

Terms and Conditions of Visotect GmbH, Kornwestheim

(Source: The wording corresponds largely to the VDMA conditions for the supply of domestic machinery, as of 2002)

For use with:

1. a person who, at the time of concluding the contract, acts in the exercise of his commercial or independent professional activity (entrepreneur);
2. legal entities under public law or a special fund under public law.

I. General

1. All deliveries and services are based on these conditions as well as any separate contractual agreements. Differing conditions of purchase of the orderer are not included in the contract even if the order is accepted. A contract is concluded - in the absence of a special agreement - with the written order confirmation of the supplier.
2. The supplier reserves property rights and copyrights regarding samples, cost estimates, drawings and similar information of physical and intangible nature - including information in electronic form; they may not be made accessible to third parties.
The supplier will make information and documents that are designated as confidential by the customer accessible to third parties only with the customer's consent.

II. Price and Payment

1. Unless otherwise agreed, the prices are ex works, including loading at the factory, but excluding packaging and unloading. The value added tax in the respective legal amount is added to the prices.
2. Unless otherwise agreed, payment shall be made without any deduction to the account of the supplier, namely:
1/3 down payment after receipt of the order confirmation,
1/3 as soon as the orderer is informed that the main parts are ready for dispatch,
the balance due within one month of the transfer of risk.
3. The right to withhold payments or offset against counterclaims is only granted to the purchaser to the extent that his counterclaims are undisputed or have been legally established.
4. If the customer is in default of payment, Visotect is entitled to claim default interest of 8% above the base rate announced by the European Central Bank. If Visotect has demonstrably incurred a higher damage caused by default, Visotect is entitled to assert it.

III. Delivery time, delivery delay

1. The delivery time results from the agreements of the contracting parties. Their compliance by the supplier presupposes that all commercial and technical questions between the contracting parties have been clarified and that the customer has fulfilled all obligations incumbent upon him, such as to provide the required official certificates or permits or to make a down payment. If this is not the case, the delivery time will be extended accordingly. This does not apply if the supplier is responsible for the delay.
2. Compliance with the delivery period is subject to correct and timely delivery of the supplier himself. Any delays will be reported by the supplier as soon as possible.
3. The delivery deadline is met if the delivery item has left the supplier's factory until its expiry date or readiness for shipment has been notified. Insofar as an acceptance has to be made, the acceptance date shall be decisive, except in the case of a legitimate refusal of acceptance, or alternatively the notification of readiness for acceptance.
4. If the dispatch or the acceptance of the delivery item is delayed for reasons for which the customer is responsible, he will be charged, starting one month after notification of the readiness for dispatch or readiness for acceptance, for the costs incurred due to the delay.
5. If the non-compliance with the delivery time is due to force majeure, labor disputes or other events which are outside the sphere of influence of the supplier, the delivery time is extended appropriately. The supplier will inform the purchaser of the beginning and end of such circumstances as soon as possible.
6. The customer may rescind the contract without setting a deadline if the supplier is finally unable to perform completely before the transfer of risk. In addition, the orderer can withdraw from the contract if the execution of a part of the delivery becomes impossible and he has a legitimate interest in the rejection of the partial delivery. If this is not the case, the purchaser has to pay the contract price for the partial delivery. The same applies in case of inability of the supplier. For the rest, Section VII. 2 applies. If the impossibility or inability occurs during the delay in acceptance or if the purchaser is solely or largely responsible for these circumstances, he remains obliged to pay.
7. If the supplier defaults and the purchaser incurs any damage, he is entitled to demand a lump-sum compensation. It amounts to 0.5% for each full week of the delay, but in total no more than 5% of the value of that part of the total delivery which can not be used on time or in accordance with the contract as a result of the delay. If after the due date the customer sets the supplier a reasonable period for performance and the deadline is not met - taking into account the statutory exceptions -, the purchaser is entitled to resign under the statutory provisions.
Further claims arising from default of delivery are governed exclusively by section VII.2 of these conditions.

IV. Transfer of risk, acceptance

1. The risk passes to the purchaser when the delivery item has left the factory, even if partial deliveries are made or the supplier has taken on other services, e.g. shipping or delivery and installation. Insofar as acceptance has to be made, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date or, alternatively, after the supplier's notification of readiness for acceptance. The purchaser may not refuse acceptance in the event of a non-essential defect.
2. If the dispatch or acceptance is delayed or omitted as a result of circumstances not attributable to the supplier, the risk shall pass to the customer from the day of notification of readiness for dispatch or acceptance. The supplier undertakes to make the insurance required by the purchaser at the purchaser's expense.
3. Partial deliveries are permitted as far as reasonable for the customer.

V. Retention of Title

1. The supplier retains ownership of the delivery item until all payments from the delivery contract have been received.
2. The supplier is entitled to insure the delivery item against theft, breakage, fire, water and other damages at the expense of the orderer, unless the orderer has demonstrably made the insurance himself.
3. The purchaser may neither sell, pledge nor assign the delivery item as security. In the event of seizures or other dispositions by third parties, he must immediately inform the supplier.
4. In the event of breach of contract by the purchaser, in particular in the case of late payment, the supplier is entitled to take back the delivery item after a reminder and the purchaser is obliged to surrender it.
5. Due to the retention of title, the supplier can only demand the delivery item if he has withdrawn from the contract.
6. The application for the opening of insolvency proceedings entitles the supplier to withdraw from the contract and to demand the immediate return of the delivery item.

VI. Claims for Defects

For defects in quality and title of the delivery, the supplier provides the following to the exclusion of further claims - subject to Section VII - as follows:

Defects in quality:

1. All parts which prove to be defective due to a circumstance prior to the transfer of risk shall be repaired free of charge at the discretion of the supplier or replaced by parts without defects. The determination of such defects must be reported to the supplier immediately in writing. Replaced parts become the property of the supplier.
2. In order to carry out all subsequent improvements and replacement deliveries deemed necessary by the supplier, the purchaser shall, after agreement with the supplier, give the necessary time and opportunity; otherwise, the supplier is released from liability for the resulting consequences. The customer has the right to have the defect rectified by himself or by a third party and to demand compensation for the necessary expenses from the supplier only in urgent cases of hazards to operational safety or to prevent disproportionately large damages. In this case, the supplier must be notified immediately.
3. Of the direct costs resulting from the repair or replacement delivery, the supplier shall bear the costs of the replacement part, including the shipment, insofar as the complaint proves to be justified. He shall also bear the costs of removal and installation as well as the costs of any necessary provision of the necessary mechanics and auxiliary staff, including travel expenses, insofar as this does not result in a disproportionate burden on the supplier.
4. Within the scope of the statutory provisions, the purchaser has the right to withdraw from the contract if the supplier - taking into account the statutory exceptions - passes a reasonable deadline set for the repair or replacement due to a material defect. If there is only an insignificant defect, the purchaser is only entitled to a reduction in the contract price. The right to reduce the contract price is otherwise excluded.
Further claims are governed by Section VII 2 of these Conditions.
5. No warranty is assumed in particular in the following cases:
Inappropriate or improper use, faulty installation or commissioning by the purchaser or third parties, natural wear, faulty or negligent treatment, improper maintenance, unsuitable equipment, defective construction, unsuitable ground, chemical, electrochemical or electrical influences - if the supplier is not responsible.
6. In case of improper repair by the supplier or a third party, the supplier can not be held responsible for the resulting consequences. The same applies to changes made to the delivery item without the prior consent of the supplier.

Defects in title:

7. If the use of the delivery item leads to the infringement of industrial property rights or copyrights in Germany, the supplier will, at its own expense, procure the right to further use the purchaser or modify the delivery item in a manner reasonable for the purchaser such that the infringement of property rights no longer exists. If this is not possible on economically reasonable terms or within a reasonable time, the customer is entitled to withdraw from the contract. Under the aforementioned conditions, the supplier is also entitled to withdraw from the contract.
In addition, the supplier shall exempt the purchaser from undisputed or legally established claims of the respective holder of the intellectual property rights.
8. The obligations of the supplier mentioned in section VI. 7 are final, if not contrary to Section VII. 2 in the event of a breach of copyright or copyright.

They only exist if

- the customer immediately informs the supplier of asserted protective or copyright infringements,
- the customer assists the supplier to a reasonable extent in defense of the asserted claims or allows the supplier to carry out the modification measures in accordance with Section VI. 7
- all defensive measures, including out-of-court settlements, are reserved to the supplier
- the legal defect is not based on an instruction of the customer and
- the infringement was not caused by the purchaser having arbitrarily changed the delivery item or used it in a way that was not in conformity with the contract.

VII. Liability

1. If the delivery item can not be used by the purchaser in accordance with the contract due to the supplier's failure or incorrect execution of proposals and consultations made before or after the conclusion of the contract or breach of other contractual secondary obligations - in particular instructions for operation and maintenance of the delivery item -, the provisions of sections VI and VII. 2 hold accordingly excluding further claims of the purchaser.
2. For any damage that has not occurred to the delivery item itself, the supplier is liable - for whatever legal reason - only in the following cases:
 - a. intentional damaging,
 - b. gross negligence on the part of the owner(s) or executive officer(s),
 - c. culpable injury to life, body, health,
 - d. defects he has fraudulently concealed or the absence of which he has guaranteed,
 - e. defects of the delivery item, as far as responsible according to product liability law for personal injury or material damage to privately used objects.In the event of culpable violation of essential contractual obligations, the supplier is also liable for gross negligence of non-executive employees and for slight negligence, in the latter case limited to contract-typical, reasonably foreseeable damage.
Further claims are excluded.

VIII. Limitation

All claims of the purchaser - for whatever legal reason - expire in 12 months. For claims for damages according to Section VII. 2.a - e, the statutory periods apply. They also apply to defects in a structure or to delivery items that have been used for a structure in accordance with their normal use and have caused its defectiveness.

IX. Software Usage

If software is included in the scope of delivery, the purchaser is granted a non-exclusive right to use the supplied software including its documentation. It is given for use on the intended delivery item. Use of the software on more than one system is prohibited.
The purchaser may only reproduce, revise, translate or convert the software from object code to source code to the extent permitted by law (§§69 a ff. UrhG). The purchaser undertakes not to remove manufacturer information - in particular copyright notices - or to modify it without the prior express consent of the supplier.
All other rights to the software and the documentation including the copies remain with the supplier or the software supplier. Sublicensing is not permitted.

X. Applicable law, jurisdiction

1. For all legal relationships between the supplier and the buyer, the law of the Federal Republic of Germany, which governs the legal relations between domestic parties, applies exclusively.
2. Jurisdiction is the competent court for the location of the supplier. However, the supplier is entitled to file a claim at the customer's headquarters.