

General Business Terms and Conditions

DELMAG GmbH & Co. KG, Boschstraße 8, 63843 Niedernberg, Germany

11.2004

A. General Rules

1. We engage in legal transactions only on the basis of these general business terms and conditions. We oppose the validity of the general business conditions of the business partner.
2. Our offers are not binding.
We are liable only for statements on quality made purposely in contractual negotiations by employees who are authorized to conclude contracts, or resulting from topical advertising brochures or from topical publications contracted by us. Because of continual development, information which is older than 12 months can no longer be considered to be topical and obliges the business partner to make further inquiries.
The publishing of details in advertising, in brochures, or on the occasion of contractual negotiations serve quality description and shall not substantiate any rights of the business partner. In particular, the information does not represent any guarantee.
3. In the event that we are entitled to damages for breach of duty committed by the business partner, we are entitled to 25 % of the sum of the contract as lump sum compensation. We reserve the right to prove higher damage. The business partner reserves the right to prove that less damage occurred for which his obligation to indemnify is limited.
4. The setting-off against our claims can only be made with uncontested or legally valid claims. This also applies to the right of retention.
5. The prices are valid "ex manufacturing plant", excl. packing, loading, forwarding, insurance, installation and starting up. The respective legal value added tax is to be added.
6. The forwarding of machines, spare parts and other objects shall be executed on the account and risk of our business partner, who is also responsible for insuring the same.
7. Unless otherwise stipulated, we carry out the delivery of goods through provision of the object of the agreement for collection from our plant or through forwarding from our plant. The products are delivered within the specified time through the delivery.
8. Part deliveries are admissible. The stated delivery times are approximate indications, except if they were explicitly indicated in writing as being binding.
9. We are working with EDP systems and store data to the extent permitted by law (§ 33 BDSG [German Privacy Act]).
10. Should separate provisions of this agreement or of these general business terms and conditions be or become ineffective or impracticable in full or in part, or are declared ineffective by a court or administrative decision, the validity or practicability of the remaining provisions of this agreement or these conditions are not affected thereby.
11. The place of jurisdiction is Aschaffenburg; Germany.
12. The general conditions are exclusively governed by the Law of the Federal Republic of Germany. The validity of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

B. Sale

1. Concerning the sale of new machines and parts, we are entitled when manufacturing to carry out modifications to the construction, equipment and volume, so long as these modifications serve the technical progress, do not cause changes in price and are considered to be acceptable to the business partner.
2. We reserve the proprietary rights to the machines and parts sold by us until all our claims against the business partner are fulfilled. Our claims which arise after delivery but before full satisfaction of our claims also constitute part of the whole of our claims. As far as our business partner has acquired the machines and parts for resale, this resale is allowed within the scope of business transactions according to general practice. He assigns to us all claims resulting from such transactions already today. We are entitled to inform the customer of this assignment as soon as the business partner fails to fully comply with his obligations towards us. He is obliged to supply us with the required data.
We engage to release securities we are entitled to to the business partner upon demand, in so far as the realizable value of our securities will not exceed the receivables to secure by more than 10%; the selection of the securities to release are incumbent upon us.
The business partner undertakes to inform us immediately of any access of third parties or any other interference to the products under reservation of title. He has to inform the third party of our reservation of proprietary rights, and he has to pay all costs required for the cancellation of access as far as these costs cannot be collected from the third party.
During the validity of reservation of title, the business partner has to insure the products under reservation of title against fire, theft and robbery providing that we are entitled to the rights resulting from the contract of insurance.
3. Any guarantee [BGB - German Civil Code, Gewährleistung] is excluded in case of the sale of used machines and parts.
4. In the event that, after having been delivered, the machines or other objects are defective, we are free to decide to affect performance either through remedying the defect or through delivery of an object free of defects.
The time span to be granted to us for remedying a defect is at least two weeks. In the event of unsuccessful remedying of defects, the repudiation of contract is excluded, irrespective of other warranty claims of the business partner.

The warranty claims of the business partner become statute-barred after 12 months as of delivery, regardless whether the defect was known or not.

5. Our products are sold by us to the business partner for use in his business enterprise. A resale to consumers (§13 BGB – German Civil Code) is inadmissible. In the event of the products being passed on, the business partner undertakes to transfer this obligation to his contractual partner. He exempts us from all claims of consumers who may have received our products through him.

C. Installation

1. Within the relationship to third parties our fitters act as persons employed by the business partner in performing an obligation for whom the principal is vicariously liable. They will observe his instructions. The fitters are entitled to refuse instructions which are contradictory to proper installation, to the recognized technical rules, or to the legal provisions, without their assuming any responsibility in complying with the instructions for the regularity and lawfulness of the ordered activities.
2. The scale of charges for the fitters is fixed separately in our specified price quotations and additional conditions referring to the assignment of fitters.
3. When completing work on the basis of the agreed installation lump-sum, our business partner has work done by our fitters which is not part of the lump-sum agreed for installation, these activities are to be remunerated in addition, according to our underlying usual installation rates and cost of material.
4. The fitter's waiting period, in particular those resulting from delays on the construction site are to be remunerated as working time.
5. Besides the working hours for installation, the expenditure (material, travelling costs and travelling time, overnight stay, daily expense etc.) is to be remunerated separately.

D. Hiring

1. The lease begins on the date of the reservation of the leased property in our plant and ends on the date of re-delivery, at the earliest at the end of the term of lease.
2. The business partner bears the risk of damage and loss of the leased property during the term of lease. He pays for the insurance of the leased property effected in our name, and for the provision of security he assigns his claims against the insurance company to us on the date of the beginning of the term of lease.
3. For the calculation of the insurance, all consecutive days between the collection and return (incl. Sundays and public holidays, and the days of transportation) are invoiced.
4. We do not undertake liability concerning the suitability of the leased property for the business partner's intended use.
5. The business partner undertakes to duly maintain the leased property during the term of lease and to observe particularly the maintenance instructions and the technical rules. Any repair work which becomes necessary and the replacement of worn parts are to be borne by the business partner.
6. As a matter of principle, an overhaul will take place in our company after re-delivery after termination of the lease. Apart from normal wear and tear, we are entitled without any announcement or extension to clean the leased property and to place it into the former state at the business partner's expense.
7. When the leased machines are collected they are filled up with diesel fuel. If they are not returned filled up, the difference in the quantity of diesel fuel will be invoiced.

E. Liability

1. We will be liable - for whatever cause in law - for damage that occurs to the object of delivery/object of assembly itself, only
 - a) if done intentionally;
 - b) upon gross negligence by our bodies and executives (in the present case limited to the damage typical to the contract and reasonably foreseeable);
 - c) upon culpable injury to life, body, health;
 - d) upon defects that were fraudulently concealed or whose absence was guaranteed;
 - e) upon defects of the object of delivery, as far as we are liable according to the Product Liability Act, for personal injury and property damage on objects used for private purposes;
 - f) upon culpable violation of essential contractual obligations we are also liable upon gross negligence by non-executives and upon slight negligence, in the latter case limited to the damage typical to the contract and reasonably foreseeable.
2. As far as we are liable for delays our liability is likewise limited to the damage typical to the contract and reasonably foreseeable, as far as no culpable injury to life, body or health exists.

Claims other than the ones regulated above are excluded.