

STANDARD TERMS AND CONDITIONS OF SALE

(Revised 03 August 2023)

All quotations by DMG MORI Malaysia Sdn Bhd or its affiliates (collectively "DMG MORI"), all Buyer's purchase orders, and all confirmations or acknowledgments of Buyer's purchase orders by DMG MORI are subject to written acceptance and acknowledgements delivered by DMG MORI in order to become a valid agreement between the Buyer and DMG MORI (the "Agreement"). The Buyer and DMG MORI acknowledge and agree that such Agreement is made subject to the terms and conditions of sale set forth below. The "Buyer" referred to herein includes authorized DMG MORI distributors and customers.

1. SALE PRICES

Unless otherwise noted, e.g. in the validity period of any issued quotation, all prices quoted are subject to change without prior notice. Unless otherwise stated, all prices are FOB port of shipment. Prices do not include sales, use, excise, VAT, GST, SST, property or similar taxes arising out of or relating to the sale or use of the equipment. Buyer shall indemnify and hold DMG MORI free and harmless from and against the imposition and payment of such taxes, whether or not they are stated in any invoice for equipment shipped. DMG MORI, at its discretion, may at any time separately bill Buyer for any taxes not included in DMG MORI's invoice and Buyer shall pay said taxes. Buyer is only entitled to withhold and/or set-off any payments if and to the extent that his counter-claims are due and payable and are undisputed or have been established by a final non-appealable court decision. Buyer is only entitled to set off his counter-claims arising from any other legal relationships between DMG MORI and Buyer if and to the extent that his counter-claims are due and payable and are undisputed or have been established by a final non-appealable court decision.

2. PAYMENT TERMS

Unless otherwise noted, payment terms are by irrevocable Letters of Credit or payment in advance. The payment schedule must be confirmed in writing by DMG MORI before the equipment can be shipped or delivered. If acceptance by Buyer (which shall not be unreasonably withheld) after delivery by DMG MORI is delayed because of conditions not related to the equipment or services provided by DMG MORI, including but not limited to delay in the provision of equipment or services by Buyer or other suppliers, Buyer will pay to DMG MORI as interest 0.4% of the total invoiced amount per week from the date of delivery until acceptance by Buyer. Receipt and subsequent bank deposit of a down payment shall not be construed as acceptance of the purchase order until said order is accepted in writing by DMG MORI. In the event of legal action to enforce the Agreement, Buyer shall reimburse DMG MORI for its reasonable costs and legal fees (on a solicitor-client basis thereby arising). DMG MORI reserves the right to cancel and to refuse to complete Buyer's purchases if, in DMG MORI's opinion, Buyer has not established credit to promptly meet the payment terms of the order. Acceptance and payment by Buyer with respect to the equipment delivered by DMG MORI shall not be delayed because of any delay in delivery by DMG MORI of accessory or ancillary equipment not essential to the operation of the other equipment delivered; in such event, the payment terms set forth in this paragraph shall be applicable to the equipment initially delivered as of the date of delivery and to subsequent deliveries of equipment as they occur. Upon delivery by DMG MORI to a carrier for shipment of equipment to Buyer, risk of loss shall pass to Buyer. Thereafter, the carrier shall be deemed to be acting for and on behalf of Buyer and the terms of payment for the equipment shall not be affected by damage to or destruction of the equipment sold.

3. DELIVERY

3.1 DMG MORI will exert its best efforts to cause the Goods to be shipped in accordance with its quotations and these Terms. Unless a date is expressly agreed to as "fixed" however, all dates stated by DMG MORI are approximate dates only, and are estimated in good faith to the best of DMG MORI's ability, commensurate with foreseeable scheduling and subject to availability of product and transit.

3.2 DMG MORI shall not be liable for any loss or damage whatsoever, including loss of income and/or profits, incidental, special or consequential damages resulting from DMG MORI's delayed shipment or delivery of the Goods for any reason whatsoever. Any claims for shortages or claims that the Goods shipped is other than that which was ordered or claims for damages prior to delivery to Buyer or Buyer's agent must be made in writing to DMG MORI within fifteen (15) days after the arrival of the Goods at Buyer's plant or place of business.

4. TITLE

DMG MORI hereby retains title in all of the equipment sold and delivered by DMG MORI to Buyer, whether presently in the possession of Buyer or hereafter acquired, and all replacement parts and components therefore, together with any and all proceeds of sale or other disposition of the property, including, but not limited to, cash, accounts, contract rights, and chattel paper until it is paid for in full. DMG MORI may enter the Buyer's premises and remove the secured property or any portion thereof. Buyer agrees to pay DMG MORI's legal fees (on a solicitor-client basis) for the collection of any amounts owing to DMG MORI hereunder and for the costs incurred in the repossession of the property. If the Buyer becomes bankrupt, is wound up, and/or commits any act of bankruptcy or winding up, DMG MORI will be entitled to withdraw from the Agreement and demand immediate return of the delivered equipment.

5. CANCELLATIONS

Orders which have been shipped from DMG MORI or any of its affiliates are not subject to cancellation. "Special Orders," which are orders for items customized for the Buyer, are not subject to cancellation. Orders other than "special orders" that have not been shipped may be cancelled in writing by Buyer to DMG MORI but are subject to a cancellation charge or the total cost incurred by DMG MORI on account of the cancellation, whichever is greater. Orders that are cancelled within one week of the date of the purchase order are subject to a cancellation fee equal to 10% of the purchase order price. Orders cancelled more than one week after the date of the purchase order and more than 90 days before the planned shipment date from the factory are subject to a cancellation fee of 30% of the purchase order price. Orders cancelled from 90 to 61 days before the planned shipment date from the factory are subject to a cancellation fee of 50% of the purchase order price. Orders cancelled from 60 to 31 days before the planned shipment date from the factory are subject to a cancellation fee of 75% of the purchase order price. Any order cancelled within 30 days of planned shipment date from the factory will be subject to a cancellation fee equal to 100% of the purchase order price. If within one year of the placement of the purchase order for the equipment, Buyer fails to accept delivery of the equipment or fails to pay the full contract price for the equipment; DMG MORI may deem the purchase order as cancelled by Buyer and will assess a cancellation fee.

6. LIMITATION OF WARRANTY

Buyer further represents and acknowledges that DMG MORI HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE DESIGN OR CONDITION OF ANY ITEM, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY ITEM OF EQUIPMENT, DELIVERY, DELAY IN DELIVERY OR CONFORMITY OF ANY ITEM OF EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE OR ORDERS RELATING THERETO. THE BUYER EXPRESSLY AGREES THAT NO SUCH REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, SUBSIST IN RESPECT OF ANY DMG MORI'S ITEM OF EQUIPMENT. DMG MORI SHALL NOT BE LIABLE TO BUYER, OR ANY OTHER PARTY, FOR ANY LOSS, DAMAGE, INJURY OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT OR THE FAILURE OF THE EQUIPMENT TO OPERATE PROPERLY. DMG MORI GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE QUALITY, FINISH, ACCURACY OR TOLERANCE, COMPLIANCE WITH ELECTRICAL, HYDRAULIC, PNEUMATIC OR OTHER SAFETY CODES REQUIRED BY ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL BODY, OR AS TO THE EFFICIENCY, PRODUCTIVITY, OR PERFORMANCE OF ANY GOODS. DMG MORI MAKES NO WARRANTY AS TO MERCHANTABILITY OF THE EQUIPMENT OR ANY REPLACEMENT PART, OR AS TO ITS FITNESS FOR ANY PARTICULAR USE, INTENDED PURPOSE OR OTHERWISE. DMG MORI SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING STRICT LIABILITY IN TORT, TO THE EXTENT THAT SUCH LIMITATION IS PERMITTED BY APPLICABLE LAW. Buyer understands and agrees that DMG MORI's liability under any theory of recovery, shall not exceed the purchase price, regardless of whether the remedy fails in its essential purpose. Any legal action relating to any manufacturer's warranty relating to the equipment shall be settled by arbitration under Section 18 herein and must be referred to arbitration no later than four years after the delivery of the equipment by DMG MORI or one year after repair efforts have ended, whichever is later, failing which then such warranty claim shall for all purposes be deemed to have been abandoned. With respect to equipment and replacement parts manufactured by DMG MORI, DMG MORI assigns to Buyer and, if Buyer is a Distributor, to Distributor's customer, DMG MORI's limited warranty towards its supplier. In such case, Buyer has the right to acknowledge receipt of a copy of said warranty.

7. CONFIDENTIALITY

All drawings, designs, specifications, manuals, programs and prices or any other information furnished to Buyer by DMG MORI shall remain the confidential and proprietary property of DMG MORI. All such information, except as may be found in the public domain, shall be held in strict confidence by Buyer and shall not be disclosed by Buyer to any third parties. Buyer shall use such information only for the performance of obligations under this Agreement. Copyrights and other rights in all material made available by DMG MORI shall remain in DMG MORI at all times. The confidentiality obligations above in this Section 7 shall survive termination of this Agreement and remain in effect.

8. SAFETY PRECAUTIONS

Buyer shall require employees to use all safety devices, guards and proper safe operating procedures as set forth in manuals and instruction sheets furnished by DMG MORI. Buyer shall not remove or modify any such device, guard or sign. It is Buyer's responsibility to provide all the means that may be necessary to effectively protect all employees from serious bodily injury which otherwise may result from the method of particular use, operation, set-up or service of the equipment. If Buyer fails to comply with such provisions of this paragraph or the applicable standards or regulations aforementioned, Buyer shall indemnify and hold DMG MORI harmless from and against any and all claims, losses or damages arising from such failure in accordance with Section 16 of this Agreement. It is the responsibility of Buyer to comply with all local laws, regulations and codes. The Buyer shall further ensure that its employees comply with all local laws, regulations, codes and take all appropriate safety measures in using the equipment.

9. INFRINGEMENT

Buyer shall indemnify DMG MORI and hold DMG MORI harmless from any infringement of any patent, trademark or copyright arising from Buyer's use of the equipment, including but not limited to the reimbursement of costs and expenses, including legal fees (on a solicitor-client basis thereby arising), incurred by DMG MORI with respect to a claim of infringement.

10. TIME STUDY & DESCRIPTIONS OF EQUIPMENT

All time study figures provided by DMG MORI are estimates only and are based on DMG MORI's understanding of the accuracy and finish required, machinability of the material, amount of material to be removed and Buyer's operating conditions. DMG MORI makes no warranty based upon or relating to time study figures and the Buyer agrees that no such representations or warranties, express or implied, subsist in respect of any time study figures. All weights and measurements given are estimates, stated as correctly as possible, and any minor deviations shall not constitute non-conformity of the goods. Brochures, photographs and other illustrations representing the equipment offered are for illustration only and are not binding in detail. Brochures and product designs and specifications are subject to change without notice.

11. USE OF SOFTWARE

If and to the extent that the delivered equipment includes software, Buyer is granted a non-exclusive right to use the delivered equipment together with the software. It will be provided for use on the delivered equipment destined for such purpose. It is forbidden to use the software on more than one system. Buyer is only allowed to copy, adapt, modify or translate the software or transform it from the object code to the source code to the extent permitted by law. Buyer undertakes not to remove or modify without the prior explicit consent of the supplier any manufacturer information including but not limited to any copyright notes. All other rights in the software and the documentations including any copies thereof remain the property of the supplier of the software. Any grant of sublicenses is forbidden.

12. EXPORTATION:

All contracts are subject to export permit by the Government/local authorities of Japan and/or Malaysia, as the case may be, or if the equipment is manufactured in another country, by the Government of such country. Buyer shall comply with local Japanese, Malaysian or the otherwise applicable laws and regulations governing the exportation or re-exportation of the equipment. The equipment is subject to export restrictions imposed by Japan, Malaysia and other countries and that the Buyer will not export or permit the export of the equipment anywhere without proper government/local authorities' authorization. Buyer will not directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, any equipment or software to any country, individual, corporation, organization, or entity to which such export, re-export, or transmission is restricted or prohibited, including any country, individual, corporation, organization, or entity under sanctions or embargoes administered by the United Nations, US Departments of State, Treasury or Commerce, the European Union, or any other applicable government authority. To prevent the illegal diversion of the equipment to individuals or nations that threaten international security, it may include a "Relocation Machine Security Function" that automatically disables the equipment if it is moved following installation. If the equipment is so-disabled, it can only be re-enabled by contacting DMG MORI or its distributor representative. DMG MORI may refuse to re-enable the equipment if it determines that doing so would be an unauthorized export of technology or otherwise violates applicable export restrictions. DMG MORI shall have no obligation to re-enable such equipment and shall have no liability (including for lost profits or business interruption or under the limited service warranty) as a result thereof.

13. ASSIGNMENT

The Agreement between DMG MORI and the Buyer may not be assigned without the express written consent of the parties hereto. Unless otherwise agreed by the parties in writing, any attempted assignment of rights or delegation of duties shall be void.

14. ANTI-BRIBERY

The Buyer agrees that it shall, and that any party retained by the Buyer shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. No part of the payments received will be used for any purpose which would cause a violation of law, including, without limitation, the anti-bribery laws of any country or jurisdiction, by DMG MORI.

15. ELIMINATION OF ANTISOCIAL FORCE

Each of DMG MORI and Buyer represents that, at the time of execution of this Agreement, it may not be involved in maintenance or management of anti-social forces (such as an organized crime group, a corporation related to an organized crime group, a racketeer acting in the name of political activity, an organizational crime group and any member, etc.). Buyer may not have any anti-social forces be involved or cooperate with its management or administration. Buyer may not provide capital or funds in any form (including but not limited to lending money) to, nor may receive capital or funds in any form, anti-social forces. For the avoidance of doubt, the breach of this section constitutes a material breach of this Agreement.

16. GENERAL INDEMNIFICATION

The Buyer hereby agrees to indemnify and hold harmless DMG MORI, its directors, officers, employees, agents, representatives, affiliates, successors, and assigns from and against any and all suits, actions or proceedings at law (including the costs, expenses and legal fees (on a solicitor-client basis) incurred in connection with the defense of any such matter) and from any and all claims demands, losses, judgments, damages, costs, expenses or liabilities, to any person whatsoever (including the Buyer's and DMG MORI's employees or any third party), or damage to any property (including the Buyer's property) arising out of or in any way connected with its use of products or services furnished by DMG MORI under this Agreement. If the Buyer fails to fulfill any of its obligations under this paragraph or this Agreement, the Buyer agrees to pay to DMG MORI all costs, expenses and legal fees (on a solicitor-client basis) attorney's fees incurred by DMG MORI to establish or enforce DMG MORI's rights under this paragraph or this Agreement. The provisions of this paragraph are in addition to any other rights or obligations set forth in this Agreement.

17. FORCE MAJEURE

DMG MORI shall not be responsible for non-performance or late performance of any part of the contract due to orders, regulations, and/or ordinances by government, act of God, war, blockade, insurrection, mobilization or due to any other Force Majeure causes or circumstances beyond DMG MORI's control. If an event of force majeure occurs, DMG MORI at its option may either extend the time of performing affected obligations during the period the event of force majeure continues, or to cancel the order.

18. SEVERABILITY OF AGREEMENT, GOVERNING LAW & ARBITRATION

Malaysian law (excluding the Convention on Contracts for the International Sale of Goods) shall govern all transactions and be applied to construe for all purposes all documents to which these Standard Terms and Conditions of Sale apply and DMG MORI and the Buyer shall submit to the jurisdiction of the court in Malaysia. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof shall be settled by arbitration (including but not limited to any dispute on warranty claim), shall be referred to a single arbitrator in accordance with the provisions of the Malaysian Arbitration Act, 2005 (Act 646) and an award shall be a condition precedent to any liability of DMG MORI or any right of action against DMG MORI. Where a claim against DMG MORI has not been referred to arbitration within one (1) year after the cause of action has accrued, then such claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder. The provisions of this Agreement are severable and the invalidity, illegality or unenforceability of any provision or provisions contained herein shall not in any way affect the validity, legality and/or enforceability of the remaining provisions of this Agreement.

19. MERGER CLAUSE

The entire Agreement is embodied in this writing. There are no understandings, Agreements, representations, or warranties, either oral or written, relative to products or services, including statements made in or conduct implied from past dealings, that are not fully expressed herein. No statement subsequent to the acceptance of the purchase order purporting to modify the said terms and conditions shall be binding unless consented to in writing by a duly authorized officer of DMG MORI in a document making specific reference to the purchase order.

20. MATTERS FOR MUTUAL DISCUSSION

Any matter not provided for in this Agreement or any doubt which may arise as to interpretation of this Agreement shall be settled through mutual discussion between the parties hereto in good faith.

21. GENUINE PRE-ESTIMATE FOR LOSSES, LIQUIDATED DAMAGES

Both parties acknowledge that for such circumstances or breaches where parties have agreed for the imposition of liquidated damages pursuant to the Agreement, such liquidated damages were imposed on the basis that it would be impractical and/or impossible to ascertain the actual damages/losses as may be incurred by the party not in breach. It is further agreed by both parties that the imposed liquidated damages as may be incurred under this Agreement represent the genuine pre-estimate of such losses that would be suffered by the Buyer.