

# General Terms of Delivery and Payment KLÖCKNER DESMA Schuhmaschinen GmbH

# DESMA

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## I. General information

1. These terms and conditions as well as any and all separate contractual agreements shall be deemed as a basis for all deliveries and services. No deviating terms and conditions of purchase of the Buyer shall become part of the contract even when an order is accepted. A contract shall – in the absence of a separate agreement – materialise upon receipt of the written order confirmation from the supplier.

2. The Supplier reserves the rights to property and copyright for samples, cost estimates, sketches, etc., information of a physical and immaterial type – even in electronic form; they may not be made accessible to third parties. The Supplier undertakes to obtain the prior consent of the Buyer before making any information and documents described as confidential by the Buyer accessible to third parties.

3. No public statements of the Supplier in particular in advertising will be deemed as contents of the contract. The Buyer may not derive expectations for certain features of the delivered object from any descriptions and presentations in public statements made by the Supplier. Documents such as figures, sketches, information on weight and dimensions, which the Supplier may enclose with his offer, shall only be deemed as approximately decisive insofar as they are not expressly described as binding.

## II. Price and payment

1. In the absence of a separate agreement the prices shall apply ex works including loading in the works, however excluding packaging and unloading. The prices do not include the applicable rate of value added tax. The prices valid on the day the contract is entered into will always apply. The supplier reserves the right to change his prices accordingly if there are any reductions or increases in costs after conclusion of the contract, in particular owing to collective wage agreements or changes in prices of materials. The Supplier shall provide proof of this to the Buyer upon request.

2. In the absence of a special agreement the payment shall be made without any deduction onto the account of the Supplier and indeed:

- 30 % payment on account after receipt of the order confirmation,
- 60 % with the declaration of the Supplier that the goods are ready for dispatch,
- 10 % 30 days after commissioning, no later than 60 days after delivery

Invoices for spare parts and invoices for services shall be due and payable within 30 days without deduction.

3. The Buyer shall insofar only be entitled to the right to retain payments or to set off against counter claims if his counter claims shall be undisputed or have been declared final.

4. The Buyer shall be in default when a reminder is sent after the due date, no later however than 30 days after due date and receipt of an invoice or an equivalent payment demand of the supplier. Should the Buyer be in default of payment then the Supplier shall be entitled to demand interest on default in the amount of the respective bank rates for overdraft facilities from due date at least however in the amount of 8 % p.a. above the base lending rate according to § 1 of the Discount Rate Transference Act of 9 June 1998 (BGBl. I P. 1242). In the event that the Supplier shall be in the position to prove higher damages due to default he shall be entitled to assert these.

5. The claims of the Supplier shall, for example, be due and payable immediately independent of the term of any collected and irrevocably credited bills of exchange if the terms of payment are not observed or the supplier is aware of circumstances which are suitable for reducing the creditworthiness of the Buyer. The Supplier shall then also be entitled to only execute any deliveries still outstanding against an advance payment. Should the Buyer be in default of payment then the Supplier is additionally entitled to rescind from the contract and also to demand compensation. The Supplier may also prohibit the resale and installation of the delivered goods and to demand their return or the assignment of the indirect possession of the delivered goods at the costs of the Buyer. The Buyer shall hereby now already authorize the Supplier to access his company in the cases mentioned and to remove the delivered goods, the removal shall not be deemed as a rescission from the contract.

## III. Time of delivery, delay in delivery

1. The time of delivery may be derived from the agreements of the contractual parties. The observance of the time by the Supplier presumes that all commercial and technical questions have been clarified between the contractual parties and the Buyer shall have fulfilled all obligations, for which he is responsible, such as e.g. provision of the necessary official certificates or permits or has made a down payment. If this is not the case, then the delivery time shall be extended by a reasonable extent. This shall not apply insofar as the Supplier shall be responsible for the delivery. In case of a subsequent change to the order the Supplier shall be entitled to extend the delivery time.

2. The observance of the delivery period shall be subject to the correct and timely self-delivery. Should the Supplier become aware of any delays he shall inform the Buyer as soon as possible.

3. The delivery period shall be deemed as observed if the delivered object has left the Supplier's plant before expiry of the period or notification has been given that the goods are ready for delivery. **Insofar as the goods are to be accepted** – except with justified refusal of acceptance – the acceptance date shall be decisive, alternatively the notification that the goods are ready for acceptance.

4. In the event that the dispatch or the acceptance of the delivered object shall be delayed for reasons for which the Buyer shall be responsible then he shall be charged the costs incurred through the delay beginning one month after notification has been given that the goods are ready for dispatch or acceptance. In particular, the Supplier shall be entitled to store the delivered object with third parties at the risk and the cost of the Buyer. The Supplier shall also be entitled to dispose otherwise of the delivered object after setting and unsuccessful expiry of a reasonable deadline, to deliver the goods to the Buyer with a reasonable extended deadline and to charge the prices applicable upon delivery.

5. In the event that the non-observance of the delivery time shall be due to force majeure, industrial disputes or any other events, which are outside of the sphere of influence of the Supplier then the delivery time shall be extended accordingly and indeed no matter whether these events occur at the supplier or a subcontractor. Neither will the Supplier be responsible for the afore-mentioned events if they occur

during an already existing default. The Supplier shall inform the Buyer of the occurrence and the end of such circumstances as soon as possible.

6. The Buyer shall be entitled to rescind from the contract without notice if it shall be finally deemed impossible for the Supplier to perform the full service before passing of risk. In addition to this, the Buyer may rescind from the contract if it shall be impossible to execute a part of the delivery of an order and he shall have a justified interest in refusing the part delivery. If this is not the case then the Buyer shall pay the contractual price due for the part delivery. The same shall apply in the case of incapacity of the Supplier. Incidentally, Section VII. 2 shall apply.

Should it be impossible or in the case of incapacity during the delay in acceptance or should the Buyer be exclusively or mainly responsible for these circumstances he shall be obliged to pay a consideration.

7. Should the Supplier be in default and the Buyer be entitled to damages from this then he shall be entitled to demand a flat rate compensation for default. It shall amount to 0.5% for each full week of the delay, in total however a maximum of 5 % of the value of that part of the total delivery which cannot be used in time or as per contract owing to the delay.

Should the Buyer set the Supplier a reasonable deadline for performance – taking into account the statutory exceptional cases – after due date and should the deadline not be met, the Buyer shall be entitled to rescind from the contract within the framework of the statutory regulations. Further claims from delay in delivery are determined exclusively according to Section VII.2 of these terms and conditions.

8. In the event that the Buyer shall cancel his order or refuse acceptance of the delivered object for reasons, for which he shall be responsible, then the Supplier, insofar as he shall not insist on performance, shall be entitled to cancellation costs of 10 per cent of the order value instead of compensation without having to provide any further proof. Besides the cancellation costs, the Buyer shall pay for any equipment of the delivered object specially produced for him, which will upon request be made available to him.

## IV. Passing of risk, acceptance, transport

1. The risk shall pass onto the Buyer when the goods are handed over to the carrier or **freight forwarder** no later however than if the delivered object has left the works and indeed also if part deliveries take place or the Supplier has assumed responsibility for other services, e.g. the dispatch costs or delivery and installation. Insofar as an acceptance has taken place this shall be decisive for the passing of risk. It must be carried out immediately on the acceptance date, alternatively after notification by the Supplier that the goods are ready for acceptance. The Buyer may not refuse acceptance in the case of an insignificant fault.

2. In the case that the dispatch or acceptance is delayed or omitted owing to circumstances which cannot be attributed to the Supplier the risk shall pass to the Buyer from the date of the notification that the goods are ready for dispatch or acceptance. The Supplier undertakes at the cost of the Buyer to take out any insurances, which he may demand.

3. Part deliveries are permitted insofar as reasonable for the Buyer.

4. In the case of damages in transit the Buyer shall immediately arrange for the facts to be recorded by the responsible departments.

5. Delivered objects are, even if they show insignificant faults, to be accepted by the Buyer notwithstanding the rights from Section VI. of these terms and conditions.

6. The Supplier will not take back any transport- nor other packaging according to the stipulations of the packaging regulations.

## V. Reservation of title

1. The Supplier reserves the rights to the property of the delivered object until receipt of all payments from the contract of delivery.

2. The Supplier shall be entitled to insure the delivered object at the cost of the Buyer against theft, breakage, fire, water and other damages insofar as the Buyer shall not have taken out any such insurance and have provided proof of such.

3. The Buyer may neither sell, pledge nor assign as collateral the delivered object subject to Section V.8. He shall inform the Supplier immediately in case of pledges and confiscation or other disposals by a third party.

4. In case of any conduct of the Buyer which is in breach of the contract, in particular in case of default of payment, the Supplier shall be entitled to take the delivered object back after warning and the Buyer is obliged to return this.

5. Owing to the reservation of title the Supplier may only demand return of the delivered object if he has rescinded from the contract.

6. The application for initiation of insolvency proceedings entitles the Supplier to rescind from the contract and to demand the immediate return of the delivered object.

7. In case of processing, combination and mixing of the reserved goods with other goods by the Buyer the Supplier shall be entitled to the co-ownership of the new object as a proportion of the invoice value of the reserved goods compared with the invoice value of the other goods used. In the event that the title of the Supplier shall expire by combining or mixing then the Buyer shall hereby assign him now already the rights of ownership in the new stock to which he is entitled or the object to the extent of the invoice value of the reserved goods and shall keep these safe for him free of charge. The rights of co-ownership incurred through this shall apply as reserved goods in the sense of Section V.1.

8. The Buyer may only sell reserved goods in usual business transactions under his normal business terms and conditions and as long as he shall not be in default under the condition that he shall agree a reservation of title with his buyers and that the claims from the resale pass to the Supplier according to Section V.9. to V.11. He shall not be entitled to any other disposals of the reserved goods.

9. The claims of the Buyer from the resale of the reserved goods will hereby now already be assigned to the Supplier, who shall accept this. They will serve to the same extent as security as the reserved goods.

10. In the event that the reserved goods are sold by the Buyer together with other goods not sold by the Supplier then the assignment of the claim shall apply from the resale only in the amount of the invoice value of the respectively sold reserved goods. In the case of the sale of goods for which the Supplier has co-ownership shares acc. Section V.7. the assignment of the claim shall apply in the amount of these co-ownership shares.

11. In the event that the reserved goods are used by the Buyer to satisfy a service contract then section V.9. and V.10. shall apply accordingly for the claim under this contract.

12. The Buyer shall be entitled to collect claims from the sale acc. Section V.8. and V.11. until the revocation of the Supplier which shall be permitted at all times. The Supplier shall make use of the right to revocation only in the cases mentioned in Section II.3.

13. The Buyer is in no way authorized to assign the claim. Upon request of the Supplier he undertakes to inform his buyers immediately of the assignment to the Supplier and to give the Supplier the information and documents necessary for collection.

14. In the event that the value of the securities granted to the Supplier exceeds the secured claims altogether by more than 25 % then he shall upon request of the Buyer insofar be obliged to release securities at his choice.

15. In the event that the reservation of title or the assignment is not deemed effective according to the law applicable, in the area of which the goods are located, then the security is deemed as agreed which corresponds with the reservation of title or the assignment in this area. If the assistance of the Buyer is necessary here then he shall at his own costs undertake all measures which are necessary for justifying and retaining such rights.

#### VI. Claims for faults

The Supplier shall provide warranty for defects of quality and defects in title of the delivery under the exclusion of further claims – subject to Section VII. – as follows:

##### Defects of quality

1. All parts, which prove to be faulty owing to a circumstance before passing of the risk, are to be improved free of charge at the choice of the Supplier or to be replaced without faults. The detection of such faults is to be reported to the Supplier immediately in writing. Replaced parts shall become the property of the Supplier.

2. The Buyer shall give the necessary time and opportunity to undertake all improvements and replacement deliveries which may appear necessary to the Supplier after consultation with the Supplier; otherwise the Supplier shall be released from the liability for the ensuing consequences. Only in urgent cases with risk of danger to the operational safety or to prevent disproportionately high damages, whereby the Supplier is to be notified immediately, the Buyer shall be entitled to correct the faults himself or have these corrected by third parties and to demand that the Supplier reimburse the necessary expenses.

3. Of the direct costs incurred through the improvement or the substitute delivery the Supplier shall bear – insofar as the complaint turns out to be justified – the costs of the replacement including dispatch. He shall in addition to this bear the costs for the dismantling and installation and the costs for providing any necessary fitters and assistants including travelling expenses insofar as no disproportionate burden is incurred to the Supplier through this.

4. Within the framework of the statutory regulations the Buyer shall be entitled to rescind from the contract if the Supplier – taking into account the exceptional cases laid down by law – allows a reasonable deadline set to him for the improvements or substitute delivery due to a defect of quality to pass unsuccessfully. In the event that only an insignificant fault exists the Buyer shall merely be entitled to reduce the contractual price. The right to reduction of the contractual price remains otherwise excluded.

Any other claims shall be determined according to Section VII.2. of these terms and conditions.

5. No warranty shall be assumed – insofar as not the responsibility of the supplier – in particular in the following cases:

- Unsuitable or improper use,
- faulty assembly or commissioning by the Buyer or third party,
- natural wear and tear,
- faulty or negligent treatment,
- improper service,
- unsuitable production equipment and facilities,
- faulty building work,
- unsuitable building substance,
- chemical, electrochemical or electrical influences
- delivery of used machines.

6. In the event that the Buyer or a third party shall make improper improvements the Supplier shall not be liable for the ensuing consequences. The same shall apply for any changes to the delivered object carried out without the prior consent of the Supplier.

##### Defects in title

7. If the use of the delivered object results in the infringement of industrial property rights or copyrights in the domestic country, the Supplier shall at his costs principally procure the Buyer the right to the further use or modify the delivered object in such a way reasonable for the Buyer that the infringement of the industrial property rights no longer exists. If this is not possible at commercially reasonable conditions or within an appropriate deadline the buyer shall be entitled to rescind from the contract. Under the given pre-requisites the Supplier shall also be entitled to rescind from the contract. In addition to this, the Supplier shall release the Buyer from undisputed or legally declared claims of the owners of the industrial property rights concerned.

8. The obligations of the Supplier stated in Section VI. 7. are subject to Section VII. 2. conclusively in the event of the infringement of industrial property rights or copyrights. They shall only exist if

- the Buyer informs the Supplier immediately of asserted infringements of industrial property rights or copyrights,
- The Buyer supports the Supplier to a reasonable extent in defending the asserted claims or allows the Supplier to execute the measures for modification according to Section VI. 7.,
- The Supplier reserves the right to all measures for defence including extra-judicial provisions,
- the legal defects are not based on instructions of the Buyer and
- the infringement of right was not caused due to the fact that the Buyer independently changes the delivered object or has changed this in a way not as per contract.

#### VII. Liability

1. If the delivered object may not be used as per contract by the Buyer due to a fault of the Supplier owing to the omission or faulty execution of proposals made and advice given before or after conclusion of contract or through the infringement of other secondary contractual obligations – in particular instructions for operation and service of the delivered object – then the provisions of sections VI. And VII. 2 shall apply accordingly by exclusion of further claims of the Buyer.

The Buyer undertakes to personally examine the deliveries and services performed by the Supplier for their suitability and the intended use.

2. For damages not incurred to the delivered object itself the Supplier shall be liable – for no matter what legal reasons – only

- a. in case of wilful intent,
- b. in case of gross negligence of the owner / the bodies or executives,
- c. in case of negligent injury to life, body, health,
- d. in case of faults, which he maliciously did not disclose or if he guaranteed the absence of such,
- e. in case of faults to the delivered object insofar as liability is assumed according to the product liability act for physical or material damages to the privately used objects.

In case of a negligent breach of essential contractual duties the Supplier shall also be liable in case of gross negligence of non-executives and in case of slight negligence, in the latter case limited to those damages typical as per contract and reasonably foreseeable. All other claims are excluded.

#### VIII. Statute of limitations

All claims of the Buyer – for no matter which legal reasons – shall become statute-barred in 12 months. **The statutory deadlines shall apply for any claims for damages according to Section VII.2. a – e.** They shall also apply for defects to a building or for delivered objects, which were in line with their customary use used for a building and shall have caused such to be defect.

#### IX. Use of software

Insofar as the scope of delivery shall include software the Buyer shall be granted a non-exclusive and non-assignable right to use the delivered software including its documentation. It will be handed over for use for the delivered object intended for this. It is not permitted to use the software on more than one system.

The Buyer may only copy, revise, translate or convert the software from the object code to the source code in the scope as permitted by law (§§ 69 a ff. UrhG [Copyright Act]). The Buyer undertakes not to remove or change information on the producer – in particular copyright notices – without the prior express consent of the Supplier.

All other rights to the software and the documentation including the copies shall remain with the Supplier or the software supplier. It is not permitted to grant sub-licences.

#### X. Applicable law, place of jurisdiction, place of performance, Incoterms

1. The decisive law of the Federal Republic of Germany for legal relations between domestic parties to each other shall apply exclusively for all legal relations between the Supplier and the Buyer.

2. Place of jurisdiction shall be the court of jurisdiction for the registered seat of the Supplier. The Supplier shall however be entitled to take action at the headquarters of the Buyer.

3. Insofar as nothing else may be derived from the order confirmation the registered seat of the Supplier shall be the place of performance.

4. This contract shall be subject to the INCOTERMS 2010. Insofar as nothing else may be derived from the order confirmation the delivery shall be agreed "FCA Achim".

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Date, stamp and legally binding signature of the customer