

1.1 Deviating Conditions

We sell and deliver on the basis of the following conditions only. The application of deviating orderer's conditions of purchase, ordering and commissioning is excluded.

1.2 Scope of delivery and service

The scope of the delivery and services provided by the contractor shall be set forth in the hardware and software scope specified in the offer or order. Our deliveries and services shall not exceed the scope of the offer or order. Any services not stipulated shall not form part of the offer or our obligation to deliver. Our equipment prices shall apply for the specified model. Compliance with manufacturing requirements, factory norms, drawings on customer paper, special varnishing and other deviations from the DMS-DINOX delivery standard may give rise to additional costs that shall be invoiced separately upon filling of the order.

Should it emerge during planning of the details or production of the equipment that it is necessary to deliver additional hardware or software, any associated additional expenses in this respect shall be separately invoiced.

The contractor may send an interim invoice for the additional expenses in accordance with the payment conditions of the principal order.

2. Transition of Risk

We have to fulfil our duty on site of our plant in Wismar or of our sales offices. The risk passes with the dispatch of the goods to the orderer. If the place of delivery is abroad, we bear the transportation and packaging costs up to the German border or, respectively, up to the seaport or airport (normal freight and customary packaging). Additional costs for express shipping or special packaging are charged extra.

3. Prices

All prices are net prices

4. Default

The delivery times start after complete technical clarification. In the case of technical amendments requested by the orderer after the order confirmation, the delivery times are extended accordingly. In the case of default, the orderer can grant us an appropriate grace period with the express statement that acceptance of the delivery will be refused after the expiry of that period, and he can withdraw from the contract, if the new deadline is not met. If the orderer experiences damage due to our default, then our liability is limited to ½ % of the delivery value per week of default, however, not more than a maximum of 5 % of the order value.

The limitation of liability does not apply in the case of gross negligence or intent from our side. If the non-compliance with the delivery time is due to Force Majeure, industrial disputes or other events that are outside of our influence, then the delivery time shall be extended accordingly. We will notify the orderer of the beginning and ending of such circumstances as soon as possible.

5. Payment

Following payment conditions are applied:

50 % of the order value following confirmation of the order

25 % of the order value after half of the delivery time

25 % of the order value after delivery

Should the purchaser default in payment, the payments shall accrue interest at a rate 8 % above the respective base interest rate for the term of the default. Additional damage may be asserted.

Cheques are accepted for processing only. Any costs connected with their clearing are to the account of the orderer. If the orderer does not comply with his payment obligations, in particular if cheques are not cleared, or if the orderer's financial standing declines significantly – in particular if he files for bankruptcy or composition with creditors, then we shall be entitled not to execute the delivery, until the orderer, at our discretion, provides us with a security or an advance payment for our claim from the contract. The orderer shall be entitled to set-off or retention only, if we have expressly agreed in writing, or if the counterclaims are undisputed or have been legally established.

6. Intellectual Property Rights

The intellectual property rights in our offers, technical drawings, product information in our products shall remain our property whatever the case may be. Without our express consent, it is not allowed to copy them in whatever manner or to disclose them to third parties. The orderer is only entitled to use these internally within the limits of the contract.

7.1 Material Defects and Notice of Defects

If a product that we have delivered should show a material defect within two years from the date of delivery, then we will, at our discretion, either remove the defect or replace the product with a faultless one, provided that the cause of the material defect had been present already at the time of the transition on risk.

If we choose to remove the defect (repair), then the orderer must give us the opportunity to remove the defect within a reasonable term, in mutual agreement. If the supplementary performance fails, then the orderer can, at his discretion, -regardless of possible damage claims – either withdraw from the contract, reduce the purchase price or demand the refund of his costs. This does not apply, if the law demands longer respites. The orderer must notify us in writing of any material defects within a term of two weeks after the delivery of the goods – in the case of hidden defects within two weeks after their discovery; otherwise, the enforcement of the liability for material defects shall be excluded. The orderer shall bear the full burden of proof with regard to any claim requirements, in particular with regard to the defect itself, for the time of the discovery of the defect and for the timeliness of the notice of defects. If a notice of defect is given without justification, then we shall be entitled to demand from the orderer to compensate us for our costs. Defect claims do not exist in the cases of only insignificant deviations from the agreed features, only insignificant impairment of usability, natural wear and tear, or damages that occur after the transition of risk due to wrong or negligent handling, immoderate use, inappropriate equipment, arbitrary amendments, or due to external influences, which are not in correspondence with the contract. If the orderer or third parties make any improper amendments or repairs, no liability claims may be raised for these works and their consequences. Claims of the orderer with regard to necessary expenses for the purpose of supplementary performance, in particular transport travel, labour and material costs, shall be excluded, if such expenses increase due to the fact that the subject of the delivery is brought to another location than the orderer's place of business

As for the rest, clause 9 below shall apply for any damage claims. Any further claims of the orderer, or claims other than specified in this clause 8, for material defects raised against us or our vicarious agents shall be excluded.

7.2 Additionally purchased third party equipment

The warranty for third party equipment shall be 12 months from acceptance, and a maximum, however, of 18 months following delivery. The warranty for third party equipment shall be restricted to DMS-DINOX warranty claim vis-à-vis its own sub-supplier.

7.3 Licensed software

The warranty shall be based on the terms and conditions of the software license agreement.

7.4 Services and individual software

The warranty for services and individual software shall be 12 months from acceptance, and a maximum, however, of 18 months following delivery. The purchaser is aware that based on current state-of-the-art technology it may be guaranteed that software is free and clear of errors only to the extent that the software functions were tested in accordance with an agreed test specification.

8.5 Warranty for deliveries abroad

The user agrees to send defective equipment free of charge to DMS-DINOX with a description of the error. Repairs shall be carried out free of charge for the user, or DMS-DINOX shall, at its discretion, deliver substitute equipment free of charge. Transport back to the user shall be free of charge until the German border. Should guarantee work by DMS-DINOX employees be necessary abroad, DMS-DINOX shall assume the personnel costs and travel costs until the German border. Any and all additional expenses (overnight accommodation costs, travel costs, expenses, etc.) shall be borne by the purchaser.

9. Provision

The ordering party shall be responsible for timely and proper provision (material, personnel, etc.). The ordering party shall be liable for the quality and suitability of the provided material and shall bear the risk associated therewith. We shall not be liable for any defective work on the part of personnel provided.

10. Liability

Damage claims and claims for the refund of expenses raised by the orderer – for whatever legal reason, in particular for a violation of duties from the obligation and for tortious act, shall be excluded.

This does not apply, if there is a compulsory liability, e.g. pursuant to the Product Liability Act, in cases of intention, gross negligence, injury to life, body or health, or violation of significant contractual duties. However, the damage claim for the violation of significant contractual duties shall be limited to the foreseeable damage typical for such contracts. The replacement of pecuniary losses, lost profit and the costs of interruption of operation are excluded.

Damages caused by improper handling or measures contrary to the contract, e.g. related to transport, setup, connections, operation or storage, do not constitute grounds for any claims against us. The impropriety or contrariness to the contract is defined in particular according to the details given in our data sheets as well as in our installation and operation manuals.

11. Data Protection

We point to the fact that the customer data collected in connection with the fulfilment of the contract are processed in accordance with the legal privacy regulations. The data are used for the intended purpose only and are not made available to unauthorised third parties. However, for rendering the services in accordance with the purpose, we reserve the right to have data processed by other partner companies, who have been carefully selected and given an assignment pursuant to Art. 11 BDSG.

12. Export provisions

The products may be subject to European, German and/or US export provisions.

Any export requiring authorisation shall require the consent of the authorities. In addition, a duty to acquire authorisation for export may arise due to the purpose and final location of the products. The purchaser shall review the relevant export provisions.

13. Partial Validity

The legal invalidity of individual provisions shall not affect the validity of the remaining provisions.

14. Jurisdiction and applicable law

Any disputes arising out of or in connection with the delivery contracts concluded between the parties including all disputes on the validity of the said contracts (and including all problems arising from the application of cartel laws) shall be settled by the courts having jurisdiction over the main office of the supplier. The supplier also has the right to bring a suit at the customer's place of business.

This contract is governed by substantive German law.