

# Terms & Conditions of Sale for DESMA Smart Remote (Valid as of 1 September 2018)

## Recitals

DESMA Smart Remote is intended to provide the Client with support in the form of fault analysis and diagnosis by DESMA Schuhmaschinen GmbH – hereinafter referred to as “DESMA” – in the case of malfunctions in the respective equipment. The equipment constituting the subject matter of the agreement concerning DESMA Smart Remote – hereinafter referred to as the “Agreement” – is integrated into ongoing production processes. As a result, a high level of operational availability is essential. Any operational outage of the equipment will therefore significantly interfere with production. The DESMA Customer Service Center – hereinafter referred to as the “CSC” – will provide the Client with support in the form of remote technical solutions (see the description of services contained in sections 1.1 through 1.4 below), essentially by helping the Client to identify and analyze the problems with the equipment and, if possible, to eliminate the problem by providing assistance over the phone.

## Active and constructive collaboration is required on the part of both Parties to ensure successful deployment of DESMA Smart Remote.

The Client will remain responsible for the operation of the equipment/plant and retain decision-making authority. DESMA Smart Remote services are no substitute for the regular maintenance prescribed by the manufacturer and the legally required safety inspections of the equipment.

### 1. Specifications

#### 1.1. Prerequisites for the use of DESMA Smart Remote:

##### “DESMA Smart Remote” Option:

The respective equipment must be provided with the DEScan control system, a VPN connection via the DESMA Gateway and an operational LAN internet connection with the switchgear cabinet of each unit of equipment that complies with current standards. The transmission rate should be at least 2 Mbit/sec. The ping to [www.desma.de](http://www.desma.de) should not exceed 150ms and output from the UDP port 1194 must be enabled.

#### 1.2 Specifications of “DESMA Smart Remote”

DESMA will provide the services described below under DESMA Smart Remote:

##### 1.2.1 One-time services:

- One-time setup of the DESMA Gateway to establish the connection between the equipment listed in section 1.1 and the DESMA Service Center by a specialist at the DESMA headquarters location. The corresponding cost is included in the purchase price of the DESMA Gateway through DESMA. This price does not include any consultation or work on the premises of the Client.

##### 1.2.2 Standard services during the term of the Agreement:

- Telephone support by DESMA specialists between 7:00 to 17:00 (CET) on working days, i.e., Monday through Friday.
- Issuance of a ticket when a problem/fault is reported by employees of the Client. The Client immediately receives a ticket number from DESMA.
- Establishment of the VPN connection with the equipment (Client must establish an internet connection with the DESMA Gateway)
- Availability of the DESMA Service Hotline.: +49 4202 990-0.
- Regular updates of security certificates and software of the VPN router through the permanent data link.
- Notification of the Client if DESMA ascertains that the data link with the VPN router is interrupted.
- Identification of the problem/fault by DESMA specialists.
  - o Interview of operating and maintenance personnel on the current situation.
  - o Readout of error memory.
  - o Query of operating conditions and parameters, status of peripherals and memory data.
  - o Verification of SPS software functions.
- Analysis of problem/fault and support.
  - o Evaluation of data.
  - o Comparison with documentation on equipment
  - o Instructions for inspection of components on site by operating and maintenance personnel of the Client.
  - o Execution of software tests
  - o Simulations and tests on premises of DESMA if deemed warranted.
  - o Preparation of instructions for execution by operating and maintenance personnel of the Client.
- Qualified telephone assistance to permit elimination of problem, performance of repairs and customization to restore operation of the equipment.

- Preparation of Remote Service Report and submission of ticket (basis for invoicing services performed under this Agreement)

### 1.3 Supplementary measures and services

The following services are not covered by this DESMA Smart Remote Agreement. Such services must be requested and ordered separately and will entail additional costs for the Client.

#### 1.3.1 Deployment of a DESMA service technician on site

In the event personnel of the Client are not in a position to carry out the necessary work on site, the Client may request the deployment of a service technician by DESMA.

DESMA will without delay take measures to deploy a qualified service technician. The time it takes for the service technician to arrive on site on the premises of the Client will depend upon the current location and availability of the technician required for the type of work involved.

DESMA reserves the right to use the services of trained and certified service partners for such deployment.

Deployment of a service technician will be invoiced separately on the basis of the current rates for services of DESMA.

#### 1.3.2 Update of equipment software

It may be necessary to update software components in the course of the service life of the equipment, e.g., due to changes in regulations and standards. Such updates will include the respective improved and current standard versions of the software. DESMA Smart Remote makes it possible to carry out such software updates through the VPN connection, which makes it possible to avoid costly deployment of technicians. DESMA will inform the Client of any necessary updates and discuss the mode of implementation with the Client. Such updates will be covered by separate agreements between the Parties. The Client will also receive revised documentation with any such updates.

#### 1.3.3 Documentation

In addition to the usual Deployment Report, the Client may request an annual record of DESMA Smart Remote activities. Such annual records will include:

- Description of deployment
- Date and duration of deployment
- DESMA personnel per connection

Annual records will be prepared at the request of the Client at a cost of € 50.00 net.

### 1.4 Limits to services

#### 1.4.1 Exclusions

DESMA will be released from its obligations to perform services if and insofar as

- the necessary hardware is not kept in operating condition by the Client,
- the required internet bandwidth is not available,
- the DESMA Gateway is not connected to the internet (LAN),
- the Client has modified its network environment and the necessary changes have not been made on the DESMA Gateway,
- the personnel of the Client fail to collaborate actively and/or are not sufficiently qualified and/or fail to follow the necessary instructions from DESMA,
- the software or software environment, including the hardware of the equipment, has been changed, e.g., for example, customization or modification not carried out by DESMA,
- or similar conditions exist that would interfere with performance.

In such cases, the Parties will discuss how to proceed and work out the necessary steps.

If and insofar as DESMA is released from its obligations due to the circumstances described above, DESMA will nevertheless remain entitled to receive compensation as agreed.

#### 1.4.2 Limitation of operational warranty

DESMA will perform the various services described in this Agreement.

No further representation or warranty is given either to the effect that the services covered by this Agreement will permit diagnosis and elimination of all existing faults and malfunctions in the equipment or in respect of the operation of the equipment/plant.

## 2. Data transmission

### 2.1 Configuration requirements

The following hardware must be in place and operational for the purposes of the performance of the services pursuant to sections 1.1 and 1.2:

- DESMA Gateway configured by DESMA,
- Hardwire internet connection with the control cabinet of each unit of equipment,

# Terms & Conditions of Sale for DESMA Smart Remote (Valid as of 1 September 2018)

- Equipment operating terminal and controls.

Each of the Parties will be responsible for the maintenance and operation of its own equipment. The services are based on the use of data transmission technology – in particular for the transmission of data – available as of the time of execution of the Agreement. Insofar as necessary, this technology will be adapted to keep up with new developments as they appear. The Client will bear the corresponding costs.

## 2.2 Modes of data transmission

The Client will procure in its own name and at his own expense an internet connection that meets the minimum requirement pursuant to section 1.1 and ensure that such connection is available to DESMA for the purposes of the performance of its obligations under this Agreement. The Client will bear the costs of its internet connection and any transmission fees. In the event DESMA cannot or cannot properly receive and transmit data due to any disruption of the data stream line or data connection, DESMA will be released from its obligation to perform the services pursuant to sections 1.1 and 1.2 of this Agreement for the duration of such disturbance. This will apply accordingly if the quality of the data makes it impossible for DESMA to perform the services. DESMA will in any such case notify the Client of a disruption of the data stream or data connection.

## 2.3 Activation of internet connection

When necessary, the Client will activate the Remote Service system by initiating the establishment of the data link. DESMA will then complete the establishment of the connection.

## 3. Confidentiality and data protection

### 3.1 Confidentiality of user IDs and passwords

DESMA will ensure that user IDs and passwords are used to limit access to DESMA's server exclusively to DESMA personnel qualified to use DESMA Smart Remote and evaluate data. Access will be controlled by assignment of access rights to prevent unauthorized access and any possible abusive use of data.

### 3.2 Confidential treatment of Client data

The Parties agree that DESMA will use all data of the Client exchanged in connection with DESMA Smart Remote and any other information of the Client in respect of confidential production know-how, related product-related data, etc., exclusively for the purposes of the performance of the services specified in this Agreement.

Neither this information nor any related knowledge may be transferred to third parties. DESMA will bind all employees associated with DESMA Smart Remote to the same duty of confidentiality. DESMA further agrees to return or delete the data of the Client upon request after termination of the Agreement.

### 3.3 Anti-virus protection

The Parties to the Agreement agree to take appropriate state-of-the-art measures to prevent infection of the software of the Client or DESMA by viruses. Each of the Parties agrees to notify the respective other Party in writing without delay in the event of detection of any viruses that could impair DESMA Smart Remote or systems of the respective other Party.

## 4. Duties of cooperation of the Client

### 4.1 Duty to maintain equipment

The Client will make available and maintain in working order all equipment specified herein as well as the necessary means of communication.

### 4.2 Duty of notification of technical changes

The Client will notify DESMA in advance and, if appropriate, obtain the approval of DESMA of any changes in the technical environment contemplated by the Client that could affect the DESMA Smart Remote system covered by the Agreement,

including, but not limited to, modification of

- control hardware/software of the equipment,
- change in the use of the equipment,
- change in the environment of the equipment, changes in the configuration and third-party modifications.

### 4.3 Collaboration in the case of fault reports

The Client must take all measures prescribed by and follow the instructions of DESMA in connection with the detection, localization, reporting and description of faults. If required to do so, the Client must use the check lists provided by DESMA.

The Client will make available qualified personnel with a working knowledge of the German or English language insofar as necessary in connection with Remote Service. The Client will – in the case of any lack

of clarity in fault reports or questions – provide DESMA with additional information and documents.

## 4.4 Safety/duty of oversight

In cases in which Remote Service could cause physical injury or property damage, the Client will fulfill its duty of oversight by confirming that the contemplated measures can be carried out safely (acknowledgment). In the event it is not possible to issue an acknowledgment for each unit on site, the Client must take reliable measures to prevent personal injury or property damage.

In particular, the Client must ensure that persons are not endangered – in any way or at any time – by the implementation of the services by the Client on site and in particular that no persons are allowed to access dangerous areas.

## 5. Compensation and conditions of payment

### 5.1 Compensation for DESMA Smart Remote

Services will be invoiced on the basis of the rates shown in the current price list for DESMA Smart Remote. The respective rates for DESMA Smart Remote applicable in the current year will be taken as the basis for billing time expended by DESMA.

### 5.2 Other components of compensation

Currently applicable rates will be applied in the case of other services performed by DESMA.

### 5.3 Validity of prices/adjustments

Rates will be taken for the year in which the Agreement is executed. These rates will then be adjusted annually in accordance with the general rate of increase in the area of technical services, in particular as regards increases in wage agreements. The Client will be notified of changes in advance and such changes will enter into effect as of the next payment period. Such increases will also apply if the Client makes payment prior to the due date.

### 5.4 Conditions of payment

Unless agreed otherwise, all invoices issued by DESMA will be due in full net 14 days after receipt by the Client and payment made to the account specified by DESMA. Timeliness of payment will be determined on the basis of the date of receipt pursuant to the bank statement of DESMA.

## 6. Performance

### 6.1 Time of performance

DESMA agrees to make the services agreed available at the following times:

- **On working days – Monday through Friday – between 7:00 and 15:00 CET.**

DESMA can be reached outside these hours and on national holidays by using a special hotline number that can be made available to the Client on a case-by-case basis for use at the Client's expense. In the event this hotline number is temporarily not manned, the Client will have the possibility of leaving a voice message or sending an email to DESMA at [service@desma.de](mailto:service@desma.de).

### 6.2 Force majeure

In the event performance is delayed due to circumstances resulting from labor disputes, including but not limited to any strike and/or lockout, or the occurrence of circumstances beyond the control of DESMA, including but not limited to any outage or disruption of data transmission equipment, an appropriate extension will be granted accordingly.

### 6.3 Default

DESMA will be deemed to be in default if it fails to respond during business hours within 4 hours. However, DESMA will not be deemed to be in default until the Client has availed itself of all possibilities to notify DESMA of its need for DESMA Smart Remote. Such possibilities will include the following:

- Telephone contact with the DESMA headquarters location (between 7:00 and 16:00, CET)
- Telephone contact by dialing: **+49 4202 990-0** (from 7:00 to 17:00, CET)
- E-mail with "Urgent" status to [service@desma.de](mailto:service@desma.de) (from 7:00 to 17:00, CET)

In the event DESMA should fail to perform any obligation under this Agreement and – taking into account exceptions allowed by law – does not cure such failure within a reasonable period of time set by the Client, the Client may terminate the Agreement without notice. Notwithstanding the provisions contained in sections 8.1, 8.2 and 8.3, the Client will have no further claims against DESMA.

# Terms & Conditions of Sale for DESMA Smart Remote (Valid as of 1 September 2018)

## 6.4 Response time

Expressly not agreed in the case of DESMA Smart Remote "On-Demand" models.

## 7. Quality assurance and claims arising from defects

### 7.1 Claims arising from defects

DESMA will perform its services in compliance with the generally accepted rules of the art and exercise the usual degree of care practiced in the industry. DESMA will neither be responsible for the achievement of a successful outcome beyond the performance of the services offered nor be liable for the fulfillment of any wishes or the achievement of any objectives of the Client that go beyond the performance of the services covered by the Agreement.

In the case of incomplete or improper performance of the services agreed, DESMA will have the right to replace or correct its work. In the event DESMA should fail to fulfill its obligation to replace or correct the work, the Client may give DESMA a reasonable period to cure such failure. If DESMA should fail to fulfill its obligations within this period or refuse to cure the defect for other reasons, the Client may at its option demand a reduction of the agreed compensation or terminate the Agreement without notice. Liability for any other loss or damage under contract or tort law will be governed by section 8 (Liability).

Performance in installments will be permissible if the Client can be reasonably expected to accept such performance.

### 7.2 Quality assurance

DESMA may record telephone or conference calls of the Parties involved for the purposes of controlling the quality of services performed in connection with DESMA Smart Remote. The Client hereby consents to such recording.

## 8. Liability

8.1 In the case of any loss of or damage to property other than that covered by this Agreement, DESMA's liability – for whatever legal reasons – will be limited exclusively to instances of

- a. willful misconduct,
- b. gross negligence on the part of the proprietor, directors or officers or senior executives,
- c. loss of life or bodily injury due to willful misconduct or negligence,
- d. fraudulent concealment of defects or presence of defects warranted to be absent,
- e. liability for personal injury or damage to privately used property under the German Product Liability Act (*Produkthaftungsgesetz* – *ProdHaftG*).

The Client may bring no further claims for damages against DESMA, for whatever legal reason, other than those provided for in this provision, including but not limited to claims for damages, nor any claims arising from tort or other rights due to any disadvantages related to the agreed services. This will apply in particular in respect of damages due to the loss of data or damage.

8.2. In the case of property or pecuniary damage due to negligence, the liability of DESMA and its agents will be limited to liability for breach of material contractual obligations, the amount of such damages being limited, however, to typical damages foreseeable at the time of execution of the Agreement, in which case material contractual obligations will be considered to mean such obligations as are determinative for performance of the Agreement and upon which the Client may rely.

8.3. The above provisions of this section 8 will not entail a change in the burden of proof to the disadvantage of the Client.

8.4. The Client waives the right to bring further claims.

### 8.5 Limitation periods

"All claims of the Client – for whatever legal reasons – will lapse twelve months from the time of completion of performance of the corresponding service. Claims pursuant to section 8.1. (a) through (e) will be subject to the provisions of law. Periods of limitation will be extended by a period of time equal to the duration of the period for curing defects.

## 9. Term of the Agreement, Termination

### 9.1 Term

The Agreement is entered into for a fixed term of two years and will expire at the end of the calendar month. The Agreement will be extended for an additional year at a time upon expiration of the initial term or any term thereafter unless terminated by one of the Parties with effect as of the end of the respective term upon three months'

prior written notice. The right to terminate the Agreement for good (pursuant to section 9.2) cause will not be affected by this provision.

### 9.2 Termination for good cause

Each of the Parties to this Agreement may terminate this Agreement without notice for good cause. Good cause will be deemed to exist in particular in the following cases:

- Failure on the part of DESMA to perform the services pursuant to section 1.2 despite the receipt of a notice of cure from the Client;
- Change in technical requirements such that DESMA can no longer perform the services pursuant to section 1.2;
- Existence of legal requirements or provisions that prevent performance of the services pursuant to section 1.2;
- Termination of performance of the services pursuant to section 1.2 by DESMA, in which case the Client will be notified accordingly 3 months in advance;
- Increase in the rates mentioned above within two weeks of the date of notification.

## 10. Jurisdiction

The Parties consent to the exclusive jurisdiction of the courts of the headquarters location of DESMA or – at the sole option of DESMA – the general jurisdiction of courts of the Client's principal place of business.

## 11. Choice of law

This Agreement will be interpreted and construed in accordance with the substantive law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG). In the case of any inconsistency, the German-language version of the Agreement will prevail.

## 12. Place of performance

The principal place of business of DESMA will be the place of performance for all services.

## 13. Severability

In the event any provision of this Agreement should be invalid or unenforceable or become invalid or unenforceable after execution, the validity of the remaining provisions will otherwise remain unaffected. Any invalid or unenforceable provision will be replaced by that valid and enforceable provision which most closely approximates the economic goal pursued by the Parties to the Agreement with the invalid or unenforceable provision. The above provisions will also apply accordingly in the case of any omissions in this Agreement.

14. Any amendments of or supplements to this Agreement must be made in writing. This will also apply in respect of any waiver of the written form requirement.

15. Business conducted between the Parties to the Agreement will otherwise be governed by the version of the **General Terms & Conditions of Sale and Payment** of DESMA in effect as of the time of execution of the Agreement. The Client hereby expressly acknowledges and accepts these Terms & Conditions.