



General Terms and Conditions for Construction Equipment

(These conditions have been drawn up by delegations of VSBM and SBI/SBV.)

1. General information

These conditions shall apply to all deliveries and work by the supplier based on the sales contract or the contract for work and services. Deviations from this are only valid if they have been agreed between the contract parties in writing.

2. Offers

a) Technical principles

The technical principles of the offers are binding for the supplier. Changes are expressly reserved.

All documents remain the property of the supplier. They may not be copied or reproduced, made available to third parties or used for the in-house production of the items in question. They are to be returned upon request.

b) Subject to prior sale

The supplier has the right to sell the offered items at any time to a third party prior to the legally-valid conclusion of the contract.

c) Project planning costs

If the customer has commissioned the supplier with the planning of the project, but does not award it the execution after the offer is issued, the supplier has the right to request the payment of the project planning costs as per the SIA tariff. Costs for basic investigations for drafting the offer are excluded.

d) Structural measures

All structural measures associated with the installation of the items to be provided (determining the location of the machine, clarifying the condition of the ground, procuring construction plans and official licences, creating foundations including tracks and electrical installations, provision of water, creation of a proper access road, provision of load-bearing working areas for any interim storage and pre-assembly, provision of the requested crane capacity, supply of operating materials (e.g. fuel, compressed air, etc.) as well as the performance of other construction work) are the responsibility of the buyer and not the subject matter of the offer.

e) Usage

Operating and maintenance provisions of the manufacturer and/or the supplier as well as instructions concerning proper use and permitted loads are to be strictly observed.

3. Conclusion of contract

Sales contracts and contracts for work and services are only binding for the parties once they have been signed by both parties. The supplier is only bound to contracts concluded by a travelling representative, if the supplier has not declared his withdrawal in writing within 10 working days of the conclusion of the contract.

Within the framework of the processing and use of personal and company data, which are necessary for the conclusion or processing of a contract, the supplier can exchange data or hand over information to authorities or companies issuing credit reports or dealing with debt collection, if this is done to check the credit rating or to assert claims. When handling your personal data, we shall observe the provisions of the Swiss Data Protection Act.

4. Prices

- a) Prices are quoted ex warehouse of the supplier, loaded and ready for transport.
- b) Price increases after the conclusion of the contract can only be passed on with the consent of the purchaser.
- c) Order executions in contracts for work and services are governed separately (currency, inflation, transportation, packaging, insurance, customs duties, taxes and fees).

5. Delivery

a) Term of delivery

The term of delivery begins upon the conclusion of the contract, however at the earliest after the receipt of all the details and documents to be provided by the buyer, as well as any down payments to be made. It is set according to the conditions in place at the time the contract is concluded and is binding. If unforeseen events occur, which are beyond the control of the supplier, such as force majeure, difficulties in the procurement of materials, operational disruptions, etc., the term of delivery shall be extended appropriately. Furthermore, the term of delivery shall be suspended if the buyer does not meet its payment obligations on time.

If the buyer incurs damages due to a delay, which occurs due to the fault of the supplier, the buyer is permitted to demand default compensation after a waiting period of 2 weeks, to the exclusion of all other claims. For each full week of the delay this amounts to 1/2%, however not exceeding a total of 5% of the value of the respective part of the overall delivery, which cannot be used on time or for the intended purpose due to the delay, or, in the event of work performances, of the price of the respective work performance. If the supplier is still culpably in default after the afore-mentioned maximum default compensation of 5% has been reached, the buyer is permitted to withdraw from the contract after setting a suitable period of grace.

Any bonus/penalty regulation for changes to delivery deadlines can be governed individually in a sales contract/contract for work and services.

b) Transport

The buyer has to bear the transport costs. Delivery is done at the buyer's risk, even if carriage paid delivery has been agreed. The risk is transferred to the buyer as soon as the delivery is made available to the freight forwarder, carrier or buyer, loaded for transport, ex warehouse of the supplier.

If the buyer determines damage or defects upon the arrival of the delivery, the buyer is obliged to report this immediately to the freight forwarder or the carrier of the supplier, as well as the insurance company, and, if necessary to secure the evidence, to take a protocol signed by the participating parties. The quantities are to be checked according to the delivery notes. If no written notice of defects is received by the supplier within 8 working days, the delivery is deemed to be approved. Later complaints are only accepted, if the defects could not have been detected at the time of delivery, despite a proper check, and the buyer provides written notice of the defect within a week of its detection, however at the latest before the expiry of the warranty period.

c) Storage

If the ordered goods cannot be delivered on time after completion and due notification of their readiness for shipment through no fault of the supplier, they shall be stored by the supplier or a third party at the expense and risk of the buyer.

d) Assembly and disassembly

Only if expressly agreed will the supplier assume the assembly or disassembly of the delivered items. In other cases the supplier shall provide the buyer, on request, with assemblers, invoicing the travel, working and waiting times, travel expenses and accommodation costs in accordance with the respectively valid rates of the supplier.

If the assemblers are not able to begin or continue work through no fault of their own or the supplier, all additional costs incurred as a result are to be borne by the buyer, even if a fixed rate has been agreed for the assembly and disassembly work. The buyer shall also provide all the necessary auxiliary staff and assembly equipment (e.g. cranes) in accordance with the contract and on time. If the buyer is obliged to provide assemblers or auxiliary staff to the supplier, their wages, social security contributions, insurance premiums and expenses are to be borne by the buyer.

The times specified by the supplier for the assembly and disassembly work to be performed by the supplier are binding. Circumstances beyond the parties' control (e.g. obstacles, force majeure, bad weather, non-contract-conform preparation of building sites, etc.) can cause the deadline to be extended. The non-observance of assembly and disassembly times due to the afore-mentioned reasons gives the buyer neither the right to withdraw from the contract, nor to compensation.

6. Payment terms

Unless other contracts have been made, the following payment terms shall apply:

a) For sales contracts, supply of spare parts, repairs: 30 days after invoicing, without any deductions.

b) For contracts for work and services:

1/3 upon the conclusion of the contract

1/3 upon notification of the readiness for shipment

1/3 30 days after operational readiness

Payments are always to be made free of charges, even in case of rectification work having to be performed on the delivered items or parts having to be replaced, or if the goods cannot be delivered on time for reasons which are the fault of the buyer.

In the event of incorrect deliveries or massive defects, which are due to the supplier and which prevent commissioning, the final third is only to be paid after the receipt of the contractually-conform delivery or rectification of the defects.

7. Default of the buyer

Payment claims which are not paid in accordance with the contract, are due without delay, and default interest shall be charged from the due date, without a prior notification of default, at a normal rate of 1% above the standard current account interest rate.

If agreed partial payments are not made at the latest within 30 days of their due date, the whole remaining amount shall be due without delay.

In the event of incorrect deliveries or massive defects, which are the fault of the supplier and which prevent commissioning, the buyer has the right to demand an extension of the due payment deadlines. The supplier expressly reserves the right to withdraw from the contract in the event of a default of payment, and to request back the delivered items.

For partial transactions and hire purchase transactions, the supplier is permitted to demand the remaining purchase price in a one-off payment, or to withdraw from the contract. The supplier can even withdraw from the contract and request back the delivered items if the buyer is in default of the final instalment.

- a) If the supplier declares his withdrawal from the contract, the buyer shall be obliged – in addition to the immediate return of items already delivered – to make the following payments:
 - to pay rent of 5% of the agreed purchase price for each whole month or part thereof from delivery until the delivered items are returned.
 - to pay compensation for any extraordinary wear-and-tear and for damage to the delivered items;
 - to pay the disassembly, transport and insurance costs for the return of the delivered items and any other associated expenses. The buyer shall also be obliged to make these payments if the buyer is not at fault.
- b) If the damage incurred by the supplier exceeds the payments specified in a), the buyer has to provide compensation for the extra amount unless the buyer can prove that he is not at fault.
- c) In other cases of contractual non-fulfilment by the buyer, such as the non-acceptance of ordered items, the afore-mentioned conditions shall apply correspondingly.

8. Reservation of title

The delivered items remain the property of the supplier until the agreed price, including all extra costs and interest, has been paid. Until this point the items are not allowed to be pledged, sold or rented without prior notification of the supplier, while the liability remains with the contract partner. The supplier is permitted to enter the reservation of title at the place of residence of the buyer into the reservation of title register.

Furthermore, the buyer is obliged to notify the supplier immediately if the buyer changes his domicile or corporate headquarters.

9. Insurance

The buyer is obliged to conclude all necessary insurance policies, with effect from the transfer of risk, for the items which have not been paid for in full or in part, for example: insurance against theft, fire, explosion, elementary damage, transport, machinery and/or comprehensive machinery and assembly insurance. Claims for insurance payments resulting from this shall be assigned to the supplier.

If the buyer is not able to provide evidence that he has concluded the necessary insurance, the supplier shall be permitted to take out appropriate insurance at his own expense. The buyer has to report any damage case immediately to the supplier.

The provision of securities of an equivalent value can be agreed between the buyer and the supplier.

10. Warranties and liability

a) Scope

The supplier shall provide a warranty for the proper design, suitable quality of the material used and perfect execution of the items for 12 months or 1000 operating hours, depending on which happens first. If the ownership of the delivered items changes before the expiry of the normal warranty period, the warranty shall end upon the transfer of ownership.

The supplier rejects any warranty

- for used items or parts thereof,
- for material not supplied by the supplier,
- for assembly and disassembly work not arranged by the supplier, as well as for items on which changes or repairs have been performed without the supplier's approval,
- in the event that changes are made by the buyer to the item, in particular extra installations, without the prior written approval of the supplier,
- for damage of any kind due to normal wear and tear, incorrect or forcible handling, excessive use, insufficient foundations, improper operation and maintenance, freezing, the use of improper materials and lubricants, accidents or force majeure and similar,
- for commodities or materials from sub-contractors, such as electronic equipment, tyres etc. (here the supplier is only liable within the scope of the warranty provisions of the affected manufacturing company),
- for any other claims exceeding the described warranty obligation. In particular, all further warranty claims (such as reduction of price or rescission) and any other liability of the supplier for direct or indirect damage to the buyer (such as claims due to the non-usability of the contract item and legal actions against the buyer due to third-party damage associated with the delivery and operation of the contract item) are expressly excluded. Damage caused by the supplier personally, due to verifiable gross negligence or illegal intent, shall be reserved.

b) Recourse

If a claim is asserted against the supplier by a third party due to a damage event and there is joint liability, the supplier can take recourse to the buyer for all expenses unless the supplier has personally and verifiably acted with gross negligence.

c) Warranty services

Defects based on this warranty that are the responsibility of the supplier shall be rectified free of charge and as quickly as possible, and the corresponding parts shall be replaced.

Any operating checks by the assemblers of the supplier additionally required by the buyer are not covered by the warranty services but are invoiced.

11. Applicable law

The contracts concluded are subject to Swiss law.

12. Place of performance and jurisdiction

For all obligations arising from this contract, the place of performance shall be the registered office of the supplier. The place of jurisdiction for the settlement of all claims arising from this contract shall be the registered office of the supplier.