

**I. General Terms and Conditions**

**1 Definitions**

- DS: Handelsoverneming De Schans B.V.
- C: Contracting Party, the other party of DS
- Equipment: all goods sold, rented out and otherwise delivered by DS in the broadest sense, thus both machines and separate components

**2 Ranking of stipulations**

1. The stipulations under I of these terms and conditions shall apply to all quotes, offers and contracts in which DS is involved as a party.
2. The stipulations from II are special stipulations for the contracts referred to there. If a special stipulation differs from a general one, the special stipulation shall prevail.
3. Terms and conditions in contracts shall prevail over these terms and conditions.

**3 General**

1. These terms and conditions apply to all offers, quotes and contracts between DS (and third parties engaged by it) and C, unless the parties derogate from these terms and conditions in writing.
2. DS explicitly rejects the applicability of C's general terms and conditions.
3. If one or more stipulations are null and void or partially null and void or are nullified, the remaining stipulations will remain fully applicable. DS and C will then consult in order to agree new stipulations to replace the null and void or nullified part, whereby the aim and purport of the original stipulations will be taken into account. If a situation occurs between the parties that is not arranged in these general terms and conditions, this situation must be assessed according to the spirit of these terms and conditions and the contract.
4. Only the Dutch version of the terms and conditions shall be binding.

**4 Offers**

1. Offers from DS are free of obligation and valid for 30 days, unless stated otherwise. Contracts are concluded by placing a written (which includes by fax or by electronic means) or oral (by telephone) order and written acceptance thereof by DS.
2. If the acceptance differs from the offer, DS will not be bound by it. In that case, the contract will not be concluded in accordance with this different acceptance, unless DS indicates otherwise.
3. Combined quotations will not oblige DS to execute part of an order at a corresponding part of the quotation. Offers will not automatically apply to future orders.
4. Mention of the model, weight, dimensions, properties, capacity or other characteristics of Equipment and other technical information will apply by approximation and will be binding on DS only when agreed.

**5 Price, price increase and security deposit**

1. Prices and rates quoted by DS are in euros, exclusive of VAT, other government levies and any costs to be incurred in relation to the contract, such as dispatch, administration, transport, packaging and insurance costs, unless stated otherwise. The prices will apply ex warehouse of DS.
2. As long as delivery has not yet taken place, DS may pass on price-increasing factors to C.
3. A security deposit must be paid in advance, in cash or by PIN payment, or by transfer to a bank account of DS. The security deposit, or the remainder thereof, will be refunded or retransferred after C has fulfilled all its obligations to DS.
4. The security deposit is not an advance payment on the rent due and will not bear interest.
5. At the end of the hire contract, DS may withhold financial obligations such as rent due from the security deposit, as well as imputable damage done by C to the Equipment. In case of damage in the interim, C must deposit the amount that was deducted from the security.

**6 Delivery, return and insurance**

1. Delivery will be made ex warehouse of DS, unless otherwise agreed. Goods must be returned to the warehouse of DS.
2. C must take delivery of the Equipment at the time it is made available. If C refuses to take delivery or fails to provide information or instructions that are necessary for delivery, DS may store the Equipment at the expense and risk of C.
3. If the Equipment is delivered to a different address, DS may charge any transport and delivery costs to C.

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4. Equipment shall be transported at the expense and risk of C and is not included in the agreed price of the Equipment to be delivered by DS. The risk of loss or of damage to the Equipment will pass to C at the time at which it is legally and/or actually delivered to C and has therefore been placed under the control of C.
5. DS needs to take out (transport) insurance only if agreed.
6. C must insure the Equipment delivered by DS on an 'all risk' basis, with a so-called financing clause, and keep it insured from delivery until it has been delivered back or the title to it has passed to C. DS shall always be indicated as the beneficiary of insurance payments and shall thus be entitled to them.
7. In case of theft or (partial) destruction of Equipment, C or its insurer must compensate DS for the Equipment at the original value when new, unless the replacement price is higher, in which case C must pay the replacement price. C must hand over the policies to DS immediately on request.
8. If C fails to insure the Equipment (adequately), DS may take out insurance and charge C for the costs involved. DS is however not required to do so and does not accept any liability for this, nor for over or underinsurance.
9. If the claim is not paid for whatever reason or the payment is lower than the applicable market value, C must compensate DS for the part not paid.
9. Delivery periods stated by DS are indicative. If the period is exceeded, C must put DS in default in writing and offer it a new, reasonable period for delivery.
10. DS may deliver and invoice Equipment in parts, without being in default by doing so.
11. If C does not return Equipment clean, C will be obliged to pay the costs of cleaning by DS.
12. DS will inspect the Equipment on return, during which C may be present. When DS or third parties take Equipment along, this may not be considered inspection. If DS ascertains that Equipment has been returned in damaged condition or not completely, it will draw up a list of findings, as far as possible with the financial extent of the damage or loss. If C does not dispute the correctness of this list within 5 working days after notification, C will have agreed to this damage assessment of DS. This period can be departed from if there is a situation of force majeure due to which C was unable to respond within that period. This does not affect the right of DS to compensation for loss of the Equipment during this period and for the recovery or reacquisition of the missed time involved.

**7 Payment**

1. Unless otherwise agreed, C must pay in cash or by way of a PIN payment at the office of DS or payment into a bank account to be indicated by DS within 30 days of the invoice date. C may be required to sign a 'business standing order'.
2. If C does not pay in time, it will be in default by operation of law. It will then owe 1% interest per month or part of a month, unless the statutory interest rate is higher, in which case the latter interest rate will apply. Interest will be charged from the day that C is in default until the time of payment of the full amount.
3. In case of liquidation, (application for) insolvency, (application for) suspension of payment of C, an attachment order against C, if this attachment is not lifted within 3 months, or in the event of a different circumstance by which C can no longer freely dispose of its assets, DS may terminate or cancel the agreement with immediate effect, without having to pay C any compensation. In that case, DS' claims against C shall be immediately due and payable.
4. DS may let payments by C serve first of all to reduce the costs, then deduct them from the interest due and finally deduct them from the principal sum and the current interest.
5. Without being in default, DS can refuse an offer for payment if C indicates a different order for its allocation. DS may refuse complete repayment of the principal sum if the interest and costs due are not paid in addition.
6. C will never be entitled to set off the amount it owes DS. Objections to (the amount of) an invoice will not suspend C's payment obligation.

**8 Collection costs**

1. If C fails to pay or is in default of (timely) compli-

ance with his/its obligations, the reasonable costs to obtain payment out of court will be payable by C.

**9 Investigation, complaints**

1. Subject to the lapse of its rights, C must report complaints about (the size or quality of) Equipment delivered to DS in writing immediately after discovery, but within eight days of delivery at the latest. In that case, C must also assess the goods delivered or have them assessed at the time of their delivery or processing or, if this is demonstrably impossible, at least at the earliest possible stage, in an expert manner. Any notice of default in this regard on the part of C must contain the most detailed possible description of the defect, so that DS will be able to respond adequately.
2. Even if C complains in good time, C will still be required to take delivery of and pay for the Equipment. C will not be entitled to setoff or suspension either.
3. If a complaint is well founded, DS will still deliver or replace the Equipment, unless this has become demonstrably pointless to C. C must make the latter known in writing and prove it if necessary. DS will be entitled to replace goods. If still delivering or replacing goods is no longer possible or meaningful and this is attributable to DS, DS shall be liable only within the limits of these terms and conditions.

**10 Breach of contract, suspension and termination**

1. DS will be entitled to suspend performance of its obligations or to terminate contracts if:
  - C does not comply with its obligations under the contract at all or in time or completely;
  - Circumstances DS has come to know after conclusion of the contract give good reason to fear that C will not comply with the obligations;
  - C was requested to provide security on concluding the contract for compliance with its obligations under the contract, and this security has not been provided or is insufficient.
2. If because of delay on the part of C, DS can no longer be required to perform the contract under the originally agreed terms and conditions, DS may also terminate the contract. In that case DS will not be obliged to compensate or reimburse C, but will have a right to compensation of the loss arising from the termination and to everything to which C has committed itself with respect to DS, including instalments already due and future instalments, plus interest and costs, if any.
3. DS may also terminate the contract without compensation if circumstances occur of such a nature that performance is impossible or can no longer be required of DS according to the criteria of reasonableness and fairness or if circumstances occur otherwise that are of such a nature that continuation of the contract unchanged may not reasonably be expected of DS. In that case, DS will not be obliged to compensate or reimburse C in any way.
4. If the contract is terminated, the claims of DS against C shall be immediately due and payable. If DS suspends performance of its obligations, it will maintain its claims under the law, contract and these general terms and conditions. In the event of breach of contract and on termination, C must always compensate DS for direct and indirect losses.
5. In the event of (application for) insolvency, suspension of payment or debt restructuring, C must place the Equipment and everything belonging to it in its possession at the time immediately in the possession of DS. C must then return the Equipment to DS in the condition in which it was made available to C. If the value of the Equipment has been reduced as a result of changes made to it, C will be liable for the amount of the reduction.

**11 Liability**

1. Should DS be liable, liability shall be limited to what is arranged in this clause.
2. DS shall not be liable for any loss arising from DS starting from incorrect and/or incomplete information provided by or on behalf of C.
3. If DS is liable, this will be limited to at most twice the amount invoiced to C up to that time, or at any rate that part of the contract to which the liability

- relates, at any rate up to a maximum of €10,000.00. Under contracts with a term of more than 6 months, liability will always be limited to the amount invoiced to C during a period of 6 months.
4. The liability of DS shall in any case always be limited to the amount of the payment from its insurer in a particular case.
  5. DS shall never be liable for indirect loss, such as consequential loss, loss of profits, missed savings and loss due to business interruption.
  6. Direct loss means exclusively:
    - Reasonable costs to assess the extent of the damage and/or loss, in so far as the assessment relates to damage and/or loss within the meaning of these terms and conditions;
    - Any reasonable costs incurred to allow the faulty performance of DS to conform to the contract, in so far as this can be attributed to DS;
    - Reasonable costs incurred to prevent or limit damage and/or loss, in so far as C demonstrates that these costs have resulted in limitation of direct loss as referred to in these general terms and conditions.
  7. DS shall not be liable for errors or flaws in information made available by third parties or C, nor for damage and/or loss due to external contingencies, nor for components and/or materials made available by or prescribed by C itself.
  8. The limitations of liability referred to here will not apply if the damage and/or loss is to blame on a wilful act or omission or gross negligence of DS.

**12 Conditions for use**

1. As long as Equipment is the property of DS, C must observe the following conditions for use.
2. C must keep Equipment in the same condition as that in which C received it, i.e. properly maintained and completely cleaned, all this except for wear and tear as a result of normal use.
3. C must use Equipment in accordance with its intended use and with due care and diligence. C must also precisely follow instructions and/or directions (if any) given by DS for the use and maintenance of the Equipment, unless the state of the art opposes this, in which case C must consult with DS. In that case, DS may give further instructions.
4. C must ensure that C inspects the Equipment in good time before expiry of the inspection date, and must at least inform DS promptly of the expiry of the inspection date and offer DS the possibility in a timely manner to inspect the Equipment. If C does not comply (properly) with this obligation, C will be liable for all damage and/or loss arising from this.
5. During use, the costs of maintaining Equipment will be payable by C. Daily maintenance includes, but is not limited to, checking and/or topping up the oil level, tyre pressure, cooling water level, regular lubrication, repairing flat tyres and regular cleaning of the Equipment.
6. Without prior permission from DS, C may not make changes to or paint the Equipment or provide it with any indication, or remove or conceal any indication applied by DS or the manufacturer.
7. Without prior written permission from DS, C may not hire out the Equipment further or sub-hire it, nor relinquish it in any other way to third parties for use.
8. C may not repair Equipment him/itself or have it repaired, unless DS gave prior written permission to do so.
9. C must report all damage to and/or defects in Equipment immediately to DS in writing.
10. C must notify DS of the place(s) in which the Equipment will be placed and/or used. This place will require permission from DS, failing which DS will be entitled to take/claim back Equipment and terminate the contract. In that case, C must pay DS the still remaining and any outstanding instalments, plus interest and costs, if any. C must also reimburse DS for the costs arising from this.
11. The Equipment may never leave the territory of the Netherlands without prior written permission from DS.

**13 Warranty on new Equipment**

1. With due observance of the following stipulations, DS warrants the soundness and quality of new Equipment delivered by it for 6 months after delivery. This means that DS will repair or replace, at DS' discretion, any defect that might arise during that time in components or materials on the basis of faulty construction, free of charge, in so far as the items are located in the Netherlands. If DS has purchased the items itself from a manufacturer or third parties, only the warranty conditions of that

manufacturer or those third parties will apply.

- Subject to lapse of the warranty, C must report a defect discovered to DS immediately after discovery by registered post. C must save a defective component and, if DS so requires, send it back carriage paid to DS. Items or components that are replaced under a repair order will become property of DS.
- The warranty of DS shall lapse if C does not use the items in conformity with the directions and instructions of DS or the manufacturer or has otherwise dealt with them incompetently or carelessly. This obligation shall also lapse if C has used the items for purposes other than the normal business operations for which they are intended, or if has had modifications or changes made by parties other than DS without written permission.
- DS may suspend its obligations under the warranty if C does not comply with its payment obligations. C may not refuse payment based on the fact that DS has not yet or has not completely complied with its warranty obligations.
- Defects and phenomena caused by accidents, improper use, poor maintenance or normal wear and tear shall be excluded from the warranty.
- If DS does not comply with its warranty obligations, its liability shall be limited to the costs of repair or replacement by third parties, but only after C has put DS in default in writing and allowed it a reasonable period within which DS can still comply with its warranty obligation.
- C must notify DS in good time of the necessary servicing that is covered by the warranty. It must be possible to carry out such servicing during the normal working hours.
- A warranty period of 3 months after the repair date applies to repairs by DS, based on 40 working hours a week.

#### 14 (Retention of) title

- All Equipment delivered by DS shall always remain the property of DS unless it ensues otherwise from the nature of the contract. In the case of purchase or hire purchase, the title will pass only at the time that C has complied with all obligations with respect to DS.
- C may not process, mix, pledge or otherwise encumber items subject to retention of title. C must store and keep these items as such separately from its own assets and also make this known to third parties until C has complied fully with its obligations with respect to DS.
- If third parties want to impose attachment on items delivered under retention of title or establish or enforce rights in them, C must draw the attention of these third parties to the retention of title and inform DS of this immediately. In that case, C must also do everything that can reasonably be expected of it to safeguard the property rights of DS.
- DS may always inspect Equipment owned by it or have it inspected. For this purpose DS or a person it has designated must be able to gain free access to the Equipment and be enabled to perform the work on the Equipment that it considers necessary.
- DS provides Equipment owned by it with a track and trace system and will always be entitled to determine the position of the Equipment and to take it back if necessary.

#### 15 Force majeure

- DS will not be required to perform an obligation if it is prevented from doing so as a result of a circumstance to which it is not to blame and is not attributable to DS by virtue of the law, a legal act or generally accepted opinions.
- By force majeure, in addition to its meaning in the law and case law, the parties mean all external causes, foreseen or unforeseen, which are beyond DS' control, yet prevent DS from complying with its obligations, including strikes and sickness at DS' company.
- DS may also rely on force majeure if the circumstance that prevents (further) performance occurs after DS should have performed its obligation.
- The parties may suspend their obligations under the contract during the period that the force majeure continues. If this period lasts longer than 2 months, either of the parties may terminate the contract without being required to compensate the other party's loss.
- To the extent that DS has meanwhile performed or will be able to perform its obligations at the time the force majeure starts, DS may invoice the part performed or to be performed separately. C must pay this invoice as if it were a separate contract.

#### 16 Drawings, software etc.

- All drawings, images, catalogues, software and other information which DS provides will remain the property of DS and must be sent back to DS immediately on request.
- C undertakes not to copy this information or allow it to be copied or to make it available for inspection by third parties, unless with prior written permission from DS, subject to a penalty of €10,000 per case, without prejudice to DS' right to compensation of the loss actually sustained.

#### 17 Recommendations, designs and materials

- Information provided and recommendations made by DS are only general in nature and free of obligation.
- DS shall not accept any responsibility for a design worked out by or on behalf of C, nor for any recommendations further to such a design.
- C itself will be responsible for the functional suitability of the materials prescribed by C. Functional suitability means the suitability of the material or component for the purpose for which it is intended according to C's design.

#### 18 Applicable law and disputes

- All legal relations with DS shall be governed exclusively by Dutch law, even if an obligation is performed wholly or partially abroad, or if C has its registered office or resides there. Applicability of the Vienna Sales Convention shall be excluded.
- Disputes - possibly in derogation from the normal jurisdictional rules - shall be brought before the Subdistrict Court in (the district of) 's-Hertogenbosch. The parties explicitly agree as well that appeal lies from the decision of the Subdistrict court in the first instance (Sections 96, 332 and 333 of the Dutch Code of Civil Procedure (Rv)).
- If C is a consumer, these terms and conditions will apply only to the extent that they do not derogate from the provisions of mandatory consumer law to the detriment thereof.
- The terms and conditions will apply as they applied on conclusion of the contract.

#### Special stipulations

#### II Hiring out and loan

##### 19 General

- Prior to the start, DS must be in possession of a recent registration from the Trade Register of the Chamber of Commerce and a valid proof of identity of C. A PIN payment may also be required as proof.
- C must store and preserve Equipment on loan with due care and diligence. C must pay for damage to Equipment on loan.
- Items on loan must be sent back to DS immediately on request by DS. Failing timely return, DS may charge C the purchase price of the Equipment.

##### 20 Rent and payment

- The rent is based on eight hours of use of the hired Equipment per day during the official working days during the hire period. Should C want to use the rented Equipment more days and/or more hours a day, C must notify DS to that effect without delay. DS will then charge C a proportionately higher rent. A week is set at 5 working days and a month at 4 weeks.
- Should the cost price of the rent be increased during the hire period, DS may pass on this increase to C by proportionately increasing the agreed rent.
- DS may agree with C that C will pay the rent in advance. If payment in advance has not been agreed, the rent must be paid by subsequent payment. In the event of subsequent payment, the rent must be paid to DS each week. At the end of the hire period the last full or partial working week must be paid to DS at once.

##### 21 Hire period

- The hire period is entered into in full days. The day(s) on which the hired Equipment is transported to C and back to DS will also count as hire days.
- In case of hire for an indefinite time, a notice period of at least 3 working days will apply to each party.
- C must return the hired Equipment no later than on the last day of the hire period before 17 hours. If the hired Equipment is not returned on the end date, this shall mean that the hire period has been tacitly extended by the same hire period on the same terms, unless DS indicates that it does not want to extend the contract. In that case, C will have to pay a

default penalty of €500.00 for each day that the hired Equipment has not been returned.

- Extension of hire periods by C is possible if enough Equipment is available. If the hire period is extended, DS may take back the hired Equipment and make similar Equipment available to C. C must cooperate with this and may not refuse it.

#### III Hire purchase and financial/operating lease

##### 22 General

- In case of hire purchase, the sold Equipment will not pass merely by transfer of title, but only by fulfilment of the condition precedent of payment in full of everything C owes DS under the contract. The same holds for an operating lease, unless the contract stipulates that the title will remain vested in DS after it ends.

##### 23 (Instalment) payment and breach of contract

- The period within which the materials delivered to C must be paid off is specified in the contract, as well as the amount and frequency of the payment instalments.
- C will owe contractual interest during the payment arrangement.
- If C does not comply with C's obligations under the contract with DS in time, DS may immediately take possession of the Equipment and terminate the contract. C must then pay the still remaining and any outstanding instalments to DS as a penalty.

#### IV On-call Agreement

##### 24 General

- The purpose of making the Equipment available is the sale and delivery thereof to third parties at the indicated minimum price set by DS, or as much more or less as DS and C explicitly agree. C must make every effort to achieve the intended purpose.
- C must also declare the general terms and conditions and warranty terms of DS applicable in a timely manner and properly to all transactions in the context of the On-call Agreement and make this Agreement available to all buyers of Equipment before the contract is concluded. If C sells and delivers Equipment under different warranty terms, these will then be offered by C himself/itself. Should DS be held liable under this different warranty for repair, replacement or refund of the purchase price, the obligations arising from this, of whatever nature, shall be at the expense and risk of C in their entirety.

##### 25 Payment

- C must have the buyer transfer the purchase price due to the account number of DS. If payment is made in cash, C must pay the purchase price immediately to DS and keep it clearly separate from C's own cash until that time, or deposit it in a separate trust bank account. In that case C will act as custodian for DS of the amount received. The purchase price shall therefore never accrue to the capital of C.

##### 26 Duty of disclosure

- When asked, C must inform interested parties of its status as C of the Equipment made available. C must also inform every seriously interested party/buyer in writing of any defects in the Equipment, even if DS has not made a record of them, but is indeed or should be aware of them and may be expected to notify the aforementioned third parties to that effect.
- C must always inform DS properly and in good time of relevant developments in relation to the On-call Agreement.
- C warrants that C does not know of any circumstances regarding which he knows or reasonably ought to know that their disclosure to DS could be reason for DS not to enter into and/or continue a contract, or to do so under different terms and conditions.

##### 27 Ownership

- Equipment on an on-call basis shall always remain the property of DS. The title will not pass to a third party until the time that DS has been paid for the Equipment and it has been transferred with due observance of the prescribed formalities.
- In the period in which C has this in C's possession, C must indicate Equipment in a manner visible to third parties as property of DS and clearly separate it from any other Equipment located on C's premises or other stock -in-trade or machinery and equipment. C must never present himself/itself as

owner of the Equipment.

- C may not deploy Equipment for the purposes of his/its own business activities or for private use. C must make the Equipment available exclusively to third parties whose identity C has demonstrably established in advance in the context of the possible sale thereof and only for the duration that this is reasonably necessary. C will make Equipment available to third parties at C's own expense and risk.
- DS may always, without stating reasons and without owing C a payment, take possession of the Equipment by mere notification or an act to that effect.
- Any penalties during the on-call period will be at the expense and risk of C. C must always indemnify DS in and out of court if DS is held liable or taken to court as a result of failure to comply or to comply properly with laws and regulations, or is otherwise held liable. Should DS have to pay any amount to third parties, C must reimburse DS for the amount paid, plus any costs of legal assistance and other costs incurred.

#### V Purchase

##### 28 Assembly, installation and commissioning

- All assembly and installation activities, hereinafter referred to as 'assembly', as well as commissioning activities, hereinafter referred to as 'commissioning', shall be at the expense and risk of C, unless otherwise agreed in writing.
- If it has been agreed that assembly or commissioning will be payable by DS, the following will apply:
  - C must provide all assistance that can reasonably be required.
  - To this effect, C will make auxiliary workers, fuel, lubricants, electrical energy, water etc. available to the mechanic(s) of DS free of charge.
  - If the mechanic(s) is (are) unable to continue the assembly without interruption or must work outside normal working hours owing to circumstances beyond DS' control, all costs arising from this will be payable by C.
- All additional work that is part of the assembly will be at the expense and risk of C.
- The same holds for the manufacture and mounting of all components and mechanisms regarding which it is not specified in the contract that they are at the expense and risk of DS. When asked, DS will provide C with instructions.
- After the mechanic(s) has/have concluded the work and the items have been commissioned, the assembly or commissioning will be considered to be completed.
- This clause also applies to disassembly and repairs.