

Standard Terms of Sale and Delivery



April 2019

Except as otherwise agreed in writing, all transactions, quotations, tenders, offers to contract and contracts, whether written or oral, for the supply of the Products and/or services ("Products") by DCM Group cc and Lecore International (Pty) Ltd, shall be subject to these standard terms and conditions of sale.

I. General

1. Our standard terms of sale and delivery - referred to hereinafter as terms and conditions - shall apply exclusively; we do not accept the customer's own terms and conditions if different or contrary to our terms and conditions. Our terms and conditions shall apply even if we execute delivery to the customer without reservation in the knowledge of the customer's terms and conditions that are different or contrary to our terms and conditions.
2. All quotations issued by us are subject to change and without obligation. A contractual relationship shall only come into force when it has been acknowledged by us in writing.
3. We store our customers' data in the context of business relations between us in accordance with the provisions of the Protection of Personal Information (POPI) Act.
4. Once goods have been supplied these terms and conditions replace any other.

II. Orders

1. If an order addressed to us is sent by e-mail and that e-mail is confirmed as received, such confirmation shall not constitute acknowledgment of the order.
2. Orders sent to us will be acknowledged in writing or in text form. The letter of acknowledgment shall be carefully checked by the customer upon receipt. The details specified therein shall be binding for further processing of the order. Any changes shall be notified to us in writing or in text form by the customer without delay.
3. We retain copyright in cost estimates, drawings and other documents compiled by us. If an order is not placed, any drawings and other documents compiled by us and enclosed with the quotation shall be returned without delay on demand.
4. DCM Group reserves the right to reasonably decline any order and/or to suspend delivery and/or to decline to supply the Products to the Customer.
5. It is the customer's responsibility to ensure that the quotation provided suits his applications and requirements before issuing an official purchase order.

III. Prices

1. Unless agreed otherwise, our prices are quoted ex works including standard packaging and in Euros, US Dollars or Rands
2. The prices quoted in order acknowledgments apply exclusively to the dimensions and versions specified therein. We shall be entitled to charge correspondingly higher prices for divergences from the original order, any changes in version or additional performances ordered by the customer and implemented.
3. Our prices are quoted exclusive of value-added tax at the statutory rate. It is itemized separately in the invoice at the statutory rate in force on the invoice date.
4. All quotations are based on the current rate of exchange as indicated by Standard Bank of South Africa on the date of the quotation. All quotations are subject to rate of exchange variations, from date of quote, to date of invoice. Should a firm price be required, a forward cover price must be requested.

IV. Payments

1. Payments shall be effected in accordance with the agreed terms of payment. Payments shall be deemed to have been effected on the date on which the sum is at our disposal (obligation to be performed at the creditor's habitual place of residence) and shall be set off against the oldest debt due. They shall be set off against costs, interest and the principal outstanding, in that order.
2. Payments are to be made on order placement, unless otherwise agreed. DCM Group shall at its discretion be entitled to effect and invoice for part deliveries.
3. Subject to the Credit Act, all overdue accounts shall accrue interest at the rate of 2% (two per cent) per month, reckoned from the due date for payment, to the date of final payment.
4. The customer shall only be entitled to set off payments against counterclaims which have been legally established by a court of law, which are undisputed or which have been accepted by us in writing or in text form. Moreover, the customer may only withhold payments if the counterclaim is based on the same contractual relationship.
5. Any discounts given will be forfeited due to late or non-payment.

V. Delivery / shipment

1. Our quoted time for delivery shall not start until the customer has correctly fulfilled its obligations in a timely manner. The right to plead non-performance of the contract is reserved.
2. If the customer is in default in acceptance or culpably fails in other duties to cooperate, we shall be entitled to demand compensation for the loss thereby suffered, including any extra expense incurred. The right to assert other claims or rights is reserved.
3. If the goods are dispatched at the customer's request the risk of accidental loss or deterioration of the goods shall pass to the customer upon dispatch to the customer by the stipulated delivery date and at the latest upon leaving the factory or warehouse. This shall apply irrespective of whether the goods are shipped from the place of performance or who bears the shipping costs. If dispatch is delayed by actions or declarations by the customer, the risk shall pass to the customer as from the date on which the goods are ready for shipment.

VI. Reservation of proprietary rights

1. We reserve ownership of the goods until receipt of all payments arising from the business relationship with the customer.
2. In case of breach of contract by the customer and particularly if payments are in arrears, we shall be entitled to rescind the contract and reclaim the goods after setting an appropriate period of grace. After taking back the purchased goods we shall be entitled to dispose of the goods and the proceeds from such disposal shall be set off against our claims against the customer.
3. The customer shall treat the goods with care and in addition shall insure them adequately and, if maintenance and servicing are necessary, shall duly carry out such work at its own expense.
4. The customer shall inform us immediately in writing or in text form in the event of seizure or other third party intervention.
5. The customer is entitled to resell the goods in the ordinary course of business. However, the customer herewith assigns its future claims (including value-added tax at the rate in force) arising from resale against third party to us according to the invoice value of the goods. The customer shall remain entitled to collect the claims but, if the customer fails to meet its payment obligations, gets into arrears of payment or if an application for commencement of composition or insolvency proceedings is made, the customer shall give us the name of its customer and the third party and the invoice details of the goods sold.
6. Processing or conversion of the goods by the customer shall always be undertaken on behalf of us. If the goods are processed or mixed with other objects we shall acquire joint ownership of the new thing in proportion of the value of the goods to the other processed or mixed objects at the time of processing.
7. The customer shall also assign to us as security for the claims against him the claims arising against a third party from combination of the goods with a property. DCM Group hereby accepts the assignment.

VII. Warranty

1. Any warranty rights and rights of recourse on the customer's part shall be dependent upon the customer's having duly fulfilled his obligations of examination and notification of defects.
2. The usual minor technical deviations in design or workmanship (e.g. colour, etc) of the goods shall not constitute a defect, insofar as they do not significantly impair either the serviceability or the value of the goods, and shall not confer any warranty rights.
3. If at the time of passing of risk the goods are defective the customer shall have the subsequent performance in the form of remedying of the defect or delivery of a faultless new replacement. In the case of subsequent performance the warranty will not cover costs due to the goods having been moved to a different location from the place of performance.
4. The warranty shall not include such defects or damage attributable to incorrect handling, use or installation of the goods by the customer or other third parties. In addition, warranty claims shall be excluded in the case of goods on which work has been undertaken by third parties without our consent.

5. Liability cannot be accepted for any damage or losses due to the following: if installations are not carried out by DCM Group personnel, if the application on site varies from the application requested and quoted on, if supplementary, replacement or accessory parts and fittings which have not been specially adapted to our goods are used, if there are damage or losses due to non-compliance with the installation and operating instructions.
6. If the customer has received goods and satisfies warranty claims, arising from a defect in the goods that was present at the time of passing of risk, the customer shall be entitled to demand compensation only for the defective goods.
7. The statutory warranty periods shall apply. A one-year period of limitation shall apply in the case of commercial, and industrial enterprises or activities of a similar or comparable nature.

VIII. Liability

1. We shall be liable as provided by law in the event of intent or gross negligence and likewise in the case of culpable breach of essential contractual obligations.
2. The seller shall not be liable to the customer for any consequential loss or loss of profits arising from the performance or non-performance by the seller of its obligations in terms of these terms and conditions. The customer further indemnifies the seller against any claims that may be made against the seller by any third party for any damages including, but not limited to, consequential loss or loss of profits arising from the performance or non-performance by the seller of its obligations in terms of these terms and conditions or in connection with the use of the goods, whether such claims are in respect of damage to property, consequential loss, personal injury or death.

IX. Jurisdiction and Applicable law

1. All transactions shall be governed in all respects by, and shall be construed according to the laws of the Republic of South Africa. The place of performance and exclusive place of jurisdiction for all disputes arising from this contract shall be at our headquarters (Durban, South Africa), unless otherwise stated in the order acknowledgment.
2. We are, in principle, unwilling and not obliged to participate in any dispute resolution procedure at a consumer conciliation committee.
3. If any of the provisions prove or become partly or completely invalid, this shall not affect the validity of the remainder.

X. Legal Costs

1. In the event that any legal action is taken, or any amount remains outstanding and DCM Group instructs attorneys to recover such unpaid costs, the Customer shall be liable for all legal costs incurred by DCM Group.

XI. Force Majeure

1. If the agreement becomes wholly or partially impossible to perform due to causes beyond the control of the Company, such causes to include, but not be limited to; war, civil insurrection, vis maior, Government action and industrial disputes, the Company shall be permitted to rescind the agreement at its discretion. If deliveries of goods or services shall be delayed as a result of such causes, the Company shall not be construed as being in breach of the agreement.

XII. Arbitration

1. Any dispute arising from or in connection with this contract shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa applicable to international arbitration by an arbitrator appointed by the Foundation. In the event that the parties do not agree to the seat, the Foundation will select the seat of the arbitration.

XIII. Domicilium Citandi Et Executandi

1. DCM Group cc and Lecore International (Pty) Ltd hereby elects as its domicilium citandi et executandi, at which it will accept service of any process or notice: 161 Smiso Nkwananya Road, Morningside, Durban, 4001, South Africa