

Defect notice templates: notice, grace period, substitute performance — three letters, one case

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<https://openexperience.de/en/wissen/maengelruege-muster/>

The defect notice templates consist of three consecutive letters under the German VOB/B: the defect notice with a request for rectification (before acceptance under § 4 (7), after acceptance under § 13 (5) no. 1 VOB/B), the grace period with a warning of the legal consequences, and the announcement of substitute performance at the contractor's expense (§ 13 (5) no. 2 VOB/B). Each letter contains the six building blocks of an effective notice — contract reference, locatable defect description, express request, deadline as a calendar date, sender with signature, and proof of receipt — as a Word template with placeholders in square brackets.

Notes on use

- **Contractual basis first**

The letters are drafted for contracts under VOB/B. For pure BGB construction contracts the sentences apply accordingly — supplementary performance under § 634 no. 1, § 635 BGB, self-remedy under § 637 BGB; swap the section references in the text.

- **Symptom, not cause**

Describe what can be seen and where — not what causes it. Naming the cause narrows your own notice for no reason.

- **Deadline as a calendar date**

"Immediately" is not a deadline. Enter a date that an averagely capable firm can meet; short if there is imminent danger, with reasons.

- **Prove receipt**

The deadline runs from receipt, not from dispatch. In the last paragraph choose the delivery route you can prove, and file the proof with the case.

- **One defect, one case**

Several defects may go into one letter — but each described, located and given its own deadline. The defect list as an attachment keeps this together.

Replace the placeholders in square brackets; delete the variants that do not apply.

Disclaimer

Non-binding sample, not legal advice. Contractual agreements and the individual case take precedence. Check addressee, contractual basis, deadline and proof of receipt before sending; seek legal advice before withdrawing a contract or where large sums are involved. German law.

Sources and legal basis

- VOB/B (2016 edition), official text of the BMWStB — § 4 (7), § 8 (3) and § 13 (5): defects before and after acceptance, withdrawal of the contract, substitute performance (German) — https://www.bmwstb.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/bauen/vob-teil-b.pdf?__blob=publicationFile&v=1
- § 634 BGB — rights of the customer in the event of defects (German) — https://www.gesetze-im-internet.de/bgb/_634.html
- § 635 BGB — supplementary performance (German) — https://www.gesetze-im-internet.de/bgb/_635.html
- § 637 BGB — self-remedy and advance payment after a fruitless deadline (German) — https://www.gesetze-im-internet.de/bgb/_637.html

Legal framework: Germany (HOAI, VOB/B, BGB). Deviating contractual agreements take precedence. This working aid is no substitute for legal advice in the individual case.

Letter 1 — defect notice and request for rectification

The first letter starts the deadline running. There are two variants of the legal-basis sentence: before acceptance (§ 4 (7) VOB/B) and after acceptance (§ 13 (5) no. 1 VOB/B). Everything else is the same.

[Letterhead of the client: company, address, contact person, phone, e-mail]

[Contractor — company, address, attention of]

[Place], [date]

SUBJECT	Construction project [sample project day-care centre Musterweg, Musterstraße 1, 00000 Musterstadt], contract [no. / lot / trade] dated [date] — defect notice and request for rectification
SALUTATION AND CONTRACT REFERENCE	Dear Sir or Madam, in the course of the above construction contract we identified the following defects in your work during the inspection on [date].
DEFECT DESCRIPTION	Defect [no.]: [visible defect, e.g. "dark moisture marks on the inside of the external wall"]. Location: [building, storey, room, grid axis]. Identified on [date]. Photo no. [x], drawing extract [y], see attachment 1. Further defects are listed in the attached defect list (attachment 1).
LEGAL BASIS — BEFORE ACCEPTANCE	To that extent the work does not conform to the contract. Pursuant to § 4 (7) VOB/B we request you to replace the defective work with defect-free work at your own expense.
LEGAL BASIS — AFTER ACCEPTANCE	To that extent the work is defective. Pursuant to § 13 (5) no. 1 VOB/B we request you to rectify the defects described at your own expense.
DEADLINE	Please rectify the defects described by [calendar date, e.g. 30 September 2026] at the latest and notify us in writing when the rectification is complete so that we can check it.
RESERVATION OF RIGHTS	Should the deadline expire without result, we reserve all rights to which we are entitled under the contract and VOB/B, in particular substitute performance at your expense.
RECEIPT AND SIGNATURE	You receive this letter by [registered mail / delivery against acknowledgement of receipt / e-mail with read receipt]. Yours faithfully — [name], [function, e.g. construction supervision], [client's company]. Attachments: defect list, photos, drawing extracts.

Letter 2 — grace period with warning of the legal consequences

When the first deadline has expired. The core is the warning: after acceptance substitute performance, before acceptance withdrawal of the contract — without this sentence the respective legal consequence does not arise.

[Letterhead of the client: company, address, contact person, phone, e-mail]

[Contractor — company, address, attention of]

[Place], [date]

SUBJECT	Construction project [as above], contract [no.] — grace period for rectification of defects
REFERENCE	Dear Sir or Madam, by letter of [date], received by you on [date], we requested you to rectify the defects described there by [date]. The deadline has expired without result / The rectification is incomplete: [what is missing, with location].
GRACE PERIOD	We hereby set you a grace period for rectification of the defects until [calendar date].
WARNING — AFTER ACCEPTANCE	Should this deadline also expire without result, we will have the defects rectified at your expense pursuant to § 13 (5) no. 2 VOB/B without any further request.
WARNING — BEFORE ACCEPTANCE	In the event that the deadline expires without result, we already declare now that we will withdraw the contract from you [in its entirety / for the part of the work concerned] pursuant to § 4 (7) sentence 3 in conjunction with § 8 (3) VOB/B.
RESERVATION OF COSTS	We reserve the right to claim the costs and damages incurred and still to be incurred by us as a result of the delay.
RECEIPT AND SIGNATURE	You receive this letter by [provable delivery route]. Yours faithfully — [name], [function], [company]. Attachment: letter of [date] with defect list.

Letter 3 — announcement of substitute performance

After acceptance and after a fruitless grace period. The letter announces, documents and safeguards reimbursement of the costs. Before acceptance its place is taken by withdrawal of the contract — a step for which you should seek legal advice.

[Letterhead of the client: company, address, contact person, phone, e-mail]

[Contractor — company, address, attention of]

[Place], [date]

SUBJECT	Construction project [as above], contract [no.] — rectification of the defects by third parties at your expense (substitute performance)
REFERENCE	Dear Sir or Madam, despite our defect notice of [date] and the grace period until [date] (letter of [date], received on [date]) you have not rectified the defects described there.
DECLARATION	We will therefore have the defects rectified by another firm pursuant to § 13 (5) no. 2 VOB/B. We will invoice you for the resulting costs or set them off against [security retention / outstanding remuneration]. The expected costs amount to [amount] (quotation in attachment 1).
ADVANCE PAYMENT (OPTIONAL)	We request you to pay us an advance in the amount of the expected costs of [amount] by [calendar date].
PRESERVATION OF EVIDENCE AND ATTENDANCE	Before the work begins we will document the condition photographically. We invite you to a joint inspection on site on [date, time]; if you do not attend, the inspection will take place without you.
RESERVATION	Further claims, in particular for compensation of consequential damage, remain reserved.
RECEIPT AND SIGNATURE	You receive this letter by [provable delivery route]. Yours faithfully — [name], [function], [company]. Attachments: quotation of the third firm, previous correspondence.