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## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF DEEGE METAALFINISHING BV

Registered with the Chamber of Commerce nr. 20041433/ Integrally available on [www.dmf-coating.nl](http://www.dmf-coating.nl)

### 1. Scope of application

1.1 These general terms and conditions of sale and delivery shall apply to all legal acts, such as but not limited to agreements regarding the supply of goods (hereinafter the "Goods") and the rendering of services (hereinafter the "Services") by Deege Metaal Finishing BV or one of its group companies (hereinafter "DMF").

1.2 Deviations from these Terms and Conditions shall only apply if DMF has confirmed the aforementioned deviations in writing. Herewith, the applicability of the general terms and conditions of the contracting party (hereinafter the "Buyer") are explicitly excluded.

1.3 In case of total or partial nullity or otherwise invalidity of one or more stipulations of these conditions, the other stipulations remain in force. Parties will draft a new provision in accordance with the spirit of these conditions

### 2. Offer

2.1 Offers made by DMF are without engagement. An offer accepted by the Buyer can be withdrawn by DMF within 5 (five) working days after acceptance and without costs.

2.2 All quotations and any subsequent orders and/or agreements are at all times subject to a resolute condition of export approval (i.e. granting of a permit, a generic approval or otherwise) by the competent authorities, whether Dutch, European or otherwise.

2.3 Provided data and samples, to the extent that no specific guarantees are given, will be deemed informative from which DMF can deviate.

2.4 DMF has the right to deliver Goods which deviate from the agreed fabrication and/or trademark provided that these Goods have the same relevant features.

### 3. Prices, invoicing, terms of payment

3.1 Prices are based on delivery FCA, Soesterberg, The Netherlands (Incoterms latest version) excluding packaging, taxes and surcharges which will be mentioned separately.

3.2 Prices are in euro. If in a specific order prices in a different currency are used this shall be done based on the exchange rate against euro applicable on order date. If at date of invoice this exchange rate deviates with 2.5 % or more, DMF is entitled to fix the contract price anew based on the then applicable exchange rate.

3.3 In the event the total production costs of the Goods and/or Services increase with more than 2.5%, DMF is entitled to raise the offered and/or agreed upon price. Aforementioned does not give Buyer any right to (partial or total) termination of the contract.

3.4 Payment will be made in accordance with the agreed upon payment schedule, within 30 days from receipt of a proper invoice. Invoicing shall take place 100% at delivery (with respect to commodities or treated goods) or according to the following payment schedule (with respect to projects):

- a) 30% as advance payment at date of order;
- b) 30% at factory acceptance;
- c) 40% at delivery.

In the event the execution of DMF's obligations is delayed due to circumstances beyond its control, DMF is entitled to deviate from the agreed upon payment schedule and invoice the activities which have already been performed.

3.5 DMF is entitled to settle its debts to the Buyer or one of its group companies against any claim it may have on the Buyer.

3.6 In the event of non payment or late payment, Buyer shall be liable to pay to DMF any and all extrajudicial (with a minimum of 15%, of the outstanding payments) and judicial costs.

### 4. Delivery

4.1 Delivery will be in accordance with FCA DMF, Soesterberg, The Netherlands (Incoterms latest edition) unless otherwise agreed. Partial delivery is permitted.

4.2 Delivery of any goods by Buyer to DMF for treatment or processing will be DDP DMF Soesterberg, The Netherlands (Incoterms latest edition) unless otherwise agreed.

4.3 Packaging, including pallets and containers that are not included in the price shall remain the property of DMF and shall be returned to DMF at cost of the Buyer.

4.4 On delivery the Buyer shall inspect the Goods and/or Services and perform the common entrance and quality checks and controls. No claim for damage or short delivery of Goods can be entertained unless either a receipt is given to the carrier detailing the shortage or damage at the time of delivery or alternatively notification of the shortage or damage is given to DMF within two business days from the date of delivery. In absence of the aforementioned, it is presumed the goods have been delivered in pristine conditions.

4.5 The dates or periods for the delivery of Goods and/or performance of Services take effect immediately after written confirmation by DMF and after the agreed conditions have been met by the Buyer such as but not limited to down payment.

4.6 Any dates, terms or periods for the delivery of goods or services are best estimates and approximate only. No such dates, terms or periods shall constitute a fatal obligation binding on DMF. In no event time shall be of the essence of the agreement.

4.7 DMF shall only be liable towards Buyer for late delivery if and when DMF is in default. DMF's maximum liability for late delivery is limited to 2.5% of the total worth of the delayed Goods.

4.8 If the Client requests DMF to postpone the delivery than DMF is entitled to reimbursement of all subsequent costs (such as but not limited to storage costs and mobilisation costs of personnel). DMF shall jointly with the Client determine a new delivery date based on the internal production planning of DMF. If such new delivery date is more than 2 months later than the original one than DMF is entitled to invoice, and the Client is obliged to pay, the full contract value.

### 5. Execution

5.1 The obligation to deliver Goods does not include the installation and commissioning of the Goods unless specifically agreed.

5.2 The Buyer guarantees that DMF can perform all necessary activities without disturbance or interference. In case the activities are interrupted or delayed due, the Buyer is liable to DMF for all additional costs, including costs for (de)mobilisation. Any agreed completion date shall be extended.

5.3 Completion of installed and commissioned Goods shall take place if and when the Goods are mechanically complete and commissioned.

The Buyer has the right to inspect the Goods at commissioning.

5.4 Completion shall be documented in a completion certificate. Any observations and/or comments shall be mentioned. The Buyer is not entitled to use the Goods before execution of the certificate of completion.

5.5 Aspects or shortcomings of minor importance which do not hinder or prevent actual operation of the Goods shall not prevent the Goods to be commissioned and



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completed. Any such aspects or shortcomings shall be made good by DMF within a reasonable time.

#### **6. Passing of title and risk**

**6.1** Subject to 5.2, title to and usage rights of the Goods shall transfer to the Buyer upon delivery.

**6.2** DMF retains ownership of all goods until all amounts including but not limited to service costs owed by the Buyer to DMF are paid in full. The Buyer is not entitled to re-sell, assign, pledge or grant any other legal rights on all or any of the goods to third parties. Regardless of the aforementioned, the goods will be for the risk of the Buyer after delivery.

**6.3** If Buyer does not comply with the applicable terms of payment or if DMF has reasonable doubt that the payment terms will be met, DMF may at its sole discretion repossess the delivered Goods. These Goods will be credited against their market value with deduction of costs made.

#### **7. Guarantee**

**7.1** DMF warrants that full title to the Goods is delivered and the Goods are new, unused and, during the Guarantee Period, free from defects in material, workmanship and design and are in accordance with the contractual specifications. Further, DMF guarantees that all Services are performed in accordance with sound engineering practice and due diligence. This guarantee is exclusive and in lieu of any implicit and/or statutory guarantee.

**7.2** The applicable guarantee period (hereinafter the "Guarantee Period") is 12 (twelve) months from commissioning or 18 (eighteen) months from delivery, whichever period expires first.

**7.3** In the event a default occurs within the Guarantee Period which could not have been detected with common entrance and quality checks and controls, DMF is obliged to make good any such default by either, at its own discretion, repairing or replacing the Goods and/or redoing the Services. This make good obligation is exclusive and excludes any liability for damages and/or costs sustained by Buyer as a consequence of such default in the Goods and/or Services.

**7.4** DMF will not be liable for the designs and materials dictated or specified by the Buyer unless the designs and choice of materials have been explicitly approved by DMF in writing.

**7.5** This guarantee does not apply to normal wear and tear, defects that could have been detected with common entrance and quality checks and controls, damage to or deterioration of the Goods as a consequence of improper storage, use or handling, repairs made by Buyer or third parties, use of spare parts, consumables or materials not supplied or certified by DMF.

**7.6** If the access to the Goods is obstructed (e.g. because Goods are built in), the costs made in order to access the Goods are for account of the Buyer.

**7.7** In the event the Buyer is not the end user of the supplied Goods and/or Services, the additional costs caused by the fact that the Goods and/or Services are not situated at the Buyer's location are for account of the Buyer.

#### **8. Dissolution and suspension**

**8.1** If Buyer is in default with the performance of its contractual obligations, DMF may, without prejudice to its other claims and rights under the contract, suspend further performance of its obligations for such time as it shall deem fit.

**8.2** In the event DMF has reasonable doubt regarding the payment capacity of the Buyer, DMF is entitled to postpone all obligations under the contract until the Buyer has provided sufficient security.

**8.3** In the event the Buyer cannot meet its obligations under the aforementioned conditions within a reasonable period, DMF is entitled to terminate the contract without compensation of damages.

**8.4** DMF is entitled to terminate the contract or suspend its performance in the event of withdrawal of operation, judicial settlement, liquidation and/or (application for) bankruptcy of the Buyer.

#### **9. Liabilities**

**9.1** DMF shall only be liable for damages, payments, losses, costs, expenses and liabilities incurred by Buyer as a result of a breach by DMF of its contractual obligations.

**9.2** Any and all liability of DMF whether in contract or at law ends at all times 18 (eighteen) months from delivery.

**9.3** DMF's maximum liability arising out of or in connection with this contract, whether in contract, tort or otherwise (including damages resulting from product liability) shall be limited to the total order value, whichever is the lesser.

**9.4** In no event shall DMF be liable for any consequential, indirect or exemplary damages, including but not limited to loss of profit or turnover, downtime costs or claims from Buyer's customers for such damages.

**9.5** The above exclusions or limitations of liability apply not only in contract but also in tort or otherwise at law and shall apply notwithstanding any provisions to the contrary elsewhere in the contract.

**9.6** Parties have explicitly agreed upon aforementioned exclusions and restrictions regarding DMF's liability under these terms and conditions. The compensation of risk has explicitly been applied as a basis for the price-setting in these terms and conditions.

#### **10. Confidentiality and intellectual property**

**10.1** Buyer shall keep confidential, both during as well as after the performance of its obligations, all commercial and technical information and know-how, such as but not limited to information on DMF's products, prices, customers and suppliers (hereinafter "Confidential Information")

**10.2** All intellectual property rights on the Goods and/or Services delivered by DMF, including without limitation all copyrights, database rights, rights in design, rights in know-how, patents and rights to inventions, information, content, materials, data or processes (in all cases whether registered or unregistered and including all rights to apply for registration thereof) belong to, shall remain and/or shall become the property of DMF. All bearers of intellectual property and/or Confidential Information shall remain or become the property of DMF and, without its explicit consent, may not be copied, shown to third parties or used in another manner, whether or not any costs were paid by Buyer for the production or provision thereof. Buyer shall return any such bearers to DMF on first written demand thereto.

#### **11. Applicable law / jurisdiction**

**11.1** These terms and conditions will be governed exclusively by and construed in accordance with the laws of the Netherlands without reference to its principles of conflicts of law.

**11.2** Parties hereby irrevocably submit that all disputes concerning the contractual relationship will be subject to the exclusive jurisdiction of the Dutch civil court, district of Utrecht.