

# GENERAL CONDITIONS OF SALE

## VDL KLIMA FRANCE

### **Article 1 – Scope of application**

These general conditions of sale (hereinafter referred to as "GCS") are notified or made available to all Customers. They replace and cancel the ones previously issued.

By placing an Order the Customer accepts these general conditions of sale.

Except in the case of a prior and written explicit acceptance for a specified period or operation, VDL KLIMA FRANCE shall not be bound by Seller's terms and conditions. Any condition on a contrary nature put forth by the Customer shall be unenforceable against VDL KLIMA FRANCE.

If any term of these GCS is unenforceable for any reason, the other terms and conditions will not be affected.

If there is a discrepancy or ambiguity between specific conditions and these GCS, the specific conditions will prevail.

### **Article 2 – Definitions**

In these GCS the following terms shall have the meanings hereunder assigned to them :

- "Customer" shall mean any person who call on VDL KLIMA FRANCE, under all circumstances ;  
- "VDL KLIMA FRANCE" means a SARL with a share capital of €38,200 registered with the LILLE METROPOLE Trade and Companies Registry under the number 354.060.063, having its registered office at Social LE WEDGE – 101 Rue Louis Constant - 59491 VILLENEUVE D'ASCQ.

### **Article 3 – Orders**

Orders are only binding once VDL KLIMA FRANCE has expressly accepted every specific condition in writing, with no reservations.

Orders are binding to Customers as soon as the acknowledgement of receipt is issued confirming the acceptance of VDL KLIMA FRANCE. From that point, customers can't cancel or refuse any delivery except in the event of serious failure of VDL KLIMA FRANCE to comply with its contractual obligations, properly established by Customers.

In the event of Orders cancellation or modification by Customers, they shall undertake to indemnify VDL KLIMA FRANCE of the resulting total direct and indirect costs.

In case of tailor-made equipment, the contractual dimensions and characteristics are those listed on the approval coupon affixed by the Customer. Any variation requested by the Customer after the issuance of the approval coupon will lead to a raise in the price and a new deadline.

When the equipment is delivered by external agencies or control offices, VDL KLIMA FRANCE can't be held liable for the documents' processing time. The studies and documents submitted by VDL KLIMA FRANCE to its Customers remain its own exclusive property even if studies' costs were asked. These studies and documents can't be transferred to or executed by third parties without the previous and written explicit consent from VDL KLIMA FRANCE.

### **Article 4 – Prices and pricing review**

#### **4.1 Prices**

The price of the Order shall be that in force at the time of the Order placement as the one reiterated on the purchase Order by VDL KLIMA FRANCE.

All prices are exclusive of any valued added tax (VAT) and are subject to the VAT applicable on the day the equipment has been made available in the VDL KLIMA FRANCE factories.

Prices are deemed to be set for a limited period specified on the offers and quotes.

Unless otherwise stipulated, VDL KLIMA FRANCE offers and quotes shall be valid for a period of 1 month following the deposit.

#### **4.2 Price review**

If at any time during the contract period there have been any substantial changes in the economic circumstances and VDL KLIMA FRANCE feels that such change is causing it to suffer substantial economic hardship, then VDL KLIMA FRANCE may adjust its prices and make a price revision.

VDL KLIMA FRANCE will notify any change to its Customers in a timely manner after becoming aware of such changes.

However, prices may not be increased on current Orders before a negotiation process has taken place. The execution of the Orders will be suspended until the negotiation process is made final and an agreement has been reached between VDL KLIMA FRANCE and the Customer.

### **Article 5 – Delivery**

#### **5.1 Delivery place and methods**

Delivery shall be made "Free Carrier" (FCA). The interpretation of the terms and conditions of delivery shall be governed by the 2010 version of the Incoterms issued by the International Chamber of Commerce.

VDL KLIMA FRANCE shall not be responsible for the transport of the goods to the destination and the Customer has to take delivery of the equipment. The costs of return, shipment and storage shall be payable by the Customer, and the Customer shall furthermore be obliged to fulfill its obligations to VDL KLIMA FRANCE as if delivery has taken place.

#### **5.2 Delivery times**

Delivery times shall not be regarded as binding. Unless otherwise expressly agreed, delays in delivery shall not entitle Customers to claim any damages resulting therein. In this case, the amount of 0,5% of the total Order value for each week, with a maximum of 3% of the amount due for the equipment may be additionally charged.

In case of any issue due to the supply of raw materials preventing the supplier to carry out the production, this would be considered as a case of force majeure.

#### **5.3 Receipt and claim**

The unloading shall be carried out by the Customer or the recipient (if different).

At the reception of the Order, it is up to the Customer to verify if it is complete and if any equipment has suffered damage or is missing. Otherwise, the Customer or Recipient shall notify within the statutory deadline any reservation or observation to the carrier in Order to avoid any warranty disclaimer.

By addressing a copy of the claim to VDL KLIMA FRANCE, the latter should seek to assist the Customer or recipient in the dispute settlement.

No material shall be returned without the express prior and written approval from VDL KLIMA FRANCE.

No material shall be returned if no reserve have been made on reception.

The costs of returning of a Material which has suffered damage of does not seem appropriate will be charged to Customers

### **Article 6 – Passing of risks**

Any agreed trade term shall be construed in accordance with the 2010 version of the Free Carrier (FCA) INCOTERMS issued by the International Chamber of Commerce.

In accordance with these INCOTERMS, the transfer of risk takes place once the equipment has been delivered to the first carrier.

### **Article 7 – Payment and invoicing**

#### **7.1 Invoicing**

For each Order, an invoice will be delivered to the Customer at the time of delivery.

#### **7.2 Payment terms and methods of payment**

All invoices are to be addresses to VDL KLIMA FRANCE, VILLENEUVE D'ASCQ (59), whatever the method of payment. Unless otherwise agreed, payment will be proceeded by bank transfer and according to French laws, 45 days after the reception of the equipment, without discount.

Alternative conditions can be considered for particular purposes or major account. In this case, the payment conditions are an integral part of the VDL KLIMA FRANCE offer. The Customer's order and the acknowledgement of receipt proving the consent of the Parties.

VDL KLIMA FRANCE reserves the right to require :

- A guarantee or a cash settlement prior to the order execution if the financial situation of the Customer or other circumstances justify it. This is the case in particular if any modification occurs in the Customer financial capacity, his professional situation, company structure or if any transfer, lease, charge or mortgage has an unfavourable impact on Customer's credit ;
- A deposit for some specific products ;
- In case of prior late payment settlement, the immediate payment for the invoices not yet falling due and the anticipated payment of all orders under implementation or there cancellation by registered letter with acknowledgement of receipt without any compensation charged on VDL KLIMA FRANCE.

#### **7.3 Default and delayed payment**

If the Customer fails to pay by the stipulated date, VDL KLIMA FRANCE shall be entitled to interest from the day on which payment was due, as well as to compensation for recovery costs. The rate of interest shall be as agreed between the parties or otherwise 10 percentage points above the rate of the main refinancing facility of the European Central Bank. The compensation for recovery costs shall be a fixed price of €40.

In case of late payment VDL KLIMA FRANCE may :

- Suspend its execution of the contract until payment is received ;

- This suspension will be the responsibility of the Customer and will be chargeable to him in case of delays or price increase. This suspension may not be regarded by the Customer as a contract termination by VDL KLIMA FRANCE ;

- Claim the restitution of the equipment sold, including the exported ones in accordance with the requirement of the article about the "Retention of title" ;  
Apply the litigation clause described hereafter.

#### **7.4 Dispute**

An invoice must be paid on its due date even when a dispute occurs. The invoice will be regularised if necessary.

### **Article 8 – Retention of title**

VDL KLIMA FRANCE shall keep the Title to the equipment delivered to the Customer until the price has been paid in full. The delivery of a bill of exchange do not constitute a valid payment.

The transfer of risk shall take place when the first Order has been delivered to the first carrier. The Customer shall undertake to take a general liability all risks insurance policy, at its own cost. Moreover, the Customer shall be obligated to inform VDL KLIMA FRANCE without delay, about any garnishment and / or any other actions undertaken by third parties, adversely affecting the goods. The Customer is required to inform VDL KLIMA FRANCE immediately if third parties allege to have any rights in relation to the equipment delivered.

Unless no full payment of the Order has been made, the Customer is not permitted to sell, loan, pledge, rent out or give away the delivered products.

The return of products is not qualified as the cancellation of the sale. However, VDL KLIMA FRANCE reserves the right to apply simultaneously the cancellation clause described hereafter.

### **Article 9 – Testing**

All materials are tested and approved prior to expedition. Customers can assist to the testing session if they so specify at the time of Order. The date for the testing session will be communicated one week before it occurs.

Additional tests can be requested given a surcharge justified by a test protocol developed by mutual agreement between VDL KLIMA FRANCE and the Customer at the time of the Order. In any case, travel and life expenses for controllers will be covered by the customer as well as expenses in case of any visit from the inspection body to VDL KLIMA FRANCE factories.

### **Article 10 – Material destination**

All materials provided by VDL KLIMA FRANCE are intended to a standard usage as defined by the rules of the art. In case of any change in the purpose of the product, the Customer must send out all the necessary information in Order to give a clear overview of the new product purpose and its new usage.

### **Article 11 – Warranty**

#### **11.1. Scope**

All transactions shall be subject to the legal provisions in force and more specifically to the "garantie des vices caches" (warranty of hidden defects) defined in articles 1641 et seq. of the French Civil Code. All materials are guaranteed against any operating defect having appeared during a period of 12 months from the delivery of those products, and for the product usage and purpose described in the Customer's Order.

If agreed, the 12 months period and its starting point can be expressly provided otherwise in the acknowledgement of the receipt of the Order.

VDL KLIMA FRANCE will choose to either repair or replace the defective product or its defective part. The defective material must be returned to VDL KLIMA at the expense of the Customer, unless otherwise agreed.

The warranty shall not be suspended or prolonged as a result of loss of use of the products even if that loss is due to repairs under warranty.

The benefit of the contractual guarantee shall be conditional to :

- The reception of a letter addressed to VDL KLIMA FRANCE by registered letter notifying the defect identified ;
- The return of the material accompanied by the corresponding invoice ;
- The protocol of the damage made by VDL KLIMA FRANCE technical services.

#### **11.2 Exemption**

The contractual warranty is excluded if the defect comes from the Customer or from any modification and action from the Customer made without the express authorization of VDL KLIMA FRANCE. Moreover, the warranty will not be invoked if the usage of the material is not made as defined by the rules of the art.

In the case of a day and night usage, 24 hours a day, the guarantee will be reduced by half.

The warranty does not cover the installation, disassembling, packaging and delivery costs.

### **Article 12 – Cancellation clause**

In the event that the Customer suspends the fulfilment of its obligations, VDL KLIMA FRANCE shall have the right to dissolve the agreement after an 8-day period starting after a formal notice has been addressed to the Customer and has not been answered.

The sums duly paid will revert to VDL KLIMA FRANCE to cover damages.

Any failure by a Customer to comply with its obligations will automatically cause the award of a compensation at the expense of the Customer and at the benefit of VDL KLIMA FRANCE. The allowance is fixed at 15% of the total amount (including all taxes) of the unpaid invoices by their due date and without prejudice to special provision of the article 700 of the French Civil de procedure code.

The materials will be returned at the Customer's expense, subject to a fine of an amount of 10% of the total price (including all taxes) applied for each week of delay in execution.

### **Article 13 – Force majeure**

Either party shall be entitled to suspend performance of its obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by Force Majeure, meaning any circumstances beyond the control of the parties. A circumstance referred to in this clause shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the constitution of the Contract. The suspension or termination of the agreement will take effect with a registered letter with an acknowledgement of receipt.

### **Article 14 – Severability clause**

If any provision of this CGS or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the CGS which can be given effect without the invalid provisions or applications, and to this end the provisions of this CGS are declared to be severable.

Moreover, if any provision of this CGS is subject to interpretation difficulties or contradict each other, the provision will be declared invalid without any effect on other provisions or applications of the CGS.

### **Article 15 – Personal data**

VDL KLIMA FRANCE is committed to protecting Customers' personal data. The processing of data by VDL KLIMA FRANCE will be handled in complete confidence.

In accordance with the "Informatique et libertés" law (Data protection act) and the EU regulation 2016/679 (27<sup>th</sup> April 2016, GDPR), Customers have a right of access, modification and correction on the data collected about them.

### **Article 16 – Disputes and applicable law**

These CGS are governed by French law and construed exclusively in accordance with the substantive laws of France. Any disputes arising out of, or in connection with, this agreement must be settled by the Courts of LILLE (59) in France.

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