

# DR Depots General Terms and Conditions

## 1. Applicability

- 1.1. These General Terms and Conditions (referred to below as "GTC") shall apply to any and all agreements with and business undertaken by DR Depots, all its legal successors and all legal entities affiliated with DR Depots (hereafter together referred to as "DR Depots"), and advice, services and information provided by DR Depots, regardless of whether this is effected on orders, on other grounds, against payment or free of charge.
- 1.2. Any terms and conditions applied by the Customer are expressly precluded and rejected.

## 2. Offers

- 2.1. All quotations by DR Depots are made without any obligation until an agreement has been concluded by means of written confirmation of order.
- 2.2. Prices quoted shall be based on the rates, wages, costs and conditions existing at the date of quotation and are subject to change by DR Depots before final acceptance.
- 2.3. In the event of an increase of one or more cost-price components occurring after the conclusion of the agreement (such as but not limited to raw materials and wages, (governmental) charges, currency rates or taxes and/or excise duties), DR Depots shall be entitled to increase the original price accordingly and with immediate effect.
- 2.4. Contractual prices are excluding statutory VAT and other taxes, governmental charges, levies and/or other charges or costs. The amount of VAT, other taxes, governmental charges, levies and/or other charges or costs shall be added to the rates agreed.

## 3. Invoices, payment, default, lien/retention/pledge

- 3.1. All invoices issued by DR Depots must be paid by the Customer within 30 (thirty) days after the date of the invoice (unless another term of payment has been agreed specifically in writing), without deduction or deferment on account of any claim, counterclaim, set-off or otherwise. Challenging an invoice shall not suspend the payment obligation of the Customer.
- 3.2. In case the Customer refers to third parties for payment of the costs as referred to in article 3.1, the Customer shall be responsible for the same on receipt of evidence of demand and non payment by such third party when due.
- 3.3. Should the period of grace for payment expire without payment being made, the Customer shall be in immediate default without further notice being required. DR Depots shall in that case be entitled to terminate the agreement with immediate effect, without prejudice to the right to recover loss or damage from the Customer.
- 3.4. On all amounts overdue the Customer owes interest calculated at two per cent above the statutory commercial interest pursuant to Section 119a of the Dutch Civil Code during the period that such amounts are overdue. When the Customer is in breach of his payment obligations or of any other obligation pursuant to the agreement, the Customer shall reimburse DR Depots all reasonable judicial and extrajudicial costs of recovery, whereby

the extrajudicial costs are set at 15% of the amount due by the Customer with a minimum of € 250,--.

- 3.5. Furthermore, all invoices and claims of DR Depots shall be immediately due and exigible if any of the situations as set out in article 9.1 of these GTC occurs.
- 3.6. DR Depots shall have a particular and general lien, right of retention and right of pledge, regardless of the grounds and regardless of its designated use, on all Containers, Goods and Vehicles, documents and funds, which DR Depots holds or will hold in his possession at the Customer's request, on any account and for any purpose whatsoever, for all and any claims which DR Depots has or may obtain against the Customer.
- 3.7. DR Depots may also exercise the rights granted to him in article 3.6 for that which the Customer owes to DR Depots with respect to previous orders.
- 3.8. DR Depots on giving 14 days written notice to the Customer shall be entitled to sell or dispose of such goods as referred in article 3.6 at the expense of the Customer and without liability to the Customer and Owner and apply the proceeds in or towards the payment of such items. After DR Depots has given notice of such sale DR Depots shall not be liable for any loss or damage whatsoever and howsoever caused.
- 3.9. Payment by the Customer to DR Depots shall serve first of all for the payment of the costs, subsequently for the payment of the outstanding interest and finally for the payment of the principal amount, despite any direction to the contrary by the Customer.
- 3.10. DR Depots shall have the right to suspend the execution of the services or any other obligation in relation to the services until the Customer has fulfilled all his payment obligations and all other obligations pursuant to any agreement.
- 3.11. Any right of the Customer to set-off or suspension (whether with regard to DR Depots invoices or otherwise) is expressly excluded.

#### **4. Scope and performance of services**

- 4.1. Should the scope of services change or expand compared with the original order, either at the Customer's request, or as a result of subsequent amendments to, or the new introduction of, such norms, or publications similar to norms, of which DR Depots must take cognizance, the contractually agreed service or completion deadline shall be extended appropriately.
- 4.2. Any business entrusted by the Customer to DR Depots may, in the absolute discretion of DR Depots, be fulfilled by DR Depots or by third parties on such conditions as may be stipulated by, or negotiated with, such third parties. Where DR Depots employs such third parties, DR Depots merely acts as mandatory (*'lasthebber'*) of the Customer and DR Depots's obligations shall be limited to using his best endeavors to conclude an agreement between the Customer and the third party. The Customer agrees that DR Depots shall have no responsibility or liability to the Customer for any act or omission of such third party, even if such third party's charges are included in DR Depots invoice, and the Customer will indemnify and hold harmless DR Depots against any such damage or loss; DR Depots may (but is not held to), if suitably indemnified against all costs (including but not limited to attorney and client costs) which may be incurred by or awarded against DR Depots, take such action against the third party on the Customer's behalf as the Customer may request.
- 4.3. Any times of delivery or times for performance of services stated by DR Depots are only indications. The Customer cannot derive any rights from such statements.

- 4.4. In case DR Depots is required to arrange for the carriage of the Goods and/or the Containers, DR Depots will do so in its capacity of freight forwarder (*'expediteur'*) and not as a carrier, even if the costs for the carriage are included in DR Depots's invoice. In such case, DR Depots's obligations shall be limited to using his best endeavors to conclude an agreement between the Customer and the third party performing the carriage. The risk of storage, loading, carriage and unloading shall be borne by the Customer. DR Depots shall never be liable for any damage or loss resulting from or connected with such carriage (including loading and unloading) and the Customer will indemnify and hold harmless DR Depots against any such damage or loss.
- 4.5. The Customer is aware that the Goods and/or the Containers are stored in the open air, also before, during and after repair and/or other activities and agrees therewith.
- 4.6. After delivery of the Goods and/or the Containers to DR Depots, DR Depots sends an estimate for repair costs to the Customer. Unless agreed otherwise in writing, the condition of the Goods and/or the Containers upon delivery at DR Depots premises is deemed to be reflected by the estimate sent by DR Depots. If no such estimate is drafted and the condition of the Goods and/or the Containers has not been agreed upon in writing by both DR Depots and the Customer, the condition of the Goods and/or the Containers at the time of delivery thereof to DR Depots, shall be deemed equal to the condition of the Goods and/or the Containers at the time of redelivery to the Customer. The burden of proof of the contrary rests upon the Customer.
- 4.7. Whenever it is discovered that the Goods are found to be contraband or prohibited by any law or regulation, or that the Goods are or have become dangerous, even if not dangerous when received by DR Depots, DR Depots shall be entitled to have such Goods destroyed, rendered innocuous or otherwise disposed of, at DR Depots discretion and without compensation to the Customer, and the Customer shall be liable for and shall indemnify DR Depots against any costs, fines, damage or liability directly or indirectly arising out of the custody of such Goods or DR Depots taking of the actions under this article.
- 4.8. Unless otherwise agreed between parties in writing, the risk in relation to the Goods and/or Containers shall pass to the Customer at the time when DR Depots makes the Goods and/or Containers available to the Customer.

## **5. Force Majeure**

- 5.1. Should DR Depots not be able to fully, partially or adequately fulfil his obligations under the agreement due to a cause for which DR Depots is not accountable, such as but not limited to illness of DR Depots or his employees, mechanical failures of computer networks or other stagnation in the usual progress of DR Depots business, weather conditions (in particular a storm with a wind speed of at least fourteen metres per second as determined by the Royal Netherlands Meteorological Institute (KNMI) or a branch thereof), water levels, earthquake, fire, strikes and explosion, the obligations of DR Depots shall be suspended until DR Depots shall be able to fulfil his obligations in the agreed way without DR Depots being in any breach and without any obligation on DR Depots to pay any indemnification to the Customer due to such non fulfilment by DR Depots of his obligations.
- 5.2. Additional costs, if any, caused by force majeure as set out in article 5.1 shall be borne by the Customer and shall be paid to DR Depots at initial request.

## **6. Obligations of the Customer**

- 6.1 The Customer is held to timely provide DR Depots with all information and documentation that DR Depots in his judgment or legally requires for a correct execution of the services. The information is to be provided in the form and manner as requested by DR Depots. In case the Customer does not or not timely provide the relevant information and documentation, DR Depots shall be entitled to suspend the (further) execution of the services until all necessary information and documentation has been provided to DR Depots.
- 6.2 The Customer is furthermore obliged to provide DR Depots with all information and documentation, which the Customer knows or should reasonably know to be necessary or useful for a correct execution of the services. Such information includes but is not limited to information on the nature, amount and condition of the Goods and/or the Containers and any requirements to be adhered to during storage of the Goods and/or the Containers, including requirements under all applicable laws and regulations.
- 6.3 The Customer warrants that the information and documentation provided to DR Depots shall be accurate, complete and reliable, even if such information or documentation originates from third parties.
- 6.4 In case the execution of the work is delayed due to the Customer's breach of the articles 6.1 and 6.2, any and all (additional) costs arising as a result thereof shall be for the Customer's account and the Customer shall be held to indemnify DR Depots for all (additional) fees for any (extra) activities that will become necessary as a result of such breach.
- 6.5 The Customer warrants that the specifications of the Goods and Containers (including, but not limited to, weight, content, measure, quantity, condition, marks, numbers and value) are complete and correct and that the Goods and Containers are clearly readable labelled in compliance with all applicable laws, regulations and requirements (including but not limited to laws, regulations and requirements concerning safety and the environment), and for lack thereof, in accordance with the applicable standards under current market practices and behaviour.

## **7. Complaints**

- 7.1 If the Goods and/or the Containers are made available by DR Depots to the Customer without the Customer or someone else for him having established their condition in the presence of DR Depots or without having informed DR Depots of complaints, in case of visible loss or damage not later than the moment the Goods and/or the Containers were made available, or in case of invisible loss or damage within five working days of the availability, indicating the general nature of the loss or damage, the Customer shall be considered to have received the Goods and/or the Containers in good condition. In case of invisible loss or damage, the said complaints must be made in writing.

## **8. Liability**

- 8.1. All operations and activities which are carried out by DR Depots upon instructions of the Customer shall be at the Customer's risk and expense.
- 8.2. DR Depots is not liable for any damage or loss unless the Customer proves that such damage or loss is caused by an act or omission of DR Depots directors done with intent to cause such damage or loss or recklessly and with the knowledge that such damage or loss would probably result.
- 8.3. DR Depots is in no event liable for:

- damage or loss suffered by the Customer or third parties resulting from incorrect or incomplete documentation and/or information supplied by the Customer even if such documentation and /or information originates from third parties, and/or damage resulting from instructions from the Customer and/or another act or omission of the Customer;
  - damage or loss suffered by the Customer or third parties as a result of an act or omission of any auxiliary person engaged by DR Depots (not including DR Depots employees), even if such persons are employed by an organisation affiliated with DR Depots;
  - damage or loss suffered by the Customer or third parties as a result of force majeure as set out in article 5.1;
  - damage or loss suffered by the Customer or third parties as a result of storage of the Goods and/or the Containers in the open air;
  - damage or loss suffered by the Customer or third parties to Goods stuffed in sealed Containers;
  - damage or loss suffered by the Customer or third parties due to the setting of temperature, humidity and/or vents of reefer-containers;
  - any indirect or consequential damage or loss suffered by the Customer or third parties, such as but not limited to damage due to the stagnation of the usual course of business, loss of profit or loss of revenue.
- 8.4. If, notwithstanding the articles 8.1, 8.2 and 8.3, DR Depots is deemed liable for any shortcoming in the execution of the services and/or the agreement and/or for torts committed, such liability is limited to the invoice value of the Goods and/or the Containers lost and/or damaged; in case the loss or damage does not relate to specific Goods and/or Containers, DR Depots liability is limited to the fee paid and/or owed by the Customer in respect of the services and/or the agreement to which the loss-causing occurrence relates or is connected. In any case, DR Depots liability is always limited to a maximum of the amount paid under DR Depots Liability Insurance Policy in the matter concerned.
- 8.5. The above exclusions and restrictions of liability shall apply irrespective of the legal basis upon which such claims may be asserted.
- 8.6. The Customer is liable for (i) damage and loss arising from the Customer not fulfilling his obligations pursuant to article 6, (ii) damage and loss arising from incorrect or incomplete information and/or documentation provided to DR Depots and (iii) damage or loss caused by the Goods, the Containers, residues, whether or not visible, remaining in the Container presented for maintenance, repair, handling, transport and/or storage, including any radiation and gases, unless the Customer proves that the relevant damage or loss is caused by an act or omission of DR Depots directors done with intent to cause such damage or loss or recklessly and with the knowledge that such damage or loss would probably result.
- 8.7. The Customer shall indemnify and hold DR Depots harmless against any and all claims of third parties (including but not limited to DR Depots subcontractors and employees of DR Depots and the Customer) that directly or indirectly relate to the agreement and/or the services, including but not limited to claims with regard to the damage and loss as set out in article 8.6, unless the Customer proves that the relevant damage or loss is caused by an act or omission of DR Depots directors done with intent to cause such damage or loss or recklessly and with the knowledge that such damage or loss would probably result.
- 8.8. All claims against DR Depots will become time barred after expiry of twelve (12) months after the Customer has become or reasonably should have become aware of the damage and/or the shortcoming. All claims against DR Depots will become extinct ('vervallen') after expiry of eighteen (18) months after the Customer has become or reasonably should have become aware of the damage and/or the shortcoming.

- 8.9. All limitations and exclusions of liability in these GTC shall also apply to DR Depots staff, employees or subcontractors in relation to others than DR Depots; if any claim should be made against DR Depots staff, employees or subcontractors, the Customer shall indemnify DR Depots against all consequences thereof.

## **9. Termination**

- 9.1 DR Depots is entitled to terminate the agreement in writing with immediate effect without incurring any liability to the Customer in case:
- the Customer discontinues his business entirely or to a major extent;
  - the Customer loses his corporate capacity, his company is dissolved, wound up or (effectively) liquidated;
  - the Customer loses the power to dispose of his capital or part thereof;
  - the Customer offers a settlement of debt to his creditors or applies to the court for or has been granted suspension of payment;
  - the Customer dies or is placed under guardianship;
  - the Customer's assets are seized;
  - application for the Customer's bankruptcy has been filed or the Customer is declared bankrupt.

The Customer is obliged to immediately inform DR Depots in writing if any of the circumstances as mentioned in this article occurs or is imminent.

- 9.2 DR Depots is also entitled to terminate the agreement with immediate effect without incurring any liability to the Customer in case of force majeure as set out in article 5.1.
- 9.3 Any right of principal to dissolve ("*ontbinden*") the agreement is hereby explicitly excluded.

## **10. Transfer or transition of the Goods and/or the Containers**

- 10.1 Transfer or transition of ownership of the Goods and/or the Containers, or the transfer or transition of the right to delivery thereof by the Customer to a third party, shall be ineffectual against DR Depots and without legal effect for DR Depots, nor shall DR Depots recognize such transfer or transition, unless all claims DR Depots may have on the Customer for whatever reason, have been fully paid.
- 10.2 The Customer shall be obliged to inform DR Depots instantly in writing of any transfer or transition of ownership of the Goods and/or the Containers, or transfer or transition of the right to delivery of the Goods and/or the Containers.
- 10.3 Notwithstanding the provisions above, the transfer or transition shall have no legal effect for DR Depots nor shall DR Depots recognize them, unless the new owner(s) has (have) explicitly accepted in writing all provisions of the agreement between DR Depots and the original and/or transferring Customer as well as these GTC.

## **11. Public sale**

- 11.1 DR Depots shall have the right to sell the Goods and/or the Containers or to have them sold, without observing any formality, in the place and in the manner and on the conditions DR Depots may see fit, publicly or in any other manner the law may permit, at the expense of the Customer and to recover from the proceeds all amounts the Customer owes DR Depots, in case the Customer fails to remove the Goods and/or the Containers entrusted to DR Depots on expiry of the agreement or at the agreed or specified time.

- 11.2 If it is probable that in case of sale the costs will be higher than the benefits or if no buyer is found despite a reasonable attempt thereto, DR Depots shall have the right to remove the Goods and/or the Containers, to have them removed or to destroy them. The Customer shall then remain liable for the amounts due, increased by the costs of removal or destruction.
- 11.3 In case of sale, DR Depots shall hold the balance of the proceeds after deducting all costs and all the Customer's debts, at the Customer's disposal of five years, after which period the balance, if not claimed, shall accrue to DR Depots.

## **12. Arbitration, applicable law**

- 12.1 All offers, tenders and quotations of DR Depots, all instructions of the Customer, all legal relationships arising out of or in connection with the agreement and/or the execution of the services as well as these GTC shall be governed exclusively by Dutch law.
- 12.2 All claims against DR Depots arising out of or in connection with the agreement and/or the execution of the services shall be exclusively decided by way of arbitration in accordance with the TAMARA Arbitration Rules ([www.tamara-arbitration.nl](http://www.tamara-arbitration.nl)) in Rotterdam, the Netherlands.
- 12.3 All claims by DR Depots arising out of or in connection with the agreement and/or the execution of the services shall, at DR Depots's sole discretion, either be submitted to the competent Court in Rotterdam, the Netherlands, or be decided by way of arbitration in accordance with the TAMARA Arbitration Rules ([www.tamara-arbitration.nl](http://www.tamara-arbitration.nl)) in Rotterdam, the Netherlands.