



Selling terms for deliveries and services

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1. Scope of fulfilment

- 1.1 Exclusively our written confirmation of the order, the additional written agreements as well as our delivery conditions are decisive for the scope of deliveries or services. The secondary agreements and amendments require a written confirmation of Supplier.
Validity of diverse business conditions or provisions of customer is expressly excluded. Especially the silence of VDL Delmas GmbH Company towards diverse offers of customer is not regarded as acceptance of an offer. The notices to the conditions of customer, printed or typewritten in the orders have no effectiveness in relation to us. The general business conditions of customer are effective in complementary way or instead of individual conditions only in the case when we expressly accept them in writing.
Receipt of our confirmation of order or delivery is considered as acceptance of our conditions.
- 1.2 All data on our drawings, pictures, dimensional and weight data as well as the data concerning procedure, output and other operational values are in principle the approximate values only, and the right for technical modifications remain reserved.
- 1.3 Our offer documents, drafts, drawings, cost budgets, etc. can be used by the customer only in connection with negotiations about delivery or delivery agreement and he must not reproduce them, neither provides them to the third parties – neither directly nor vicariously. All the documents delivered from our side remain our property, even after they were ceded to customer. If the delivery agreement is not accomplished, the right for asking to send back the delivered materials remains reserved.
- 1.4 The buyer guarantees that the documents furnished by him are correct and that by their using, especially for production of the object of delivery, the rights of third parties will not be violated.
- 1.5 We assure that the quality is ensured by the quality assurance management according to DIN ISO 9001/9002 (or by equivalent). The production enterprises, authorized by our Company to make production, are obliged to ensure and to prove the quality according to the regulations of our quality assurance manual.
- 1.6 The acceptance tests will be performed at the extent that is specified by German provisions and regulations. Above all, all of the heat exchangers and appliances delivered by our Company will be subject to a pressure test with the agreed checking pressure values. Output measurement for checking of power and operation values is performed only on the basis of a special agreement and against calculation of costs.
- 1.7 Unless the customer requires it expressly, the packing will be only performed if it is necessary according to our experiences. The packages are invoiced to overhead costs and cannot be taken back because of economy.

2. Place of fulfilment

The buyer has to provide us with sufficient knowledge about the place of installation and the application conditions of delivered goods or service. It deals especially with climatic and ecological conditions as well as operation conditions and legitimate regulations at the installation place. Due to shortage of knowledge, we are going out from normal operating conditions for installations in protected spaces in Germany.

3. Test certificates and documentation

- 3.1 At the delivery, the customer will receive for all delivered heat exchangers and cooling devices the certificate about inspection in the factory according to DIN 50049-2.3, serving as a document proving the performed pressure test. On demand, the further checking certificates and statements will be made out on the basis of the respective order, against invoicing.
- 3.2 The customer will receive a standard documentation in German language for all delivered heat exchangers and cooling devices, at latest during delivery. Generally, it comprises drawings or a dimensional sheet, technical description, as well as a maintenance and instruction manual for the parts of the delivery being determining for operation.
On demand, the detailed documents in several copies as well as a copy in some European foreign language will be delivered against invoicing.

4. Price and payment

- 4.1 Our prices are stated, unless agreed otherwise, from our corresponding production plant, including loading, but without packing and transport insurance. The legal TVA will be added to the prices. The possible customs and charges for export deliveries will enter to the debit of customer.
- 4.2 The invoice will be issued on delivery day; the advance payment invoice is issued on purchase order day. The invoiced sum is payable immediately and, unless agreed otherwise, it is to be paid within 14 days after the invoice date with 2% discount, or 3 days at latest after the invoice date net. The invoices of customer service, other invoices with relation to wages are payable immediately without discount. In case of big orders or a reduced financial standing of customer, we insist in a direct payment.
- 4.3 If the customer will not comply with these payment conditions (or other ones - agreed in writing), he is coming to a delay period without a reminder. We are eligible, without a special evidence, to demand in the current invoice payment of the interest for delayed payment at the amount of the bank rough interest rate for loans, which is just valid for our purposes. In case of a delayed payment, all our claims towards the customer are getting payable immediately, and therefore those customer's payments become delayed, too.
- 4.4 If the information or other circumstances will indicate a threatening of our claims resulting from the delivery contract, we are entitled to withdraw from the contract without any duty to offer indemnity, while our claims from partial performances are preserved.

- 4.5 The bank exchanges (bills) are accepted only in case of a correspondent written agreement and for maximal validity period of 90 days after the invoice date. The contingent acceptance of bills or cheques is performed only for payment and without our duty to take over the law of exchange and cheques. The interest discount, expenses, etc. enter to the debit of customer. If the bill is not paid in time, the stipulations according to the item 3.3 are effective.
- 4.6 The invoice is to be claimed within the period of 10 days after delivery of invoice, otherwise the invoice is recognized from the side of customer as correct.
- 4.7 The customer may freeze the payments or to credit them only with lawfully determined or not denied claims from our side.
- 5. Reservation of ownership**
- 5.1 All deliveries are performed with reservation of ownership according to § 449 BGB with following complements:
- 5.2 The reservation of ownership exists until all claims are settled, and in case of current invoices until settlement of mildly exceeded and recognized balance.
- 5.3 Modification and processing of the reserved goods by customer are always performed on the basis of our commission, but without commitment to our side. The effectiveness of § 950 BGB is excluded in this way.
For all cases of §§ 947 and 948 BGB, the customer resigns even now his rights of ownership, or co-ownership and preserves them for us.
Finally, for the case that the transfer of ownership towards our side fails from any reason, the customer drops on our behalf even now the possible claims of the customer from § 951 BGB.
The possible rights of the third parties, which have them on other parts of a novelty, remain untouched in all cases of item 4.3.
- 5.4 The supplier is entitled to cover the object of delivery by insurance at customer's expense, against theft, burglary, fire, water and other damage, unless the customer himself has affected provably the insurance.
- 5.5 The customer must not neither impawn nor to transfer the object of delivery as a guarantee. He must avert all constraints of our rights by the third parties as good as possible and to give us advice immediately.
- 6. Delivery date and delay**
- 6.1 The delivery dates are only valid as approximate and they start with the date of order confirmation, but not sooner than the customer offers the procured documents, material, approvals, permissions and before arrival of possibly agreed advance payment. The same applies to the agreement concerning delivery dates.
- 6.2 The delivery times and delivery dates use to be prolonged accordingly at some obstacle – even on the side of our sub-suppliers – caused by the measures taken within class struggles (particularly a strike and a lock-out, as well as at occurrence of unexpected events) being beyond supplier's will, as far as such events have a substantial influence for finalization or delivery of the object of delivery.
The delay in the case of such restrictions cannot be excused, provided we were in a delay at the time of the event occurrence.
If some of the above-mentioned restrictions hinder implementation of the order in excessive way, we have the right to withdraw from the contract while our claims from partial fulfilment remain preserved. The customer's indemnity claims in case of such withdrawal are excluded.
- 6.3 The delivery times are observed, if the agreed object of delivery left the production factory before their expiry and the customer was advised about readiness for shipment or he was informed about taking over of the agreed service.
- 6.4 In case the delivery is delayed due to a simple negligence, we offer the indemnity, but no sooner than after expiry of the reasonable additional delivery time determined for us, at a correspondent documentation of the amount of damages, limited to 0.5% for each terminated week after expiration of the additional delivery time, but no more than 5% from the value of the parts, which were not delivered in due time.
The contractual fines are effective only after they were expressly agreed. We are not obliged to pay the contractual fines, which are invoiced to the customer from the third parties. The same applies for the case of the delivery delay due to a gross negligence. If the stipulation about gross negligence is ineffective, then the contractual fines that are invoiced to the customer by third parties are accepted as losses due to a delay only in the case, if we can be blamed for an intention or a gross negligence.
- 6.5 If the dispatch is delayed on customer's request then he is, starting the first month after the advice about readiness for shipment, charged with the expenses due to storage, this being at minimum 0.5% of the invoiced sum per month. Nevertheless, after determination and lapse of the reasonable time, the supplier is authorized to dispose of the object of delivery by another way and deliver to the customer in a reasonable time.
- 6.6 Observance of the delivery time or of the agreed delivery date supposes the accomplishment of customer's contractual duties.
- 7. Works on the place of installation**
- 7.1 We will assign a professional manager for the building site. He will be equipped with indispensable powers.
The professional personnel equipped with necessary certificates of qualification corresponding to requirements are at the site manager disposal.



- 7.2 The direct agreements between the site manager, the buyer's customer and other companies working on the building site need to be approved by the buyer.
The site managers have to be, by means of the specialist responsible for work safety (both of the buyer and operator of equipment), informed about possible dangers on the place of installation, as well as agree and arrange the necessary safety precautions in co-operation with him.
- 7.3 Before the beginning of installation works, the supplier must check the place of installation, whether the appropriate working conditions and necessary means and lifting devices are on the site. The 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.
- 7.4 Supplier will protect the buyer from all claims and consequences resulting from nonobservance of the laws, instructions and regulations.
8. Dispatch and risk transfer
- 8.1 Unless otherwise agreed, the expenses for dispatch and packing, customs, fees and other payments are debited to the customer.
- 8.2 When the price from factory or from storehouse is determined, we will always do the transport at lowest costs, unless the customer 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 (being the customer's responsibility) with the aim to meet a delivery date is borne by customer.
- 8.3 When the price is determined "Free delivered", the customer can give the necessary instructions concerning packing, way of transport, transport company and forwarder, after the contract was concluded. The possible increased costs arisen in this way will be advised to the customer for approval before performance, and are invoiced to him.
- 8.4 Each delivery is to be equipped with dispatch notes or the tickets being placed on a packet with indication of the contents, number of DELMAS purchase order and with other characteristics of the order specified by the customer.
- 8.5 The deliveries, which the sub-suppliers or the production factories working for us dispatch according to our instruction to the customer, can be equipped exclusively with original dispatch notes of DELMAS GmbH Company.
- 8.6 At the deliveries and partial deliveries without assembling or installation, the risk transfers to the customer by handing over, by dispatch or by termination of loading in our production factory.
At the delivery including assembling or installation and at services, the risk transfers after the handing over procedure performed by the buyer or his representative in the fulfilment place or by putting into operation.
If the handing over, dispatch or taking over is delayed or is prevented for the reasons beyond our side, the risk is transferred (including partial deliveries) to the customer after preparation, advising readiness for shipment or taking over, or after termination of installation or service.
If the installation is delayed for the reasons beyond our side, the risk passes for the sake of the delayed time to the customer.
- 8.7 We conclude insurance of the consignment against the theft, the damage caused by burglary, transport, fire and water as well as the other insurance risks only according to the instruction of the customer and on his account.
- 8.8 The customer has to take over the delivered goods, although they show some irrelevant imperfections, without prejudice of the rights stipulated in the article 9.
- 8.9 The partial deliveries are allowable, unless they are contractually excluded.
9. Warranty and shortcoming liability
- 9.1 We are liable for deficiencies of the delivery, including also the absence of expressly promised properties, with exclusion of another claim and without taking regard to the article 10, in the following way:
- 9.2 All the parts, which in the period of 24 months (12 months at a 3-shift operation) from the delivery date, risk transfer due to the circumstances before the transfer of risk – especially for reason of defective construction, wrong material or incorrect execution – have shown as unserviceable or irrelevantly defective in view of their serviceability, are to be either repaired or redelivered free of charge, at discretion of the supplier. Finding of such imperfections is to be immediately reported to us in writing.
The replaced parts become propriety of supplier.
- 9.3 If the dispatch, installation or putting into operation is delayed without our guilt, the warranty expires 18 month after the risk transfer at latest.
- 9.4 In case of purchased parts or foreign products, our liability and guarantee is restricted to the claims from liability and responsibility, which are pertaining to us in this regard towards the sub-supplier.
- 9.5 We reimburse in the adequate extent from secondary costs, arising directly by a supplementary repair or by substitute delivery, the expenses for dispatch of spare pieces as well as the expenses for assembling and dismantling, provided the claim will show to be justified.
The expenses for sending back the claimed piece to our corresponding production factory and the transport risk are borne by the buyer.
- 9.6 The scope of liability for the objects of delivery outside Germany is restricted to such performances that would arise, in case of warranty, in the place of borderline crossing.
- 9.7 The guarantee period for the spare parts and repairs is 3 months. But it runs at least up to expiry date of the original warranty period for the object of delivery. The guarantee period for imperfections on the object of delivery is prolonged by the time of interrupted operation due to a repair.
- 9.8 The guarantee is excluded, if the customer performs the repairs without our approval or if he let make them by a third party. The guarantee is also refused if the customer does not provide us with indispensable time and opportunity to perform a repair.
- 9.9 If the repair performed by our side is not free from faults or will not be performed at all, and even after determination and unsuccessful lapse of adequate additional time is not correct or is not performed at all, the customer may enforce a discount from the price.
In case the parties do not come to an agreement about the discount rate, the customer can back out of the contract.
- 9.10 The guarantee for imperfections is not related to the delivered pieces, as far as they are, due to their material properties or kind of application, subject to early consumption; for example sealing, connecting parts, drive belts, carbon brushes at grinding rings, throttling cones, membranes and other parts made from the material like rubber, plastic, leather, etc.
The guarantee for imperfections excludes all damages caused by corrosion and atmospheric effects, which could occur adequately to the scheduled operation conditions in a normal level, typical for the equipment; moreover the damages caused by corrosion and atmospheric effects, which are based on unpredictable composition of influencing media could occur.
The guarantee for imperfections neither applies to the damages caused by unsuitable operation conditions and installation circumstances, unprofessional storage, unprofessional installation by the third parties or by the customer himself or a faulty maintenance or attendance.
- 9.11 Further claims, especially the claim for compensation of damage, which has not arisen on the delivery object itself, are – as far as the law recognizes it – excluded.
The guarantee exclusion does not apply to the case of intention, gross negligence or guilty behaviour of the supplier's managing persons. Neither is applied if the expressly promised properties are absent, when just this promise was aimed to secure the customer against the damages, which do not arise on the delivery object itself.
- 9.12 Warranty claims of the customer will become statute-barred 6 months after the immediate written advice on the imperfection, but not before expiry of guarantee period according to the article 9.2. The rights of the customer according to the effective German law about liability for a product remain untouched.
10. Buyer's right for withdrawal
- 10.1 The buyer can withdraw from the contract if the supplier cannot perform the whole fulfilment before the risk transfer.
The same is applied at ineligibility of the supplier.
- 10.2 If a delay of delivery occurs according to the article 6 of our delivery terms, the buyer will provide us with the adequate additional period including an explicit declaration that after expiry of this period, he will refuse to accept the fulfilment, and if the additional period is not observed, the buyer is eligible to back out of contract.
If the impossibility will occur in the course of a delay during taking over procedure or by the fault of the buyer, then he is getting bound to offer a consideration.
11. Supplier's right for withdrawal
In case of unpredictable events in terms of the article 6, provided they will essentially change the economic significance or contents of the fulfilment or they have the essential influence to the operation of supplier and are beyond his responsibility – especially force majeure, class struggles and/or official measures, and for the case of a supplementary ineligibility of implementation the contract will be adequately amended. If it is not tolerable in economic way, the supplier has a right to withdraw from the contract, either completely or partially.
The indemnity claims due to such withdrawal are excluded.
12. Obligatory force of contract, Salvador clause
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, which 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.
13. Seat of the court, applicable law
- 13.1 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.
- 13.2 The German law is applied for all contract relations.
Moreover, the "ICC-INCOTERMS" (issue 2000) and General delivery terms for export of machines and equipment of UN Economic Commission for Europe (No. 188/Geneva, March 1953) are taken into consideration.
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
Heat exchangers + Cooling devices