



Terms and Conditions of Purchase

of DELMAG GmbH & Co.KG
Boschstraße 8
63843 Niedernberg, Deutschland
manufacturing-facility: 73730 Esslingen, Deutschland

1. General/Scope

- These Terms and Conditions of Purchase apply exclusively. DELMAG does not accept any conflicting or deviating terms furnished by the Supplier, unless otherwise explicitly agreed to the application thereof in writing. These Terms and Conditions of Purchase also apply, even if we accept the Supplier's delivery without any reservation in full knowledge that the Supplier's terms are conflicting with or deviate from these Terms and Conditions of Purchase.
- Any and all agreements made between DELMAG and the Supplier for the purpose of performing this Contract, have to be set out in writing in the Contract.
- These Terms and Conditions of Purchase shall only apply to businesses in accordance with Sec. 13 German Civil Code (Bürgerliches Gesetzbuch, BGB).

2. Offer/Acceptance/Changes

- Any offers by the Supplier have to be made free of charge.
- The Supplier is obliged to confirm our order in writing within a period of 5 working days (Mondays to Fridays).
- Any change in the order confirmation requires DELMAG's written acknowledgment for becoming valid.

3. Prices/Terms of Payment

- The price stated in our order is binding. Unless otherwise agreed in writing, the price includes the cost of carriage and packaging. For foreign business section 10 sub-section 4 shall apply.
- DELMAG can only process invoices comprising the following information according to the specifications made in our order: order number, order item, DELMAG part number, description, quantity, delivery date.
- Unless otherwise agreed in writing, payment of the purchase price shall be made within 21 days less 3 per cent cash discount or net within 60 days, in each case after receipt of the goods and the invoice (in accordance with the provisions set out in above sub-section).
- DELMAG is entitled to enforce any rights of set-off or retention to the extent prescribed by law.

4. Delivery Time

- The delivery time stated in DELMAG's order is binding.
- The Supplier is obliged to notify DELMAG in writing as soon as he becomes aware of any past or future circumstances that may result in a non-compliance with the agreed delivery time.
- In case of a delay in delivery, DELMAG is entitled to the damages provided under statute.
- Any premature delivery requires DELMAG's explicit approval.

5. Passing of Risk/Documents

- Unless otherwise agreed in writing, delivery shall be effected DDP Niedernberg (INCOTERMS 2010). For foreign business section 10 sub-section 4 shall apply.
- The Supplier is obliged to make the following statements (on all shipping documents and delivery notes): order number, order item, DELMAG's part number, description, quantity, delivery date.
- DELMAG shall not be responsible for any delay in processing due to full or partial lack of detail(s). At the same time, any expenditure incurred to DELMAG due to the determination of missing detail(s) shall be reimbursed by the Supplier.

6. Claims Based on Defects

- DELMAG may claim for defects according to any respective provisions of statutory law. In any case DELMAG is, at its discretion, entitled to demand either the removal of the defect(s) or a replacement delivery. DELMAG explicitly reserves the right to claim damages, and in particular the payment of a compensation instead of performance.
- In cases of imminent danger or exceptional urgency DELMAG is entitled to remove the defects on its own at the Supplier's expense.
- The limitation period shall be 36 months from the passing of the risk.

7. (Product) Liability Insurance

- The Supplier is obliged to effect and maintain a product liability insurance against personal injury/property damage with a lump-sum coverage of 3 million Euros per occurrence for either the duration of the Contract or until the respective expiry of the limitation period for each defect; however this obligation is without prejudice to any further damages DELMAG may be entitled to.

8. Third-Party Rights

- The Supplier warrants that none of the goods he delivers infringes any third party's right. The Supplier is obliged to indemnify and hold DELMAG harmless against all claims advanced by any third party. The Supplier's obligation to indemnify shall comprise all actions, suits, claims, losses, charges, costs and expenses necessarily arising from or in connection with third-party demands.
- The limitation period shall be 10 years from the conclusion of the Contract.

9. Provision of Parts, DELMAG's Copyrights

- Should DELMAG provide the Supplier with any parts, DELMAG shall retain the title thereof. The Supplier shall carry out any processing or modification of such parts on DELMAG's behalf solely. Should the parts subject to retention of title be processed with other objects not belonging to DELMAG, DELMAG will obtain a title in the new goods in proportion to the value of DELMAG's parts (purchase price plus VAT) compared to the other processed object at the time of their processing. Should Goods provided by DELMAG be inseparably mixed with other objects not belonging to DELMAG, DELMAG will obtain a title in the new goods in proportion to the value of our parts (purchase price plus VAT) compared to the other mixed objects at the time of their mixing. Should the mixing be effected in such a way that the objects provided by the Supplier are the principal goods, then it shall be deemed as agreed that the Supplier shall award DELMAG a proportional co-title, with the Supplier keeping in custody the goods DELMAG has a sole or co-title to. Should the security interest in the personal property that is due to DELMAG pursuant to the sub-sections 1 and 2 above exceed the purchase price of all DELMAG's unpaid goods subject to retention of title by more than 10 per cent, DELMAG shall be obliged, at its discretion, to surrender the security interest at the Supplier's request.
- DELMAG expressly reserves the intellectual property (copyrights and other property rights) rights in all parts, tools, models, drawings and other documents, data and materials provided by DELMAG. The Supplier is not entitled to disclose to any third party any information or data, drawings or models. Any of these shall be returned to us upon execution of the order without the requirement of a request. The Supplier is obliged to handle with care and hold in safe custody these objects until they are returned to DELMAG.

10. Place of Jurisdiction / Place of Performance / Applicable Law / Foreign Business

- If the Supplier is considered as a merchant according to the German Commercial Code (Handelsgesetzbuch, HGB), DELMAG's place of business (Niedernberg) is considered the place of jurisdiction. DELMAG shall, however, be entitled to take proceedings against the Supplier in any other court of competent jurisdiction.
- Unless any other agreement can be derived from the order, DELMAG's place of business shall be the place of performance.
- The contract shall be governed by German law to the exclusion of the UN Sales Convention (CISG).
- With respect to foreign business, the INCOTERMS 2010, Delivered Duty Paid (DDP) Niedernberg as well as the Uniform Customs and Practices for Documentary Credits (UCP) in force at the time of the conclusion of the contract shall apply, unless there has been another agreement made in writing in the Contract or these Terms and Conditions of Purchase.

11. Data Protection

- DELMAG uses Electronic Data Processing (EDP), storing data within the scope permitted by law (Sec. 33 German Federal Data Protection Act).