



Terms of the Service Conditions

(Rev.1)

1. Range of services

1.1. Our offers are non-binding unless explicitly stated as being binding.
1.2. The range of services is determined exclusively in accordance with our written order confirmation or secondarily by our written offer. Additional and supplementary agreements must be made in writing.
All services are carried out on the basis of these service conditions and contractual terms. Any existing general terms and conditions will only form part of the agreement if we have accepted them, in writing, entirely or in part. These service conditions are also valid for all future business relations, even if these conditions have not explicitly been agreed again. Deviations from these conditions require our prior written consent.

2. Service fulfilment

2.1. The customer makes the necessary preparations so that the service technician can start the service work immediately after arriving at the respective site. This includes free access to plants and their components.
2.2. If required, the customer will support the service technician in carrying out the service work. Should it be necessary to inspect the site, the customer will provide auxiliary staff in order to meet the valid accident prevention regulations.
2.3. The aim of works covered by the service agreement is to maintain the normal condition of the plant. This includes the timely replacement of worn out parts. The lump sum service payment does not cover the cost of replacement parts. If these are anticipated, they will be offered via order confirmation before the works start or they will be charged on a time and material basis.
2.4. Should the customer not be able to fulfil any agreed obligations stipulated in the service agreement (e.g. free access to the plant) on the agreed service date then the extra expenses will be charged separately.

3. Prices and payment

3.1. The invoice will be issued once the service works have been completed.
3.2. Payment is due within 14 days net of the invoice date.
3.3. Prices do not include VAT; the customer is required to pay VAT additionally at the respective valid rate.
3.4. The invoice is considered as recognised unless a complaint is received within 14 days.

4. Delays

4.1. All details about the duration of the service works are estimates. We endeavour to meet the agreed dates and deadlines as far as possible. No claims for damages can be made should deadlines be exceeded, however.
4.2. If maintenance works are delayed for reasons for which we are not responsible then the customer bears the additional costs arising from the delay, in particular the waiting and travel time costs.

5. Risk

5.1. The customer bears the risk for the subject matter of the contract.

6. Warranty, claims for deficiencies or defects, liability

6.1. Once the repair works have been accepted, we are liable for deficiencies or defects in the repair works that emerge within 12 months after acceptance in that we will remedy the deficiencies or defects, this way excluding other claims by the customer, except as otherwise provided for under 6.6 and in these provisions. This is valid only if the identified deficiencies or defects are reported immediately in writing.
6.2. We guarantee that we will carry out rework for all deficiencies or defects in our service works if the deficiencies or defects are reported to us immediately by the customer. If the rework we have to carry out does not take place or is not free of faults then the customer is entitled to demand a reduction after expiry of a reasonable grace period.
6.3. There is no warranty should the customer carry out rework without our consent, or if the customer employs a third party to carry out the rework. There is also no warranty should the customer fail to give us the necessary time and opportunity to carry out the rework. We are not liable if the deficiency or defect is insubstantial in terms of the interests of the customer, or if the deficiency or defect has been caused by a condition for which the customer is responsible.

6.4. In terms of the costs arising directly from the rework (provided the demand for rework is justified), we accept the costs of the spare part plus shipping, disassembly and installation.

Further claims, especially compensation claims for damage that did not occur to the object in need of repair, are excluded to the extent permitted by law.

This non-warranty clause is not valid in cases of intent, gross negligence or culpable acts. It is also invalid should features that have been expressly promised be missing if precisely this promise was made with the intention of protecting the customer against damage that occurred to an object other than the object in need of repair.

6.5. We do not accept warranty and liability for any parts and material that have been provided by the customer and have not been delivered by us. In this case, in the event of damage or consequential damage, the burden of proof is reversed. For purchased parts or third-party products, our warranty and liability are restricted to the warranty and liability claims we are entitled to make against the external supplier.

6.6. The liability for deficiencies and defects does not cover parts that are subject to premature wear due to their material features or type of use. Also excluded is damage caused by corrosion and weather conditions that may occur to a normal extent typical for the plant when operating under the intended conditions and any further damage caused by corrosion and weather conditions caused by the unpredictable interaction of media affecting the site.

Furthermore, the liability for deficiencies and defects does not cover damage caused by unsuitable operation and assembly conditions, inappropriate storage or inappropriate handling.

6.6. The customer is entitled to a reduction to the extent permitted by law should we – taking the legal exceptions into consideration – allow a reasonable deadline set by us to pass without carrying out rework. The customer is also entitled to a reduction in other cases when rework has not been carried out. The customer is only entitled to withdraw from the contract/rescission should the repair be of no verifiable interest to the customer despite the reduction.

6.7. If the maintained object cannot be used by the customer due to a fault on our side, the provisions given under 6.1 to 6.4 and under 6.6 are applicable, excluding any further claims by the customer.

6.8. If the repaired object cannot be used by the customer as intended in the contract due to a fault on our side, and if this fault is caused by a lack of or faulty implementation of suggestions made, or advice given, before or after the contract has been concluded, as well as of other supplementary contractual obligations – in particular the operation and maintenance instructions for the repaired object – the provisions given under 6.1 to 6.4 and 6.6 and 6.7 apply, excluding any further claims by the customer.

7. Applicable law and place of jurisdiction

7.1. The exclusive place of jurisdiction is Berlin. The competent legal authority is the respective chamber for commercial matters at Berlin District Court.

7.2. The law of the Federal Republic of Germany is valid for all contractual relations.

The ICC-INCOTERMS (2010 edition) have also been taken into account.

VDL DELMAS GmbH
Wärmetauscher+Kühlanlagen