

#### **Article 1. Scope of application**

1. These supply and payment terms and conditions shall constitute part of every agreement into which DSD Stalinrichting B.V. enters or any offer which it makes in any form whatsoever. DSD Stalinrichting B.V. is referred to as 'DSD' hereinafter. Any other party is referred to as a 'counterparty'.
2. Any general terms and conditions employed by a counterparty shall not apply and DSD explicitly rejects them.
3. In the event that any of these provisions is void, nullified or otherwise turns out to be unenforceable, the remaining provisions shall continue to apply. The void, nullified or unenforceable provisions shall be replaced with one which reflects the intention behind the original one.

#### **Article 2. Derogating arrangements or provisions**

Any arrangements or provisions which derogate from these terms and conditions, and which may or may not be included in the relevant counterparty's general terms and conditions shall only apply provided that DSD has explicitly consented to them in writing.

#### **Article 3. Offers and agreements**

1. All offers which DSD makes in any form whatsoever shall be free of obligation. This entails that DSD reserves the right to give immediate notice that it is revoking its price or other offer after an order or any other form of acceptance.
2. Any information which DSD provides, which includes price lists and drawings pertaining to what has been offered, shall be supplied subject to any errors or changes.
3. In the event that a contract is not awarded to DSD or is cancelled, DSD shall be entitled to charge the relevant counterparty for all of the costs which it has incurred until then.
4. Howsoever it may be called, an agreement shall only be concluded once DSD has explicitly consented to it in writing.
5. Any agreement which is concluded by a subordinate employee or staff member who does not hold power of attorney shall only be binding on DSD provided that and in so far as the latter confirms it in writing.

#### **Article 4. Advice, designs and materials**

1. Any information or advice which DSD provides shall only be of a general nature and shall be free of charge.
2. DSD shall not accept responsibility for a design produced by or on behalf of a counterparty, for any advice based on such design, nor for any parts and/or materials which a counterparty themselves provides or stipulates. A counterparty shall themselves be responsible for the functional suitability of any materials which they stipulate. 'Functional suitability' is deemed to refer to the suitability of any material or part for the purposes for which it is suitable based on the relevant counterparty's design.

#### **Article 5. Industrial and intellectual property rights**

Unless otherwise agreed, DSD shall retain the copyright and also any other industrial or intellectual property rights to any designs, sketches, drawings, models, software or quotations which it provides. Such items shall remain its property and may not be copied, exhibited to any other party, or used in any other way without its explicit consent, irrespective of whether or not the relevant counterparty charges a fee for same. A counterparty shall have a duty to return such items when DSD first requests this on pain of payment of a penalty of €500.00 per day.

#### **Article 6. Fees**

1. Unless otherwise stated, all quotations shall be exclusive of value added tax.
2. The contents of leaflets, printed matter and so forth shall not be binding on DSD, unless this is explicitly mentioned in an agreement.
3. DSD shall be entitled to pass on to the relevant counterparty any tax or tax increase, import duties or any other levy charged by a public authority which is introduced or becomes known to DSD after the agreement concerned has been concluded.
4. Any fee agreed to shall be based on the cost of materials and labour costs applicable on the date of the offer in question.
5. In the event that and in so far as the period between the date of an offer and the date of delivery exceeds that of three (3) months and labour costs and the prices paid for the relevant materials and the like increase during that period, the agreed fee shall be raised proportionately. The payment of an additional fee pursuant to this article shall be effected simultaneously with the principal sum or the last instalment of same.

#### **Article 7. Packing materials**

Any packing materials that are required shall be charged at cost and shall not be repossessed. Whether any packing materials need to be used shall be determined at DSD's discretion.

#### **Article 8. Licences and permits**

A counterparty shall ensure that any licences, permits, exemptions or similar rulings which are required to carry out the relevant work are obtained in good time.

#### **Article 9. Assembly**

1. Assembly shall be effected at the normally applicable rates. The staff who are charged with assembly shall confine themselves to the assembly of the materials supplied by DSD and/or covered by the relevant contract.
2. DSD shall not be liable for any assembly work that falls outside a contract.
3. A counterparty shall be required to ensure that DSD can carry out its work without disruption. Unless otherwise follows from the nature of the relevant agreement, to this end, a counterparty shall be required to ensure, amongst other things, that gas, water and electricity are available in the area in which the work needs to be carried out and that the area is or can be heated.

#### **Article 10. Delivery place and time**

1. Delivery shall be effected ex works DSD. In the case of all consignments DSD reserves the right to charge a transport fee.
2. Delivery times shall be determined in the form of an estimate. A delivery time shall commence once all of the technical details are agreed to and under no circumstances may a deadline be deemed to be material.
3. A delivery time shall be decided on in the expectation that DSD can continue to work as foreseen when the relevant offer was made and that the requisite materials can be supplied on time. A failure to meet a delivery time may only constitute grounds for compensation, provided that this has been agreed to in writing.
4. Where a counterparty fails to take delivery of goods following the expiry of a delivery time or they cannot be incorporated into the relevant works, those goods shall be placed at DSD's disposal and they shall be stored in a place still to be determined by DSD at the counterparty's risk and expense.
5. The provisions of Clause (4) shall not affect DSD's entitlement to issue an invoice for those goods and the claim shall fall due with immediate effect.
6. In the event that a counterparty fails to collect any of its goods which DSD has in its possession in spite of the fact that they have been placed at their disposal in return for payment of what is owed, DSD shall be entitled to sell those goods for and on behalf of the counterparty (or to arrange for this to be done) one (1) month after they have been placed at the counterparty's disposal and after notice of default has been issued in writing subject to its duty to pay the proceeds to the counterparty less any claim payable to DSD, which is deemed to include the storage costs.

#### **Article 11. Payment**

1. Payment shall be effected in DSD's office or through a bank in the absence of any deduction of a discount or setoff.
2. Any terms of payment shall be stipulated in accordance with the nature and importance of the relevant consignment or the work which is carried out. Unless otherwise agreed, the following terms of payment shall apply:
  - payment in respect of any commercial matter shall be effected in cash;
  - any delivery or work that is contracted shall be paid within fourteen (14) days after the relevant invoice date;
  - larger assignments and contracting for work;
    - 20% of the agreed fee paid upon the commencement of the relevant work;
    - three (3) instalments of 25% of the agreed fee paid upon the delivery of the relevant materials to the workplace;
    - 5% of the agreed fee paid upon handover.
3. The right of a counterparty to set off their claims against and obligations towards DSD or to suspend them shall be explicitly precluded.
4. Where an invoice that has been issued is not paid within fourteen (14) days after the relevant invoice date, the counterparty concerned shall be in default by operation of the law and, following the expiry of the aforementioned deadline, DSD shall be entitled to charge the counterparty a penalty equal to 1% per month on account of foregone interest, where interest payable in respect of part of a month shall be charged on the basis of a full month.
5. In the event that timely payment is not forthcoming, the counterparty in default of payment shall also be liable towards DSD for all judicial and extrajudicial expenses which are due to such non-payment. A complaint shall not confer on the relevant counterparty entitlement to suspend payment. Extrajudicial expenses are any which DSD has reasonably incurred to obtain assistance from another party for the purposes of collecting an amount payable in respect of which the relevant counterparty is in default. DSD shall be entitled to set the aforementioned extrajudicial expenses at a flat rate of 15% of the amount due subject to a minimum of €100.00 exclusive of value added tax.
6. Before effecting delivery, proceeding with it or complying with a contract, DSD shall always be entitled to require any security which it deems to be appropriate to secure compliance with the relevant counterparty's financial obligations. This clause shall also apply where credit has been obtained. A counterparty's refusal to tender security shall confer on DSD entitlement to cancel the relevant agreement by means of a written notice to this effect subject to DSD's entitlement to be compensated for any expenses and loss of earnings.
7. Furthermore, in the event that a counterparty fails to comply with their financial obligations, DSD shall also be entitled to suspend its work, even where a fixed delivery time has been agreed to.
8. Rules issued by any authority whatsoever which serve as an obstacle to the use of goods that are still to be or which have already been supplied shall not affect the relevant counterparty's financial obligations.
9. In any case the entire fee shall fall due immediately in the event that payment is not effected promptly on the due date, where the relevant counterparty goes bankrupt, applies for a moratorium on payments, debt rescheduling under the law or to be placed under the care of a guardian, in the event that the counterparty's goods or claims are attached, upon the counterparty's death, or where the counterparty goes into liquidation or is dissolved. This shall not affect DSD's right to cancel all or part of the relevant agreement without having a duty to provide compensation or to honour a warranty.

#### **Article 12. Transport**

1. Unless the parties make other arrangements, all goods shall be shipped at the relevant counterparty's risk and expense as of the time when they are despatched. A counterparty shall be required to take out appropriate insurance against such risk.
2. Should reliance on the provisions of Clause (1) fail, DSD shall never be liable for any further compensation than the sum which it may obtain from the relevant transporter and/or insurer pursuant to loss or damage during transport and, where requested to do so by the

relevant counterparty, it shall assign its claim against the transporter or insurance company to that counterparty.

#### Article 13. Amendment of contract at a counterparty's request

1. DSD may pass on any additional costs incurred due to the amendment of the original contract to the counterparty. Any additional costs shall be calculated on the basis of those cost-determining factors which are applicable when excess work is carried out.
2. Any changes to implementation which a counterparty requires after awarding a contract must be communicated to DSD in writing. DSD shall not be liable for any problems involving the implementation of changes which have not been passed on in writing. In the event that any originally agreed delivery deadlines are not met as a result of a change covered by the foregoing clause, DSD shall not be liable for any loss suffered pursuant to that.

#### Article 14. Complaints or claims

1. A counterparty shall be required to inspect any goods sold and supplied by DSD in relation to quantity, weight and quality upon receipt or within twenty-four (24) hours after receiving them.
2. A counterparty may not rely on deficient performance in the event that they fail to notify DSD of this in writing within eight (8) days after they discover or ought to have discovered such deficiency, indicating to DSD in writing what the deficiency is, and how and when they discovered it.
3. A counterparty shall forego all rights and entitlements available to them pursuant to such deficiency in the event that they fail to lodge a claim by the aforementioned deadline and to afford DSD an opportunity to remedy it.
4. A complaint concerning an invoice must be submitted in writing within eight (8) days after receiving it.

#### Article 15. Impracticability of a contract

1. In the event that, after an agreement is entered into, DSD is unable to comply with it due to circumstances of which it was unaware when it was concluded, DSD shall be entitled to seek its amendment in such a way that it remains possible to execute it.
2. Furthermore, DSD shall be entitled to suspend compliance with its obligations and it shall not be in default in the event that it is temporarily prevented from complying with its obligations due to a change in circumstances which was beyond its control and which it could not reasonably have expected when the relevant agreement was concluded.
3. 'Circumstances which were beyond DSD's control and which it could not reasonably have expected' are also deemed to refer to a failure on the part of DSD's suppliers and/or subcontractors to comply with their obligations or to do so on time, war or the danger of war, fire, traffic disruptions, the loss of or damage to goods covered by the relevant agreement while being transported, strikes, work stoppages, a pandemic, the loss of materials that were to be treated, import and/or export prohibitions, and trading bans.
4. Where compliance is permanently impossible or is temporarily impossible for more than sixty (60) days, the parties shall be entitled to cancel the relevant agreement without either party being entitled to compensation for any loss suffered or to be suffered due to such cancellation.
5. In the event that DSD has complied with part of its obligations, it shall be entitled to a proportionate part of the agreed fee based on the work which it has already carried out or the costs which it has already incurred.

#### Article 16. Retention of title and pledges

1. DSD shall retain ownership of all of the goods which it has supplied or is still to do so for as long as the relevant counterparty fails to effect counterperformance in full for which they are liable pursuant to any agreement with DSD.
2. Furthermore, DSD shall retain ownership of any goods which it has supplied or is still to do so for as long as the relevant counterparty fails to pay for the work carried out pursuant to such agreement and to pay any amount payable due to their failure to comply with such agreement, which is deemed to include any claim pertaining to a penalty, interest or costs.
3. As long as a counterparty fails to pay any of the aforementioned amounts payable, they shall not be entitled to pledge or in any other way encumber goods subject to retention of title and, when DSD first requests them to do so, they undertake to notify any third party that wishes to encumber them with such a right that they are not entitled to do so.
4. In the event that a third party arranges for any goods that have been delivered to be attached, or wishes to establish or enforce any right thereto, the relevant counterparty shall have a duty to notify DSD of this as expeditiously as may reasonably be expected.
5. In the event that a counterparty fails to comply with any obligation towards DSD pursuant to the relevant agreement pertaining to goods sold and/or work carried out, the latter shall be entitled to repossess both the original goods supplied and any newly created ones without giving notice of default.  
A counterparty shall authorise DSD to enter any place where such goods are located.
6. At such time as a counterparty has complied with all of their financial obligations pursuant to these or any similar agreement(s), DSD shall transfer ownership of the relevant goods that have been supplied subject to their pledge to DSD in connection with any other claims which the latter may have against the counterparty. A counterparty shall assist with any action which may be required in this respect when DSD first requests this.

#### Article 17. Liability

1. DSD shall only be liable for any direct loss suffered by a counterparty which is the direct and sole consequence of culpable default on the part of DSD, subject to the proviso that only that loss shall qualify for compensation against which DSD is insured or should reasonably have been insured in the light of customary practices in the industry. In this respect the following limitations shall be observed:
  - A. whatsoever its cause, any consequential loss (the disruption of business, mooring fees, other expenses, loss of earnings and the like) shall not qualify for compensation. A counterparty shall be required to take out insurance against such loss if required;
  - B. DSD shall not be liable for damage of any nature whatsoever which is inflicted on

property located in the vicinity of a place where work is carried out as a result of such work being performed or any goods or installations that have been supplied being assembled, or while this occurs, unless and in so far as DSD is insured against this;

- C. DSD shall not be liable for any loss which is occasioned due to a wilful act or omission, or gross negligence on the part of any assistant;
  - D. DSD shall not be liable for any injury or damage being inflicted on a person or property which is directly or indirectly due to any goods which it has supplied or their use, or as a result of a defect in such goods, unless there is a question of a wilful act or omission, or gross or any other negligence on the part of DSD;
  - E. DSD shall not be liable for any loss due to any goods which it has supplied perishing or failing to work properly as a result (amongst other things) of a failure to properly heed the instructions accompanying the relevant items or by acting otherwise, or by failing to act and thereby having an adverse effect on the relevant work or the shelf life of an item;
  - F. DSD shall not be liable for any inaccuracy in information supplied by a counterparty (which is deemed to include specifications, drawings, construction data and so forth), with the result that any goods supplied by DSD do not fit in their entirety or partially, are unusable and/or do not function properly;
  - G. DSD shall not be liable for any environmental harm as a result of pollution that is due to the use or storage of goods which it has supplied;
  - H. the relevant counterparty shall be liable for any loss due to theft, fire or damage to property, tools and materials belonging to DSD once they are located on the work site in so far as this is not due to any culpable failure on the part of DSD;
  - I. Any loss for which DSD is to provide compensation shall be reduced in the event that the fee which the relevant counterparty is to pay is insignificant compared to the loss that they have suffered.
  - J. Any liability on the part of DSD for a loss which has occurred as a result of a proven defect or deficiency in any goods that it has supplied shall be confined to no more than the amount invoiced for those goods.
2. A counterparty shall indemnify DSD against any claim made against the latter by another party for compensation for the use of information supplied by that counterparty and shall be liable for any expenses incurred as a result.

#### Article 18. Warranties

1. DSD warrants that any work which it contracts to do will be carried out properly in relation to construction and materials in so far as DSD has been able to select same at its discretion on the understanding that new parts will be supplied to it free of charge in the case of all those parts which become defective within a period of six (6) months after their delivery as a result of deficient construction and/or faulty materials. Any parts that are to be replaced must be sent to DSD freight-free. DSD shall acquire ownership thereof. The relevant counterparty shall be liable for the disassembly and assembly of such parts.
2. In the case of inappropriate delivery, after the deficient item has been returned freight-free, DSD shall be entitled to credit the relevant counterparty in full, to repair that deficient item or to supply a new one.
3. A counterparty shall at all times be required to afford DSD an opportunity to remedy any deficiency.
4. No warranty shall apply in the case of a deficiency which occurs due to normal wear and tear, improper treatment, improper or inappropriate maintenance, or following any modification or repairs carried out by or on behalf of the relevant counterparty or any other party. By way of derogation from the foregoing, in the case of any goods covered by a manufacturer's warranty, the provisions of that warranty shall apply. The relevant counterparty shall be liable for the disassembly and assembly of such parts. Where a manufacturer does not provide a warranty, DSD shall not provide one either. No warranty shall be provided for any item which is supplied and which was essentially not new when it was supplied. No warranty shall be supplied for any item which DSD has not assembled, nor for any which it has assembled but which it has not supplied.
5. A warranty shall only apply provided that the relevant counterparty has complied with their obligations towards DSD (both financial and otherwise) or has tendered satisfactory security for same.

#### Article 19. Cancellation

1. An agreement may be fully or partially cancelled by means of a written notice issued by the party entitled to do so. Before a counterparty issues DSD with written notice of cancellation, they shall at all times first notify DSD that it is in default and afford it a reasonable period of time within which to comply with its obligations or to remedy its default.
2. A counterparty shall not be entitled to cancel all or part of the relevant agreement or to suspend their obligations in the event that they had already failed to comply with their obligations.
3. In the event that DSD consents to cancellation in the absence of default on its part, it shall always be entitled to compensation for any financial loss, such as expenses, loss of earnings, and any reasonable costs incurred for the purposes of determining the loss and liability. In the case of a partial cancellation a counterparty may not seek the reversal of any performance which DSD has already effected and the latter shall be fully entitled to payment for such performance.

#### Article 20. Governing law

1. All agreements that are concluded shall be solely governed by and construed in accordance with the law of the Netherlands.
2. Unless the provisions of the law pose an obstacle to this, any dispute arising pursuant to an offer or agreement, howsoever it may be called, shall be adjudicated by a civil court of law which enjoys jurisdiction in the place in which DSD has its registered office.

#### Article 21. Location and amendments

1. These general terms and conditions have been lodged with the commercial register maintained by the Chamber of Commerce.
2. The last version which has been lodged or the version which applied at the time when the relevant agreement came into effect shall always be applicable.
3. DSD shall be entitled to amend or add to these terms and conditions. Minor amendments may always be made.  
Major amendments shall preferably be discussed with a counterparty in advance