GENERAL TERMS AND CONDINTIONS OF SALE AND DELIVERY F&M

I. DEFINITIONS

1. By "F&M" is understood in these Delivery Conditions: the private company with limited liability F&M Supplies BV, established and having its office in Rotterdam and registered at the Chamber of Commerce in the Netherlands under registration number 70564574.
2. By "Buyer" is understood in these Delivery Conditions each person/legal person having concluded an agreement with F&M, acting in the performance of a profession or business, or desiring to conclude an agreement with F&M respectively and also his/its representative(s), attorney(s) and successor(s) in rights.

II. GENERAL/APPLICABILITY

1. These Conditions will apply to all legal relationships between F&M and Buyer, including all offers, (purchase) agreements which oblige F&M to deliver goods, deliveries and activities of F&M, whereby "Activities" means the execution of obligations following from the agreement in the broadest sense of the word.
2. It is possible to have additions to and/or deviations from these General Terms and Conditions in joint consultation, but they will only apply if they have been agreed in writing between F&M and the Buyer. The applicability of any purchase or other terms and conditions of the Buyer, is expressly rejected and these other terms and conditions do not bind F&M, unless and in so far as they have been explicitly accepted in writing by F&M.
3. Any offer made by F&M and any agreement concluded by F&M is based on these General Terms and Conditions, and these General Terms and Conditions will apply from the moment the offer is made or the purchase agreement has been concluded, and from the moment the Buyer has placed an order and/or gives an order for sale or delivery. These General Terms and Conditions remain in force for as long as the (commercial) relation lasts, despite the fact that no reference is made to these General Terms and Conditions in future correspondence, for example in the context of new orders.

III. OFFERS/CONCLUDING OF AGREEMENT

1. All offers of F&M will be free of engagement, unless stated otherwise, and will therefore not bind F&M.
2. An agreement will not be effected until the moment F&M confirms the order of the Buyer in writing or the moment F&M starts executing the order. Any agreements made between F&M and Buyer will replace all prior agreements, written and oral.
3. No amendment, modification or change of the agreement and other agreements between F&M and Buyer will be valid unless they have been confirmed by both parties in writing (including e-mail).
4. If Buyer wants the goods to meet certain requirements or specifications, Buyer must notify F&M in writing and unambiguously before concluding the agreement, after which these requirements/standards will only be part of the agreement after being expressly accepted in writing by F&M. F&M is in no way responsible or liable if the delivered goods do not meet the requirements/standards of the country where the goods are to be used and/or to be sold or delivered, nor is F&M responsible or liable for damages, of any kind, incurred when F&M acted on incorrect and/or incomplete data provided by the Buyer.

IV. DELIVERY

1. Deliveries will take place Ex Works, Rotterdam (pursuant to the provisions of the Incoterms 2010) from the location selected by F&M, unless expressly agreed otherwise in writing. The Buyer must transport or have the goods transported in conformity with the storage conditions (temperature etc.) as prescribed by F&M, in order to be entitled to the return arrangement as set out in clause XIII of these General Terms and Conditions.
2. Delivery times which might have been agreed and delivery times mentioned in offers will be approximate delivery times and will not bind F&M. Without prejudice to the provisions in Clause IX and unless there is a situation of force majeure, any delay in delivery dates will not entitle the Buyer to claim any compensation, to refuse the delivery or to entirely or partly cancel the agreement or entirely or partly suspend the fulfilment of any obligation of the Buyer under the agreement, unless the Buyer is entitled thereto on the basis of legal provisions.
3. F&M has fulfilled its duty to deliver by offering the goods once. The receipt signed by the Buyer or by a person representing the Buyer will be the proof of delivery. In case of refusal to accept the delivered goods instantly, the costs of transport, storage and other expenses will be entirely at the expense of the Buyer. In the event the goods are not accepted instantly, F&M is entitled to store the goods at the expense and risk of the Buyer, respectively keep the goods stored and invoice the goods without it being possible to refuse payment due to the fact de goods have not been accepted.
4. The delivery time commences once F&M has access to all the specifications and necessary information required, the (partial or instalment) payment which might be agreed upon is fulfilled and the necessary requirements for executing the order are fulfilled. If the necessary requirements referred to for executing the delivery order are not fulfilled or have not been submitted by the Buyer in time, the delivery dates will be delayed with a term that was required to fulfill these aspects.
5. In the event of suspension of the obligations of F&M, the delivery date will be delayed for at least the term of the suspension. In the event of other circumstances that were not known by F&M at the time of establishing the delivery dates, F&M is entitled to delay the delivery date with a term needed to execute the order under these circumstances.

V. PACKAGING AND PACKAGING MATERIALS

1. F&M will comply with the applicable statutory standards, when packaging and labeling the products that will be delivered, as they exist at the time and place of delivery. If Buyer has made special demands to the packaging and/or labeling of the products, the Buyer must notify F&M in writing about these demands at the moment of concluding the agreement. The additional costs resulting from the special demands will be entirely borne by the Buyer.
2. The Buyer will be responsible for the storage c.q. processing of empty/used packaging materials in conformity with the applicable legal provisions.

VI. PRICES

1. All prices, both in offers, promotions and agreements, will be net and exclusive of VAT, transport and packaging expenses and exclusive of custom duties and other charges otherwise imposed on imports, unless expressly agreed otherwise in writing.
2. All prices are based on the prices of materials, wages, transport costs and rates of exchange applicable at the time of the offer.
3. F&M is permitted to increase the prices in the event circumstances occur after the conclusion of the agreement that lead to an increase in price, which circumstances include but are not limited to, an increase in the price of raw materials and other materials, currency differences, increases of taxes/contributions, collective labor increases and/or other objective criteria. This also applies if this increase was to be expected at the time of the offer. An increase in price does not entitle the Buyer to terminate the agreement.
4. The Buyer shall be immediately notified in writing by F&M of possible increases in price.
5. If the increase in price as meant in paragraph 3 of this clause is more than 15%, the Buyer will be entitled to cancel the order within 3 working-days after the moment when he has taken notice thereof.
6. Taxes, which did not exist at the time of the offer, may be charged, as well as any increase of taxes. In this case the stipulations of paragraph 5 will not apply.

VII. RESERVATION OF OWNERSHIP

1. After delivery, F&M will reserve the ownership of the goods sold until the time when the Buyer has fully complied with all obligations on the basis of any agreement or on the basis of these General Terms and Conditions, including damages, penalties, interest and costs, also in the event that the delivery takes place in parts.
2. As long as the delivered goods are subject to retention of title, the Buyer shall not be entitled to dispose of or encumber the goods other than in the normal course of his business, except with the written permission of F&M.
3. In the event that the Buyer does not pay in time, F&M will be entitled to take the goods back without any summons, declaring in default or judicial intervention, without prejudice to F&M's other rights in connection with late payment. The Buyer will immediately put the goods at the disposal of F&M and will grant F&M access to all areas and places where goods of F&M are present, if necessary.

VIII. PAYMENT

1. All payments shall be made in the currency stated on the invoice, ultimately within thirty days after the invoice date, without any deduction, withholding, settlement of debts or discount otherwise. The Buyer does not have a right to suspend his obligations.
2. F&M shall be entitled at all times, if in the opinion of F&M, the financial conditions or creditworthiness of Buyer give cause for concern, to request advance payment, security, a guarantee or any other security to the amount which must be paid to F&M by the Buyer, in order to secure an adequate payment. Pending such security, F&M will further be entitled to wholly or partially suspend the execution of the agreement. In the event the advance payment is not made, or if the guarantee or security is not provided in response to F&M's reasonable demand, F&M is entitled to terminate the agreement by a mere written statement and without judicial intervention and without prejudice to its right to claim damages.
3. In the event payment in advance is agreed and/or when security is provided by virtue of documentary credit, bank guarantees and/or other documents customary in international trade and payment, the Buyer will ensure that this will be done by a bank of good repute, solely to the opinion of F&M.
4. The Buyer shall, without further notice of default, be obliged to pay the interest equal to the statutory interest rate applicable in the Netherlands for commercial transactions following article 6:119a Dutch Civil Code, with a minimum of 1% per month, with time being counted in full months, on all the amounts that have not been paid by the Buyer on the last day of the payment term. This interest is due from the date on which the payment period had elapsed until the date of full compliance, without further notice being required and subject to F&M's rights.
5. In the event the Buyer, after a written summons to pay, remains in default to proceed satisfy to the full payment of the amount mentioned within the term established in the summons, this shall - without prejudice to any other right to which F&M is entitled - have as a result that:
   a. all other outstanding claims in the name of the Buyer with F&M will be immediately claimable;
   b. all (collection)expenses to be reasonably incurred by F&M, both judicial and extrajudicial, including 15% collecting costs calculated on the outstanding amount of the invoice (with a minimum of € 250,--), will be at the expense of the Buyer, whereas it does not have to be proved that these expenses have been incurred.

IX. FORCE MAJEURE

1. In the event that, after conclusion of an agreement, the implementation of the agreement becomes problematic or impossible for F&M, F&M is entitled to terminate, in whole or in part, the execution of the agreement, in so far as it requires further execution, or to wholly or partially suspend the execution, without judicial intervention and without incurring any damages to the Buyer. The Buyer will be notified as soon as possible, taking into account the circumstances of the case.
2. Force majeure shall mean an unforeseen defect beyond the reasonable control of F&M, that makes it impossible for F&M to execute the agreement, including – but not limited to – restrictions by the government of any kind, mobilization, wars, international and national riots (and preparations thereto), nature disasters, epidemic diseases, revolution, loss or robbery of products, traffic congestion (including traffic jams), or transport problems, missing or defective delivery/deliveries by suppliers of F&M, strikes, fire and any circumstance that cannot have been foreseen by F&M, and that cannot be influenced by F&M and that – if F&M would have been aware of the circumstance – would imply that F&M would not have concluded the agreement under the same conditions.
3. If at the moment of the commencement of the force majeure situation F&M has already partly complied with its obligations, F&M is entitled to invoice the delivered goods separately and the Buyer is obliged to pay the invoice as if it involved an individual transaction.

X. TERMINATION OF AGREEMENT

1. F&M reserves the right to terminate/cancel the agreement(s) with the Buyer immediately and without judicial intervention wholly or partially, by means of written notice to Buyer, without prejudice to Buyer's obligation to pay for the delivered goods, in the event:
   a. Buyer is declared in state of bankruptcy, has been granted suspension of payment c.q. applies for suspension of payment c.q. bankruptcy, or is put under legal restraint.
   b. Buyer should not, not properly or not in time meet any obligation (of payment) under the agreement;
   c. Buyer takes a decision to liquidate, close down the enterprise and/or in practice termination of the enterprise of Buyer occurs;
   d. Buyer loses the free control on its capital, or, if the Buyer is a natural person, is put under legal restraint or dies;

e. The goods of Buyer are wholly or partially seized by third parties.

2. Any claim F&M may have on the Buyer at the time of existence of one or more of the circumstances mentioned under paragraph 1 of this clause, will be immediately fully claimable, without prejudice to F&M's right to claim a full compensation of damages, c.q. loss of profit and any compensation of legal assistance in or out of judicature.
3. The Buyer is liable for damages and costs of F&M, incurred as result of the termination, including loss of profit. The loss of profit will amount to at least 15% of the price agreed on, with a minimum of € 250,-- (exclusive of VAT) except for counterproof.
4. F&M is entitled to terminate or suspend the execution of the obligations arising from the agreement and the General Terms and Conditions, in the event the Buyer fails to comply with an obligation arising from the agreement or the General Terms and Conditions, or in the event F&M has reason to assume that the Buyer will not be able to comply with those obligations; F&M will never be liable for the possible ensuing consequences.

XI. CANCELLATION

1. If the Buyer entirely or partly cancels an order, F&M will be entitled to charge cancellation costs to the Buyer, which are calculated as follows on the net purchase price:
   a. until 31 days before the date of delivery agreed on: a percentage of 30%;
   b. 30 days or less before the date of delivery agreed on: a percentage of 40%.
   c. Both amounts (sub a and b) at a minimum amount of €250,-.
2. The request for cancellation of the entire order or a part thereof after a partial execution cannot be met. It is not possible to cancel the entire order or a part thereof if one or more products have been produced c.q. processed especially at the request of the Buyer.
3. Cancellation shall take place in writing and by registered letter. The date of confirmation of receipt of the letter by F&M will be the date of cancellation.

XII. LIABILITY AND RIGHT OF RECOVERY

1. In the event and for as far as the Buyer lodges a timely and justified complaint in accordance with clause XIII, F&M's liability (for alleged deficiencies in compliance with the obligations, non-compliance or unlawful act against the Buyer) is limited per event or a series of related events to the net invoice value of the relevant delivery, with a maximum of EUR 25,000 or its equivalent in another currency per date of payment. A series of events with the same cause, are considered one event. F&M furthermore, does not guarantee that the goods are suitable for the purpose for which the Buyer intends to use them, even if this purpose has been disclosed to F&M, unless expressly agreed otherwise in writing between parties.
2. Any liability of F&M as a result of the non-delivery, or as result of the delayed or improper delivery or delivery of damaged goods, is strictly limited to the net sales amount c.q. the net invoice amount of the relevant goods. Moreover the liability for damages, caused by defects of goods and packaging, is limited to the direct damage to persons or goods.
3. F&M shall under no circumstance be liable to the Buyer or any other person for special, incidental or indirect damages, consequential loss or punitive damages, costs or expenses, including but not limited to damages in the form of loss of goodwill, loss of sales, loss of profits, interruption of work, disruption of production, non-specified or lump-sum claims, payment of penalties, fines, damages to other goods or otherwise, regardless of whether the damages arise from or relate to a breach of warranty, breach of contract, misrepresentation, negligence or otherwise.
4. Except for provisions of imperative law with regard to (product) liability, F&M will not be liable for damages as a result of inexpert use c.q. processing of the goods delivered, either or not contrary to the standards and values which are applicable in the sector. F&M is not liable for damages suffered by third parties (not being the Buyer or its employees), in connection with goods delivered by the F&M, the use of these products or otherwise. The Buyer indemnifies F&M against all third party claims that directly or indirectly, are connected with the performance of the agreement and/or delivered goods. Buyer will indemnify F&M for any such claims.
5. Buyer must check whether the goods show any deviations from the delivery agreed upon within five working-days after receipt of the goods, and the Buyer shall immediately inform F&M in writing of any defects. The complaint of the Buyer must be received by F&M, ultimately 7 weekdays after the delivery date. After expiry of this period, the delivered goods shall be deemed to be irrevocably accepted by the Buyer. If, at the time of delivery there is no opportunity to detect any deviations, the Buyer must notify this in writing or electronically at the time of delivery. In order to restrict damage the Buyer will follow the instructions of F&M with regard to goods and packaging.
6. Buyer must notify F&M in writing of any damage to packaging and/or wrapping of the products in writing within 48 hours after receipt. F&M will then determine whether the products should be returned or destroyed, or if the inner packaging is undamaged, the goods can still be used. In case of return or destruction, F&M will replace the products.
7. Information from or on behalf of F&M with regard to the quality, composition, treatment in the broadest sense, application possibilities, qualities etc. of the goods will not bind F&M, unless such notifications are presented in writing (including via e-mail) and expressly in the form of a written guarantee by F&M. The Buyer can only apply for such a guarantee if the Buyer has timely complied with all its obligations to F&M.
8. Any claim against F&M will expire within 6 months after delivery of the goods in question.
9. The Buyer shall at all times ensure compliance with European and national law and regulations on the use, distribution, storage and resale of the products.
10. Buyer shall provide full and correct information, in particular regarding the levying of VAT in connection with intra-Community transactions. In the event that the Buyer fails to do so, the Buyer indemnifies F&M against all related claims and loses the right to file a claim against F&M.

XIII. RETURN SHIPMENTS

1. Return shipments can only be returned, following the prior written consent of F&M, in which event a return shipment number is supplied to Buyer. The goods shall be delivered properly, except for the detected defect by the Buyer, at the return address as indicated by F&M. F&M explicitly reserves the right to check the goods or have the goods checked at the place where they are located.
2. Return shipments shall not be accepted in the event the storage conditions as prescribed by F&M have not been observed.
3. If return shipments take place without prior written consent of F&M, the costs thereof will be fully at the expense of the Buyer. Furthermore F&M will be entitled to charge administration costs and F&M is free to store the goods for the account and risk of the Buyer (if necessary in the care of third parties) and to keep them at the disposal of the Buyer.
4. Return shipments without the consent of F&M will not discharge the Buyer in any respect from his obligations (of payment).
5. Return shipments and the risks during the transportation of the return shipment, will always be for the risk of the Buyer.
6. In the event F&M discovers that the goods, before they have been delivered to the Buyer in accordance with article IV of these General Terms and Conditions, were not kept under the correct storage conditions or were not transported correctly, F&M will be entitled to recover the goods from the Buyer and the Buyer will cooperate fully and free of charge to the recovery of the goods.

XIV. APPLICABLE LAW AND DISPUTES

1. These General Terms and Conditions, as well as all agreements between DC Sand the Buyer will exclusively be governed by Dutch law. The applicability of the Vienna Sales Conventions (11 April 1980) is explicitly excluded.
2. Any disputes which arise as a result of an agreement or these General Terms and Conditions, or which are connected therewith, will be exclusively, except if stipulated otherwise, be submitted to the competent court of the district Rotterdam, the Netherlands, it being understood that F&M has the right to submit actions, whether or not simultaneously, against the Buyer at the place of residence or stay of the Buyer, or any other court of F&M's choice.
3. These General Terms and Conditions are available both in Dutch and in English. In the event of differences in interpretation about the content and scope of the text of these General Terms and Conditions, only the Dutch text and its meaning within the Dutch territorial jurisdiction will be binding.
4. All delivery conditions, used in offers, order confirmations, invoices or otherwise, shall be interpreted according to the ICC Rules for the use of national and international delivery terms, known as ICC Incoterms, Edition of 2010, unless otherwise agreed in writing and only for as far as they are not conflicting with these General Terms and Conditions.

XV. FINAL STIPULATION

1. F&M is entitled to amend these General Terms and Conditions. These amendments shall take effect at the time announced for that purpose. The amended General Terms and Conditions shall be sent timely to the Buyer by F&M. In the event that no time is announced for an amendment to come into force, it shall come into effect as soon as the Buyer is given notice to this effect.
2. If any of the provisions of these General Terms and Conditions is annulled, the other provisions of these General Terms and Conditions shall remain in full force.
3. If F&M should not always require the strict observance of this text, this does not mean that these General Terms and Conditions should not apply or that F&M should lose the right to require in future cases, either or not similar, the strict observance of these conditions.