

**General terms and conditions of the private company Debets Schalke BV, with registered office in Monster,  
Filed with the Chamber of Commerce in The Hague under number 27176097**

**General**

**Clause 1.**

1. Unless agreed otherwise in writing, these terms and conditions apply to all quotations, requests, notifications and agreements of the private company Debets Schalke BV, with registered office in Monster, under this name as well as under all other trading names used by Debets Schalke, including DS Hortitrade, referred to hereafter as: Debets Schalke BV, including the performance and delivery, as well as all agreements in which Debets Schalke BV acts as service provider and all contracts for the sale or purchase of goods concluded with it as well as all mixed agreements.
2. Deviating terms and conditions are only binding for Debets Schalke BV if these are agreed on explicitly in writing and on an incidental basis by the management board of Debets Schalke BV.
3. In the event of conflict between the general terms and conditions and corresponding terms and conditions, including the purchasing terms and conditions of the buyer and/or general terms and conditions of the client, the general terms and conditions of Debets Schalke BV will exclusively be in force, unless agreed otherwise and confirmed in writing by the management board of Debets Schalke BV.

**Offer**

**Clause 2.**

1. The offers, in whatever form they are made, and data appearing in publications from Debets Schalke BV are entirely free of obligation and may be revoked. Data from printed material provided on Debets Schalke BV's account are subject to change, without Debets Schalke BV being required to give notice of this.
2. The prices cited by Debets Schalke BV are excluding VAT, excluding freight charges and any delivery costs, unless written notices state otherwise.
3. The offer is based on the drawings and other data provided by the buyer/client, unless explicitly agreed otherwise.
4. All time limits given in the offer have been made only for the benefit of Debets Schalke BV and are to be regarded for the client/buyer as deadlines. An offer is always revocable before acceptance, even if it contains a time limit. All dates provided by Debets Schalke BV are only to be regarded as target dates.

**Prices**

**Clause 3.**

1. Agreed prices are based on exchange rates and the costs of materials, transport, wages, taxes and levies, import duties and other factors that determine the price, which are in effect on the day the agreement is established. Any exchange rate risk is at the client's expense.
2. After the agreement is established, Debets Schalke BV has the right to adjust the prices without prior notice, even after the order confirmation or, to the extent the order confirmation refers to the offer for the price, after the offer, if any increase in the factors that determine the price as cited in the first paragraph of this clause occurs before the completion or delivery, even if this takes place as the result of circumstances that were foreseeable or unforeseeable at the time the agreement was concluded. If the price to be charged is increased within three months after the agreement is concluded, the buyer may terminate the agreement if he is a natural person not acting in the practice of a profession or operation of a business. Debets Schalke BV will notify the client/buyer of the specifics of this price increase as soon as possible. The payment of any higher price on the basis of this clause will take place simultaneously with payment of the principal or last instalment thereof.
3. The provisions in paragraph 2 apply likewise if the price adjustments mentioned there occur at the suppliers, which mean these have adjusted their price with respect to Debets Schalke BV.

## **Establishment and contents of the agreement**

### **Clause 4**

1. An agreement is not established until written confirmation from the management board of Debets Schalke BV and/or its authorised representative competent to give such confirmation according to the trade register. Any additional agreements or changes made later only apply if the management board of Debets Schalke BV has confirmed these in writing and the buyer/client has not objected to these in writing. A partial payment by the client is regarded as confirmation of the assignment from the client.

2. The day on which the confirmation is sent is regarded as the date on which the agreement is established. A consignment note or invoice sent by Debets Schalke BV is also regarded as confirmation in respect of the contract of sale which contains the goods listed in the consignment note or invoice.

3. Agreements with or notifications from subordinate employees of Debets Schalke BV do not bind the latter insofar as these have not been confirmed by the company in writing. Subordinate employees are regarded in this context as all employees who, according to the trade register, do not have power of attorney/authorisation.

4. The client/buyer is bound by his order and will be required, in the event the order is changed and/or cancelled, to compensate the damage or loss suffered, costs already incurred, loss of profits, loss of interest, etc. sustained by Debets Schalke BV, regardless of the reason (including *force majeure*) for the change and/or cancellation, and regardless of Debets Schalke BV's acceptance thereof. If an order is made contingent on financing to be secured and this financing reportedly cannot be secured, Debets Schalke BV is likewise entitled to compensation of loss of profits, as well as if it emerges that the buyer/client gives the order to a third party within twelve months after the period set for securing the financing.

The aforementioned loss of profits is regarded as amounting to at least 50% of the purchase price or contract sum. Debets Schalke BV reserves the right to demand a higher amount in compensation.

## **Delivery period**

### **Clause 5.**

1. Unless explicitly agreed otherwise, an agreed delivery period is only approximate. Debets Schalke BV is not liable for deviation from the delivery periods given, for any reason whatsoever, and the buyer is therefore required to accept the purchased goods even in the event of deviation from the delivery period. Failure to meet the delivery period never gives the buyer the right to damage compensation or payment of a (contractual) penalty, termination or conversion of the agreement or non-compliance with any obligations arising from this agreement.

2. The delivery period is set in the expectation that work can be performed as at the time of the offer, and assuming that the necessary materials will be supplied by third parties on time.

3. Without prejudice to the provisions of paragraph 1 of this clause, a delivery period does not start until the specified order has been accepted in writing by Debets Schalke BV, Debets Schalke BV has all the data necessary for performance in its possession and in writing, Debets Schalke BV has received partial or full advance payment - if this has been demanded, and the space in which the sold goods will be placed or where work will be performed is made available to Debets Schalke BV clean and empty, unless other agreements have been made explicitly and in writing.

4. Every agreement is entered into by Debets Schalke BV on condition that the client/buyer proves to be sufficiently creditworthy. Debets Schalke BV has the right to require that the client/buyer furnish adequate security, to Debets Schalke BV's satisfaction, to cover its obligations to Debets Schalke BV. Debets Schalke BV has the right to suspend performance of the agreement until the security requested has been furnished.

## **Risk**

### **Clause 6.**

The goods to be delivered are for the risk of the buyer/client after they leave the warehouses of Debets Schalke BV or its supplier. The buyer/client is liable for all damage that arises during transport with or to these goods, including but not limited to any fire or water damage, theft or misappropriation. The buyer must insure itself properly against the above risk. Debets Schalke BV is entitled to demand proof from the buyer of the insurance referred to in the previous sentence before handing over the goods, to which it has retained title pursuant to clause 10. The client bears the risk of the condition of the soil on which Debets Schalke BV performs its work. Debets Schalke BV can never be held liable for the condition of the soil.

## **Payment**

### **Clause 7.**

1. Payment must always be made without discount or set-off, within fourteen days after invoice date into the bank account specified by Debets Schalke BV or a third party to be designated by it. Debets Schalke BV reserves the right however to only supply to certain buyers if a shorter payment period is observed. If it considers this desirable, Debets Schalke BV has the right to demand additional security from the buyer for payment of the agreed price.

2. In the event of an agreement for services, the client must always proceed to pay, without deduction or set-off, within eight days from the date of a written request to this end by or on behalf of Debets Schalke BV. Unless the parties agree otherwise, the contract sum includes the following payment instalments.

- 10% when the agreement is entered into;
- 50% at the start of work;
- 35% during delivery
- 5% at completion.

3. If the payment period is not met, the buyer/client owes Debets Schalke BV late payment interest of 2% per month or part thereof on the entire invoice amount, counted from the due date. All judicial and extrajudicial costs associated with collection are at the expense of the buyer/client. The extrajudicial costs for legal entities are set at at least 15% of the amount to be collected plus VAT, with a minimum of € 450, and are owed at the moment that the claim is handed over for collection.

4. No discount is given for cash or early payment, unless this has been explicitly agreed in writing. Besides the principal sums for the services and deliveries, the extra costs and interest described in the conditions and referred to in this clause, Debets Schalke BV has the right to claim from the client all costs caused by failure to comply with the obligation.

5. In the event of non-payment of any amount due, suspension of payment, request for moratorium on payments, bankruptcy or liquidation of the client/buyer or if attachment is levied on the moveable or immovable property of the client/buyer, Debets Schalke BV will have the right to terminate the agreement or the part thereof which is still to be performed as of that date, without notice of default being necessary and without being required to pay any damage compensation, and therefore to not perform any work not yet carried out, or to reclaim the goods that have not yet been paid for (see clause 10), without prejudice to Debets Schalke BV's right to damage compensation on account of failure to comply with the obligation and the right of Debets Schalke BV to convert the agreement into an agreement for alternative damage compensation in the event of breach of contract. In the cases mentioned above, every claim that Debets Schalke BV has against the buyer is immediately due in a lump sum.

6. Complaints on account of deliveries made never give the client the right to suspend its payment obligations or to set off amounts.

## **Complaints**

### **Clause 8.**

1. Every complaint in relation to incomplete or incorrect delivery must be reported in writing immediately, though no later than within 2 days after delivery, clearly described and with reasons. Complaints relating to qualities of the delivered goods may be submitted within a period of 2 days after discovery however, likewise

clearly described, with reasons and in writing. When submitting the complaint, the buyer must provide a sample from the product which is the subject of the complaint.

2. Debets Schalke BV's obligation in the event of shortcomings in relation to contracts of sale is limited to providing a replacement or reimbursement for the goods it has delivered.

3. Inexpert and/or faulty handling or storage of the delivered goods causes any obligation to provide replacement or reimbursement for the delivered goods to lapse. Faulty handling or storage includes, but is not limited to, storage in spaces where the temperature drops below five degrees Celsius or rises above forty degrees Celsius.

4. The submission of a complaint does not relieve the buyer of its obligations towards Debets Schalke BV, nor does it give the buyer the right to suspend these obligations.

5. A complaint is not admissible if the buyer has proceeded to process or deliver the goods to a third party, while the alleged defect was known or should have been known to the buyer. A defect is regarded as known to the buyer if a simple check would have discovered the defect.

6. The buyer will have to furnish proof of the fact that the goods which are the subject of the complaint are the very ones delivered by Debets Schalke BV.

### **Force Majeure**

#### **Clause 9.**

1. Without prejudice to other rights it has, if Debets Schalke BV is prevented from performing the agreement or performing it on time by *force majeure*, Debets Schalke BV has the right to suspend performance of the agreement or to terminate the agreement wholly or in part by written statement, at the discretion of Debets Schalke BV, without Debets Schalke BV becoming liable for any damage compensation. None of this detracts from the obligation of the buyer/client to pay for the goods already delivered and the costs already incurred.

2. *Force majeure* is understood in this context to include every circumstance beyond Debets Schalke BV's control which makes it such that the client/buyer can, in all reasonableness and fairness, no longer expect compliance with and/or timely performance of the agreement (even if this was already foreseeable at the time the agreement was established), including in any event war, revolution, threat of war, civil war, riots, work strikes, exclusion of workers, transport difficulties, fire and/or disruption in the business of Debets Schalke BV or one or more of its suppliers or subcontractors, late delivery of materials, raw or auxiliary materials or parts that were ordered on time, flooding, storm, hurricanes, hail, rain, fog, frost, snowfall, black ice, traffic disruptions, disruption in the supply of power or drinking water and government measures.

### **Retention of title and transfer of ownership**

#### **Clause 10.**

1. All the goods delivered remain the property of Debets Schalke BV until the buyer/client has complied with all its obligations to Debets Schalke BV under the particular agreement or obligations related to it. Therefore the counterparty may not, among other things, sell, pledge or deliver the goods.

2. Debets Schalke BV is irrevocably authorised by the buyer to repossess the goods delivered and/or supplied by Debets Schalke BV in the event of non-compliance or defective compliance, without any notice of default being required.

### **Intellectual rights**

#### **Clause 11.**

1. Debets Schalke BV explicitly reserves the (intellectual) property rights and all other intellectual rights in relation to drawings, calculations, models, designs etc., provided by it. These rights will continue to belong to Debets Schalke BV even if costs have been charged for these. The transfer of intellectual rights belonging to Debets Schalke BV can only occur by a written agreement explicitly for this purpose.

2. The aforementioned works may not be copied or provided, made available or disclosed to third parties without written permission from Debets Schalke BV. All documents must be provided to Debets Schalke BV at first demand.

3. In the event of non-compliance with the provisions of this clause, the breaching party will incur a penalty of € 25,000, in words: twenty-five thousand euros, per violation, from the moment that the breaching party is in default.

## **Liability**

### **Clause 12.**

1. If Debets Schalke BV has failed attributable in complying with any of its obligations or has committed a wrongful act towards the client/buyer, Debets Schalke BV is only liable to the client/buyer for the damage or loss suffered in connection with that if the client/buyer proves that this damage or loss is owing to the intent or gross negligence of Debets Schalke BV.

2. If the liability of Debets Schalke BV must be assumed under clause 12 (1), the liability of Debets Schalke BV is limited to the amount of the purchase price or contract sum or the invoice amount for goods delivered, works realised and services provided, on the understanding however that Debets Schalke BV's liability for indirect damage and consequential damage is excluded, including damage to crops.

3. Debets Schalke BV is also never liable for damage caused by the quality of the soil, by materials used or processed by the client/buyer or by the use of materials and machines that the client/buyer has provided to Debets Schalke BV. Debets Schalke BV is never liable for damage to moveable or immoveable property of the client or for damage caused by failure to meet the delivery periods.

4. Notwithstanding the above, the total liability of Debets Schalke BV will in no event exceed the amount paid out by the insurer per damage-causing event in the particular case, whereby a series of related events is regarded as a single event.

5. The client/buyer indemnifies Debets Schalke BV and the assistants and persons engaged by it in the performance of its obligations against all third-party claims on account of damage suffered by these third parties as the result of or related to the performance of the agreement by Debets Schalke BV, or the client's or buyer's use of the goods delivered, works realised or services provided by Debets Schalke BV.

## **Applicable law and disputes**

### **Clause 13.**

All agreements concluded by Debets Schalke BV as well as the obligations arising from these are governed by Dutch law. All disputes arising from or in connection with these terms and conditions and the legal relations arising between the parties will in first instance be exclusively heard by the competent court in The Hague, unless Debets Schalke BV prefers to submit the dispute to the competent court of the domicile or place of establishment of the client/buyer or to a different competent court.

## **Special provisions relating to works contracts**

### **Completion**

#### **Clause B1.**

1. The work is regarded as completed:

- if Debets Schalke BV has notified the client/buyer, either in writing or orally, that the work is completed and the latter has approved the work;

- after eight days have passed since Debets Schalke BV notified the client/buyer that the work is completed and the client/buyer has failed to inspect the work within this period;
  - if the client/buyer takes the work into use, on the understanding that putting part of the work into use means that the particular part is regarded as completed.
2. Minor defects which can be repaired properly in the time period referred to below in paragraph 4 may not constitute reason to withhold approval.
3. If approval of the work is withheld, the client/buyer is required to notify Debets Schalke BV of this in writing, stating the reasons for this.
4. Debets Schalke BV is required to repair as soon as possible the minor defects referred to in paragraph 2 as well as any defects that have come to light in the work and which are brought to its attention in writing within 30 days after completion.
5. After the period cited in the previous paragraph, the contractor is no longer liable for defects in the work.

### **Additional and less costs**

#### **Clause B2.**

1. The agreement includes the power to charge separately for additional work performed.
2. The settlement of additional or less work takes place as soon as possible after the amount is known and no later than upon completion. Debets Schalke BV can send an invoice to the client/buyer immediately once the height of the amount owed in additional work becomes known. The provisions of clause 9 apply *mutatis mutandis*.
3. If, after the agreement is entered into, it emerges in consultation with the client/buyer that the installation or assembly of the work to be delivered is larger or smaller in scope than originally agreed, Debets Schalke BV has the right to charge the client/buyer the actual additional price caused by this or deduct from the amount/purchase price owed the actual costs consequently saved, so that Debets Schalke BV is not required to increase the original contract sum/purchase price or reduce this by an amount that is proportionate to the increase or reduction in the original object.
4. All changes to the work, either due to a special order from the client/buyer or facilities which prove to be necessary in order to prevent unforeseen difficulties or solve problems that have arisen, will, in the sense of this clause, be regarded as additional work if these give rise to additional costs and as less work if these give rise to lower costs.
5. An order for additional work given by the consultancy firm and/or an authorised representative whom the client/buyer has asked to represent its interests in the establishment of and further performance of the agreement is regarded as an order from the client/buyer and the consultancy firm or authorised representative.

### **Obligations of the client**

#### **Clause B3.**

1. The client/buyer will ensure that Debets Schalke BV has access to the following on time:
  - the information and approvals required for the work (such as permits, exemptions and decisions), all on the instruction of Debets Schalke BV;
  - the building, site or water in or on which the work must be performed;
  - sufficient opportunity/space for the supply, storage and/or removal of building materials, other materials, waste substances and machines;
  - possibilities for connecting electric machines, lighting, heating, gas, compressed air, water, and other energy required for the work;
  - drawings showing the location of cables, ducts and pipes.

2. The costs of the electricity, gas and water required, as well as the costs of removing waste substances, are at the expense of the client/buyer.
3. The costs for the necessary demolition and/or building permit and related costs such as administrative charges, calculations, drawings, models and designs, etc. are at the expense of the client/buyer.
4. The client/buyer must ensure that the work and/or deliveries to be performed by others and which are not part of the work of Debets Schalke BV are performed on time and in such a way that the performance of the work does not encounter any delay.
5. If the start or progress of the work is delayed by factors for which the client/buyer is responsible, the damage and costs arising from this for Debets Schalke BV must be compensated by the client/buyer.

#### **Vicarious tax liability**

##### **Clause B4.**

1. Third parties contracted by or on behalf of Debets Schalke BV are, by accepting the contract, irrevocably required to indemnify Debets Schalke BV against all liability which could arise for Debets Schalke BV as a result of contracts accepted by these third parties. The contractors are required to maintain proper insurance in this respect.
2. Third parties that can be regarded as subcontractors with respect to Debets Schalke BV are required to open a G-account at the first request from Debets Schalke BV.
3. The following are considered subcontractors in the sense of this clause:
  - any party that has committed to Debets Schalke BV to, outside of employment, perform a work accepted by Debets Schalke BV wholly or in part at a price to be specified;
  - any party that has committed to Debets Schalke BV to supply any future good, even if this obligation arises from an agreement other than an agreement for services;
4. Payments that Debets Schalke BV makes into an account as described in paragraph 2 serve to reduce Debets Schalke BV's payment obligations in respect of the particular subcontractor.
5. The subcontractor's refusal to open an account as described in paragraph 2 means that Debets Schalke BV has the right to immediately terminate all agreements with this subcontractor, without any notice of default or court intervention being required, with the subcontractor being required to immediately compensate all damage suffered by Debets Schalke BV, both if the damage arises from the termination of the agreements or due to any other reason. Debets Schalke BV has the right to withhold any money owed to the subcontractor as security for the recovery of its damage compensation claims indicated above.
6. The contractor referred to in this clause commits to provide Debets Schalke BV with insight into its payroll administration, at the latter's request, in order to give it the opportunity to assess what amounts must be paid into the account referred to in paragraph 2 as withholding taxes and VAT to be paid by the subcontractor. If the subcontractor does not provide insight or does not provide adequate insight, as deemed by Debets Schalke BV or a registered accountant appointed by it for this purpose, Debets Schalke BV is entitled to deposit into the account cited in paragraph 2 all amounts owed to the subcontractor pursuant to the agreements concluded with the subcontractor, or to keep these amounts as security for recovery of any claims from the industrial insurance board or tax authorities.
7. The subcontractor is required to indemnify Debets Schalke BV against all claims relating to the payment of withholding taxes and VAT, both in relation to itself and in relation to the subcontractors it in turn has engaged.
8. The subcontractor commits that it will not subcontract any work to third parties unless it has obtained explicit written permission from Debets Schalke BV to do so. The subcontractor is required to take measures for the payment of withholding taxes and VAT by the subcontractor it has engaged such that no liabilities can arise from this for Debets Schalke BV, this subject to the exclusive opinion of Debets Schalke BV. The absence of and/or failure to maintain such measures approved by Debets Schalke BV means that Debets

Schalke BV can immediately terminate all agreements concluded with the subcontractor, without any notice of default or court intervention being required, with the subcontractor being required to immediately compensate all damage suffered or to be suffered by Debets Schalke BV, both if the damage arises from the termination of the agreements or due to any other reasons. Debets Schalke BV has the right to withhold any money owed to the subcontractor as security and recovery of the payment of withholding taxes and VAT.

9. Debets Schalke BV will fine the subcontractor if it fails to comply with one or more obligations from points 1 to 8 of this clause, regardless of whether the non-compliance can be attributed to it. The fine amounts to € 5,000.00 per incident, with a maximum of € 25,000.00 per day, for each day that the violation continues after it has first occurred.