



Buying terms for deliveries and services

1. General terms:

1.1 The following conditions are valid exclusively for realization of the orders placed by the VDL DELMAS GmbH Company, along with the possible complements or supplements, unless anything else is resulting from the order or papers of VDL DELMAS GmbH Company.

The possible different delivery terms of the supplier have no legal effect in relation to us.

1.2 Supplier must procure all evidence (for example Certificates of Origin), which the buyer needs for realization of his order, or to achieve the tariff concessions or any other advantages.

2. Offers, conclusion of a contract, inadmissible advertising

2.1 Supplier's offers towards the buyer are free of charge.
2.2 Supplier is bound with his offer in the course of 3 months, unless the public tender stipulates other term.

2.3 The orders, agreements as well as complements and amendments are binding only after they were awarded by the buyer or confirmed in writing.

2.4 The buyer can withdraw from the order, without possibility to be invoiced for charges, if the supplier will not confirm it in writing within two weeks after its delivery.

2.5 The use of the order as a reference or for advertising purposes is allowable only after our approval.

3. Drawings, models, technical documents

3.1 All drawings having been left for purposes of the order implementation and other written documents, as well as the models and tools remain a property of the buyer and they are to be – provided the buyer calls for it – sent back, free of charge, after the order is accomplished.

3.2 All the drawings left for the order implementation purposes and other written documents, as well as the drawings and written materials having been worked-out by supplier on the basis of the buyer's entry data, must not continue to be used, neither reproduced or supplied to the third persons.

The supplier is liable to the buyer for all damages that will arise by acting in contradiction with this stipulation.

3.3 Buyer's approval with drawings, computations and the other technical documents do not touch the supplier's responsibility obligations and liabilities regarding the object of fulfilment.

This is also applied for the proposals and recommendations of the buyer.

3.4 If the foreign patents or utility designs are touched by implementation of the order, the supplier has to procure the necessary licences at his own expenses and to protect the buyer against all obligations, detriment and damages, which could arise to him due to utilisation of foreign invention, or violation of foreign patents or utility designs.

4. Place of fulfilment

4.1 As far as it is necessary, the supplier must procure, at his own expenses and in due time, the necessary knowledge about the installation place and about the purpose of utilisation of the delivered goods or his services.

It deals especially with the climatic and ecological conditions as well as operation conditions at the installation place. Violation of time limit or shortcomings within supplier's fulfilment cannot be excused by pointing out to missing knowledge.

5. Scope of fulfilment and execution

5.1 Supplier will offer a finished fulfilment even though the partial fulfilments, which are indispensable for them, were not fully described in the order.

Supplier must verify, on his own responsibility, the data offered by the buyer for implementation of the order.

5.2 The additional performances that exceed the stipulated scope of fulfilment necessitate a written approval of the buyer before starting with their implementation. The additional fulfilments performed by the supplier without previous written approval cannot be rewarded.

5.3 Supplier must ensure that technical state of spare parts and the parts being subject to a fast wear will remain adapted to the current state of the main delivery up to the end of the contracted warranty period.

Supplier is obliged to deliver spare parts for the period of anticipated technical use, however at least 10 years after delivery, at reasonable terms.

5.4 As far as the supplier has intention to utilise the third sub-suppliers to accomplish his fulfilment, he has to notify the buyer before the sub-supplier contracts are concluded.

That applies also in case when supplier has intention to utilise for the possible purchased parts the products of other manufacturers than it was intended by the buyer.

The intended potential establishment of the alliance of companies is to be agreed with the buyer, and it needs his approval.

The proceeding being in contradiction with this provision authorizes the buyer to withdraw from the contract, either fully or partially, or to demand compensation of damages for reason of non-performance.

5.5 If the buyer has informed the supplier about the purpose of utilisation of deliveries or services or if this utilisation purpose is recognizable even without an explicit notice, the supplier is under obligation to inform immediately the buyer whenever the deliveries or the performances mentioned in the order are not suitable to meet this purpose of utilisation.

5.6 Supplier guarantees that the quality will be ensured by the quality assurance management according to DIN ISO 9001/9002 (or by equivalent). Supplier is obliged to ensure and prove the quality according to the regulations of our quality assurance manual.

5.7 Presence of our designer or construction manager in the corresponding production plant or on a building site does not remove the supplier's responsibility for the works performed by him.

6. Works on installation place

6.1 Supplier must install a specialist at the building site – site manager, and give him necessary competencies. It is necessary to provide the site manager with professional personnel having indispensable qualification certificates for corresponding requirements.

6.2 Direct agreements between the supplier, the buyer's customer and other companies performing the works on the building site without consent of the buyer are ineffective.

6.3 Supplier must consult with a competent work safety expert (for the both buyer and operator of the entire equipment) the possible dangers connected with installation and to agree with him and also arrange the necessary safety precautions. Supplier has to take advantage of a professional inspector for work safety.

6.4 Before beginning of installation works, the supplier must check the installation site, whether the appropriate working conditions as well as the necessary means and lifting devices are on the site.

Supplier has to check, on his own responsibility, the adequate state of basement and connectors.

The imperfections and anomalies are to be reported to the buyer.

6.5 Supplier will protect the buyer from all claims and consequences resulting from nonobservance of the laws, instructions and regulations.

6.6 It is possible to refuse the access to the installation site for the personnel and representatives of the supplier due to an important reason.

7. Dispatch and transfer of risk

7.1 Unless otherwise agreed, the expenses for dispatch and packing, customs, fees and other payments are debited to the supplier.

7.2 When the price from factory or from storehouse of the supplier is determined, it is always necessary to do the transport at lowest costs, unless the buyer ordered a certain kind of transport.

The increased costs due to nonobservance of the regulation related to dispatch or packing, or due to accelerated transport in order to meet the delivery time is borne by the supplier.

7.3 When the price is determined as free delivered to addressee, the buyer can give the necessary instructions concerning packing, way of transport, transfer company and forwarder, even after the contract was concluded. The increased costs, arisen in this way, are to be submitted to the buyer for approval before implementation.

7.4 Each delivery is to be equipped with dispatch notes or the tickets on a packet with indication of the contents, number of VDL DELMAS purchase order and the marking of the order having been determined by other buyer.

Buyer is to be advised about the dispatch with indication of the same data, at the time of dispatch at latest.

7.5 The deliveries dispatched by the supplier upon our instructions to the third parties, can be equipped exclusively with original dispatch notes of VDL DELMAS GmbH Company.

7.6 If the required dispatch documents will not be submitted to the consignment in time because of supplier's blame, or the above mentioned data will be missing in dispatch documents, then the goods will be warehoused at the charges and risk of the supplier until arrival of full set of documents.

7.7 At the deliveries without assembling or installation, the risk transfers on arrival of the goods to the consignee's address, cited by the buyer.

At the delivery with assembling or installation and at the services, the risk transfers by the taking over procedure performed by the buyer or his representative on the fulfilment place.

7.8 Buyer expects that the supplier, being a seller of the goods, has necessary vast knowledge about possible risks related to his goods during storage, packing and dispatch. Therefore, the supplier has to check before receipt of an order whether the goods that are mentioned in the order, or their parts, are to be classified as hazardous ones. In such cases, the supplier has to advise immediately the buyer with the details. Supplier must forward to the buyer, at latest during written confirmation of the order, the necessary binding explanations, correctly filled in and containing a legally binding signature.

7.9 When doing packing, marking and declaration, it is always necessary to take into account the latest, nationally and internationally valid regulations, as well as the possible alternative or additional regulations in the consignee's country, provided the consignee's country was advised to the supplier.

Supplier is responsible for all damages that will arise during dispatch of the consignment.

8. Date of delivery

8.1 The agreed date of delivery is binding. As for timeliness of deliveries (without assembling or installation), the decisive point is the delivery to the consignee's address shown by the buyer.

At the deliveries with assembling or installation, the decisive point is the taking over date.

8.2 Dispatch is to be advised to the buyer in time and the written information is to be announced in the delivery date, at latest.

8.3 A premature delivery or a partial delivery (fulfilment or partial fulfilment) necessitate the buyer's consent.



- 8.4 The circumstances, which interfere observance of agreed dates of delivery, are to be immediately advised to the buyer and further advancement is to be explained. The buyer's right even to withdraw from the contract or the right for compensation due to non-performance remains intact.
- 8.5 If the supplier falls to a delay, then the legitimate provisions in view of legal consequences are operative.
In addition, the buyer is entitled, without prejudice to other rights, to request a penal bond up to the amount of 1% from the order value for each started week, 10% of the order value at maximum.
9. Prices and fixing the price
- 9.1 The agreed prices – unless otherwise adapted in the contract – are firm prices in the delivery moment. The prices include all charges and accessory charges, which will arise in connection with implementation of the order.
- 9.2 The agreement on the place of fulfilment is not touched due to the method of fixing the price.
10. Invoices
- 10.1 The invoices are to be furnished for each order, or separately for each delivery and with stating the number of the order as well as the other characteristics of the order indicated by the buyer, to the buyer's address, unless other invoicing address is stated in the order. The copies of invoices are to be marked as such.
- 10.2 The included sums of taxes (for example TVA) as well as of customs and fees are to be shown separately in the invoice.
- 10.3 The not duly issued invoices will be sent back to the issuer and are deemed as not delivered.
11. Payments
- 11.1 The payments are performed at the terms shown in the invoice. The payment will be performed with reservation of the later invoice checking by the buyer.
- 11.2 The payments do not mean that the delivery or the fulfilment is acknowledged to be corresponding to the contract.
- 11.3 Buyer is entitled to credit (ring up) all his claims towards the supplier's claims that he has towards the buyer.
- 11.4 Withdrawal from or set up of the claims towards the buyer is effective only after a written approval of the buyer.
Buyer will not refuse this approval without any essential reason.
- 11.5 The day of payment starts as soon as the invoiced deliveries arrive to the consignee's address shown by the buyer, or as soon as the services have been taken over or (provided the taking over is not expected) were duly offered.
However, the day of payment does not begin before delivery of duly issued invoice and as far as the documentation or test certificates are to be a part of the delivery before their handing to the buyer in accordance with the contract.
The day of payment does not begin before the agreed date of delivery.
- 11.6 If some special data are missing in the order, the payment will be performed either within 14 days with 3% discount, within 30 days with 2% discount or within 60 days without a discount, by payment means according to the buyer's choice.
- 11.7 The delayed payments caused by non-conforming delivery documents or invoices as well as missing documentation or test certificates entitle even though the buyer to a correspondent discount deduction. The discount deduction is admissible even in case when the buyer will make a mutual crediting or will retain the payments because of some shortcomings.
12. Liability and warranty
- 12.1 Supplier is liable for the deliveries or services in order to be corresponding to the agreed specifications, to prove their promised properties and to be free from the defects that would breach or decrease their value or suitability for the usual or assumed (according to the contract) utilisation.
In addition, the supplier is liable for the deliveries and fulfilments, provided the special rules are not agreed, to be conform with the recognized technology rules, to the decisive ecological rules, to the rules of safety and health protection at work, as well as to the generally recognized safety-technical and working-medical rules being effective in Germany or in the place of fulfilment (item 4).
- 12.2 Supplier has to advice the buyer in written form the changes concerning the processed material, construction work, technical designation or other deviations from the specification before beginning of production or before provision of fulfilment. The changes need to be approved in writing by the buyer.
- 12.3 The claims due to insufficient delivery, incorrect delivery or due to mistakes in quantity can be applied by the buyer with exclusion of the rule § 37 HGB (of the Commercial Code), within one month after the risk transfer.
As far as the claimed reality is found out only at a subsequent processing or utilisation of the delivery or service, the buyer may claim it within one month after its detection. Supplier renounces the right for delayed claims of the faults (§ 37 HGB).
As far as the entrance inspections of the goods are planned with the methods of random tests, the buyer is entitled, in case the agreed or the standard allowable limits of qualitative values are exceeded, to refuse the delivery completely or let to make an inspection at 100% supplier's charges.
- 12.4 The minimal guarantee period is 24 months at a 3-shift operation, unless the law or the contract determines a longer period.
- 12.5 Supplier grants the guarantee for supplementary repairs, deliveries of spare parts or for substitute fulfilments – at a new start of the guarantee period – in the same way as for the original deliveries or fulfilments.
- 12.6 At material deficiencies, the buyer may apply the legal warranty claims (even a partial withdrawal from the contract) according to his own selection, to require a substitute delivery or supplementary repair – even in the place of usage, which must be immediately performed by the supplier. All expenses related to the rendered guarantee are borne by the supplier. Besides the costs for work and material, also all expenses, for example for dismantling, assembling, transport, packing, customs, insurance, tests, acceptances, new putting into operation and public payments or charges.
- 12.7 If the substitute delivery or supplementary repair fails, is refused or delayed, the buyer has the right to demand compensation due to non-fulfilment or to withdraw from the contract completely or partially. The supplementary repair is deemed unsuccessful, if the first attempt for supplementary repair is not successful.
- 12.8 In urgent cases, the buyer is entitled to replace at the supplier's expenses the faulty parts or to repair them and remove the arisen damage, or let it perform by a third party at the supplier's expenses.
- 12.9 Further legitimate claims of the buyer – especially those related to the promised properties and guarantees for the product – remain untouched.
13. Responsibility for ecological damage
- 13.1 Supplier is liable for all damage that will arise due to violation of respective valid provisions and the provisions issued to them (for example the water management law, the law for disposal of old oils and wastes). He will protect the buyer against the claims of third parties, which are directed against him because of such violation.
- 13.2 A special obligatory care regarding the utilisation of his deliveries or services, when it deals with the matters jeopardizing the environment, belongs to the supplier. He is obliged to inform the buyer in a due manner and give him opportunity for investigation and carrying-out of appropriate measures.
14. Obligatory force of contract, Salvador clause
- 14.1 Even at a legal ineffectiveness of individual conditions, the other parts of the contract remain binding. As far as some regulation is fully or partially ineffective, then such amendment is deemed agreed, that mostly approaches the required purpose. For explanation, the contractual partners will strive to achieve immediately the economic effect, which strived the regulation, by means of another - legally admissible way.
15. Seat of the court, applicable law
- 15.1 The exclusive seat of the court is, if the supplier is a businessman registered in the Register of Business Names, the person in law of a public law or of a public-private property with a special status, Berlin. The corresponding Chamber for business matters at the regional court is competent.
- 15.2 The German law is applied for all contract relations.
The Haag convention from 1 July 1964 concerning the individual laws about international purchase and the UN agreement from 11 April 1980 about the contracts related to the international purchase of movable assets are not applied.

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VDL DELMAS GmbH
Wärmetauscher+Kühlanlagen