concluding a license contract. If this is not possible under financially reasonable conditions or in a reasonable amount of time, the purchaser is entitled to withdraw from the contract or to an appropriate reduction in the purchase price. Under the preconditions of the preceding sentence 2, the supplier is also entitled to withdraw from the contract. Any claims of the purchaser to compensation for damages shall be subject to the restrictions according to section IX. of these Terms and Conditions of Delivery.
3. If rights are infringed by the products of other manufacturers delivered by the supplier, the supplier shall at its discretion assign its claims against the manufacturers and upstream suppliers on behalf of the purchaser or assign them to the purchaser. In these cases, and in accordance with section X., claims of the purchaser against the supplier exist only if the legal enforcement of the claims stated in the preceding sentence 1 against the manufacturer and upstream suppliers was unsuccessful or has no prospect of being successful, for example due to insolvency.
4. If the supplier manufactures parts according to the purchaser's specifications and builds or designs tool setups to manufacture such parts, the following provisions shall apply:
 - The purchaser bears sole responsibility for the tool being manufactured itself in every case (including if the supplier draws the purchaser's attention to the possibility of production). It is the purchaser's responsibility to determine before the order is placed whether the part is free from the rights of third parties.
 - If a third party brings a claim against the supplier for infringement of protective rights, the supplier is entitled to decline fulfillment of the contract, excluding any claims to compensation for damages of the purchaser. The exclusion of claims for compensation for damages does not apply if the supplier is proven to be culpable of willful intent or gross negligence.

In all cases in which the purchaser is responsible for ensuring that no third-party protective rights are infringed, the purchaser must indemnify the supplier against all claims of third parties of whatever nature and the supplier is entitled to demand compensation from the purchaser for damage suffered for delivery of the previous work result to the purchaser.
5. All rights to know-how, industrial property rights, copyright, and / or other rights of the supplier or purchaser that originated before the beginning of collaborative work shall be fully retained by the rights holder, thus the supplier or purchaser.
6. All rights to know-how developed together in collaborative work by the supplier and purchaser shall be the joint property of both parties. Both parties can file an application for protective rights pertaining to this know-how. The manufacturing process and other know-how developed by the supplier alone shall remain the property of the supplier. The supplier is free to file an application for protective rights for these.

XI. Secrecy

1. The supplier and purchaser agree to handle confidentially all knowledge of confidential information and trade secrets of the other party acquired in the context of the business relationship, including also business relations before the contract is concluded and implemented, for an unlimited period of time, in particular after the collaborative work has ended, and to take all appropriate precautions to protect their confidentiality and not make them accessible to third parties. This includes in particular technical information, plans, diagrams, data, ideas, software, business secrets, documentation, source code and other information identified as confidential or recognizable as such ("*confidential information*").
2. The confidentiality obligation shall not apply to confidential information
 - a) that was already publicly available at the time of disclosure or later became publicly known without failure to observe the previous provision being a contributing factor to said public knowledge,
 - b) that was explicitly disclosed by one of the parties on a non-confidential basis,
 - c) that was already in the lawful possession of the other party before the disclosure, or
 - d) that was disclosed to it subsequently by a third party without any breach of the confidentiality obligation.

The burden of proof for the presence of one of the preceding exceptions is on the party invoking application of this clause.
3. If confidential information in accordance with this section XI. does not meet the requirements for a business secret within the meaning of the German Business Secrecy Protection Act (GeschGehG), it is nevertheless subject to the non-disclosure obligations of this section XI.

XII. Data Privacy, Handling Contact Data

1. All personal data transmitted shall be handled by both parties exclusively in compliance with the applicable data privacy requirements.
2. The supplier shall also use the contact data specified by the purchaser beyond the term of the contract to provide the purchaser with information about its own similar products and services, but only provided the purchaser does not object. The legal basis for this data processing is art. 6 para. 1 f) of the GDPR (General Data Protection Regulation), thus the legitimate interest of the supplier to provide purchasers with information relevant to them even beyond the end of the contractual relationship, provided they do not object. The supplier's Data Privacy Statement, with which the purchaser is familiar, also applies.

XIII. Legal Venue, Applicable Law, Partial Unenforceability

1. The legal venue for all disputes arising from the contractual relationship is Munich. The supplier is also entitled to file suit in the court responsible for the purchaser's headquarters.
2. The laws of the Federal Republic of Germany shall apply.
3. If provisions of these Terms and Conditions of Delivery or parts of them should be or become unenforceable in whole or in part, this shall not affect the effectiveness of the remainder of these Terms and Conditions of Delivery. If an effective, appropriate section is included in the unenforceable provision, it should remain intact. The parties shall endeavor to negotiate a substitute provision that comes as close as possible to the legal, financial and actual purpose of the omitted provision.

Edition January 2025