

General Terms and Conditions DZM Machinery

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Introduction

You have made a purchase at DZM Machinery. All purchases and services through our website and shop are subject to these general terms and conditions. If necessary, we will update our general terms and conditions. At the time of your purchase, the version of the general terms and conditions that you were able to view on our website at the time of your purchase applies.

Article 1 Scope

1. The general terms and conditions apply to all purchase agreements or service contracts concluded on our website or shop.
2. Deviating stipulations shall only be valid if DZM Machinery and the Customer have agreed on them in writing. Other matters the general terms and conditions shall apply.
3. The general terms and conditions of the Customer do not apply and are rejected.
4. The purchase agreement is concluded under resolutive condition, you are deemed to pay the full purchase price within two weeks after the date of invoice or order confirmation.
5. In the absence of full or timely payment, the agreement with DZM is dissolved by operation of law.

Article 2 Definitions

Below you will find the definitions of terms used in these general conditions:

1. **Purchase agreement:** agreement in which the seller, DZM Machinery, undertakes to give a good to the buyer. And the buyer undertakes to pay a purchase price for it.
2. **Service contract:** contract of services is the contract by which one party, the contractor, undertakes towards the other party, the client, other than on the basis of an employment contract, to perform work consisting in anything other than the realization of a work of material nature, the storage of goods, the publishing of work or the transport or cause to be transported of persons or goods.
3. **Client:** the natural or legal person to whom DZM Machinery makes an offer or with whom DZM Machinery concludes a purchase agreement in which the Client undertakes to pay a purchase price to DZM Machinery.
4. **Seller:** the seller, DZM Machinery, who undertakes to give a good to the Client.
5. **DZM Machinery:** DZM Machinery B.V. is the party that makes an offer to the Client or enters into a purchase agreement with the Client.
6. **Agreement:** the purchase and service agreement concluded between DZM Machinery and the Client.
7. **Services:** non-material goods. DZM Machinery can provide the Customer with the sale of its machines, the purchase of machines, worldwide transport, repair of machines and maintenance & inspections.
8. **Service & maintenance:** DZM Machinery can perform service and maintenance in their own workshop. If necessary, the machines will be inspected by their own inspector.
9. **Non-committal:** all offers are without obligation, i.e. are revocable immediately after acceptance.
10. **General Conditions:** are the present terms and conditions for purchase agreements concluded with DZM Machinery.
11. **Machines:** a device consisting of a frame with a drive mechanism and other specific parts. A mechanism that can convert a form of movement or energy into another movement or energy. With the associated installations, apparatus, parts, tools and related goods, in the broadest sense of the word.

Article 3 Offers

1. All offers are without obligation. DZM Machinery has the right to revoke the offer after acceptance by Customer.
2. If the Client provides DZM Machinery with information for the conclusion of an agreement, this information shall be deemed to be correct and DZM Machinery shall base its offer on it.
3. The prices mentioned in the offers are based on "delivery ex Culemborg", "exworks", in accordance with the Incoterms 2010, unless explicitly agreed otherwise between DZM Machinery and the Customer. The prices are exclusive of VAT and packaging.

Article 4 Assembly machines

1. The costs of assembly and commissioning are not included in the purchase price.
2. If, due to circumstances beyond the control of DZM Machinery, our mechanic is unable to continue the assembly and commissioning, the resulting costs will be at the expense of the Customer.

Article 5 Advertising

1. DZM Machinery will not handle complaints on delivered used machines, unless otherwise agreed with the Customer.

Article 6 Liability

1. DZM Machinery shall not be liable for any damage resulting from shortcomings in the fulfilment of its obligation(s) towards the Customer.
2. Liability for indirect damage or consequential damage is excluded under all circumstances.
3. The fulfilment of the obligation under guarantee/claim as described, shall be considered as the sole and full compensation for damages.
4. DZM Machinery shall also not be liable for the manner in which these third parties carry out their work and shall not be liable for shortcomings of these third parties, except for intent, gross negligence, or deliberate recklessness on the part of DZM Machinery.
5. DZM Machinery shall not be liable either for or on behalf of advice provided by DZM Machinery.
6. DZM Machinery is not liable for damage to motor vehicles of third parties on its premises.
7. DZM Machinery shall not be liable for errors and deviations in images, notices of sizes and weights, appearing in price lists and in offers and/or order confirmations.
8. DZM Machinery shall never be liable for the consequences of exceeding delivery times.

Article 7 Warranty

1. DZM Machinery delivers used machines to their Customers. As a result, DZM Machinery cannot guarantee quality and service life. Guarantees only apply if agreed in writing.
2. DZM Machinery cannot guarantee the correctness of the hours and years of construction, because these factors cannot be tested with certainty.
3. Customer is given the opportunity by DZM Machinery to have the machine inspected at his own expense. DZM Machinery shall determine the location and time of the inspection.
4. If warranty has been agreed in writing with Client, DZM Machinery shall repair, replace or credit a proportional part of the invoice as soon as possible for the defects covered by this warranty to the delivered good. Insofar as Customer demonstrates that they have come to light within the guarantee provisions mentioned under sub 1. or are wholly or partly a result of faulty material and/or incorrect construction or processing.
5. Fulfilment of the guarantee provisions is considered to be the sole and full compensation. Further liability either by direct or indirect damage, costs and interests for whatever reason, is expressly excluded.
6. Parts that are subject to premature wear and tear due to their nature or operating conditions are not covered by the warranty. Damage resulting from negligent and inexperienced handling, excessive strain or other influences are also not covered by the warranty.
7. The warranty obligation of DZM Machinery expires immediately if, during the warranty period, Customer carries out any repairs or changes without DZM Machinery's permission or has them carried out by others. Client does not have the right to refuse payment on the grounds that DZM Machinery has not, not yet, or not yet fulfilled its warranty obligation.

8. If DZM Machinery replaces certain parts, these replaced parts shall become the property of Client.

Article 8 Changes or cancellation of purchase agreement

1. DZM Machinery must give prior written consent if Client wishes to amend or cancel the purchase agreement.
2. If Client wishes to amend or cancel the concluded agreement, he shall be obliged to bear all damage and costs resulting from this himself and to compensate DZM Machinery. DZM Machinery may at all times make use of the authority arising from Article 6:90 of the Dutch Civil Code.

Article 9 Delivery

1. The delivery of the goods shall take place in the condition 'As-is': the condition in which the goods are at the time of purchase, unless otherwise agreed in writing.
2. Only approximate times of delivery can be given. DZM Machinery aims to meet the delivery deadlines.
3. Any exceeding of the delivery period does not give the Customer the right to cancel the order, to refuse the receipt or payment of the goods. As a result, DZM Machinery shall not owe the Customer any compensation or delivery from stock.
4. Delivery will only take place when the Customer has fulfilled all its obligations. No or incomplete fulfilment of the obligations shall have the consequence that DZM Machinery suspends its obligation until the moment that Customer has fulfilled its obligation in full. In that case, DZM Machinery is not obliged to fulfil its obligation to deliver the machine(s).
5. DZM Machinery may organise worldwide transport by truck or ship, DZM Machinery will outsource the transport to third parties.

Article 10 Force Majeure

1. Force majeure is understood to mean all circumstances which are deemed to prevent the timely delivery of sold goods. Non-timely delivery is a shortcoming in the fulfilment of DZM Machinery's obligation. A force majeure situation is a non-attributable event for DZM Machinery that completely excludes liability.

Article 11 Price change

1. The sales price of the goods offered by DZM Machinery is based on the purchase price and other cost factors. DZM Machinery has the right to increase the sales price if after confirmation of the sales order, but before delivery of the goods, a cost price component is increased.
2. This clause applies in particular to a change in import or export duties or taxes after the order confirmation has been sent. And in case of a change in the exchange rate of the Euro against the foreign currency in which DZM Machinery bought the goods.

Article 12 Payments

1. The Customer shall be obliged to observe the agreed payment conditions and to provide DZM Machinery, at DZM Machinery's request, with sufficient security for payment, in his opinion. If the Client fails to fulfil his obligation arising from the agreement with DZM Machinery, the Client shall be in default immediately. DZM Machinery shall have the right to dissolve the agreement and to recover the damage suffered as a result thereof from the Client.
2. Payment shall be made at DZM Machinery's place of business or to an account number designated by DZM Machinery.
3. DZM Machinery has the right to suspend its obligations if the Client has not or not fully complied with his obligation. The suspension shall apply until the Client has provided security for the fulfilment of all his obligations under the agreement, at the request and to the satisfaction of DZM Machinery.
4. Unless otherwise agreed in writing, payment must be made in cash without any discount for delivery of the goods, regardless of whether all or only part of the goods sold are delivered. Set-off is not permitted.

5. As long as Customer has not paid or not fully paid the purchase price owed by him, DZM Machinery is entitled to suspend the fulfilment of his obligation.
6. The Client only receives ownership of the sold goods upon fulfilment of all his obligations under the purchase agreement. Before that time, the sold good shall remain the property of DZM Machinery, and Client shall therefore not be free to resell the good, encumber it in any way, process it or dispose of it in any other way without prior written consent of DZM Machinery.
7. From the day that payment should have taken place, the Client must pay as interest on the amount due by him, the official interest rate for commercial transactions of the European Central Bank, applicable on the due date, increased with 3.5%.
8. If the Customer has exceeded the term of payment by more than one month, DZM Machinery shall be entitled to claim the related collection costs, if it makes use of authorised persons or institutions to collect the claims.

Article 13 Transfer of risk

1. In the event of purchase, delivery will take place at the location of DZM Machinery's registered office in accordance with "exworks" the Incoterms 2010. The risk of the case shall pass to the Customer at the moment that DZM Machinery makes the goods available.
2. The condition set out in 13.1 will lapse if DZM Machinery and the Customer agree in writing that DZM Machinery will provide transport. The risk of storage, loading, transport and unloading shall rest with the Customer. Commitments with third parties shall not change this and shall be deemed to have been accepted in the interest and at the expense of the Customer.
3. If there is a trade-in and the Customer continues to use the good to be trade-in pending delivery of the new good, the risk of trade-in shall remain with the Customer until the moment he has placed the good in the possession of DZM Machinery.

Article 14 Customer's breach of contract

1. DZM Machinery has the right to dissolve the contract of sale if Client fails to fulfil one or more of his obligations, if he is declared bankrupt, if he applies for a moratorium, if he proceeds to liquidate his business or if his assets are seized in whole or in part.
2. If DZM Machinery has not yet fulfilled its obligations in full, but the cases mentioned in 14.1 occur, DZM Machinery may consider the part of its obligation that has not yet been fulfilled to be dissolved. DZM Machinery shall recover the delivered unpaid goods without any judicial intervention, without prejudice to its right to compensation of costs, damages and interest.
3. Default shall occur when Client has exceeded an agreed term and has not fulfilled his obligation, without notice of default being required.
4. A complaint does not suspend the payment obligations.
5. DZM Machinery has the right to resell the goods sold, if Client is in default of payment and/or acceptance for more than fourteen days. The down payment made to DZM Machinery shall lapse as compensation for the damage suffered.

Article 15 Retention of title and lien

1. After delivery, DZM Machinery remains the owner of delivered goods for as long as the Customer:
 - a) fails or will fail to fulfil his obligations under the agreement or other similar agreements.
 - b) Does not pay or will not pay for work performed or to be performed under such agreements.
 - c) has not paid claims resulting from the non-fulfilment of the above agreements, such as damages, penalties, interest and costs.
2. The Customer may not encumber delivered goods outside its normal business operations as long as they are subject to retention of title.
3. The Customer may only retrieve the delivered goods after DZM Machinery has invoked its retention of title. The Customer shall allow DZM Machinery to enter the place where these goods are located.

4. If the Customer has mixed, deformed or checked the delivered goods and as a result DZM Machinery cannot invoke its retention of title, the Customer is obliged to pledge the goods formed to DZM Machinery.

Article 16 Sanctioning countries

1. DZM Machinery acts in accordance with the European laws and regulations imposed by the OFAC (Chapter 6 of the UN Charter) with regard to sanctioning countries. On the basis of these regulations, DZM Machinery does not, or only to a limited extent, conduct transactions with countries on the list of sanctions countries.
2. The Customer is prohibited from reselling the delivered goods to a sanction country listed by OFAC by means of the chain clause imposed by the EU and OFAC.
3. DZM Machinery takes no responsibility if the Customer resells the delivered goods to a sanction country.
4. DZM Machinery has the right to withdraw an offer in its entirety if it suspects that it violates the European laws and regulations of OFAC.

Article 17 Storage

1. If the Customer does not take delivery of the machines, does not pick them up or have them picked up, or if delivery at the address given by the Customer is not possible, the machines will be stored for a maximum of 30 days, or longer if DZM Machinery deems it desirable, at the expense and risk of the Customer.
2. In this case, as in the case of any other attributable failure of the Client, DZM Machinery shall at all times have the power to either demand compliance with the agreement, or to dissolve the agreement in whole or in part after written notice of default, all this without prejudice to its rights to compensation for the damage suffered and loss of profit, including storage costs.

Artikel 18 Services

1. DZM Machinery shall use its best efforts to perform services with care. All services shall be performed on the basis of an obligation to perform to the best of one's abilities.
2. The Customer shall always inform DZM Machinery of all circumstances that may influence the services.

Article 19 Prices and rates of services

1. Performance of services will be charged on the basis of the rates included in the agreement. If the agreement does not specify otherwise, services will be charged on the basis of post-calculation. Rates may be indexed once a year.
2. If a periodic fee for the performance of services has been agreed, this fee is payable in advance.
3. A fee for maintenance shall be based on the running hours of the item. The minimum number of running hours of the item to be maintained is 500 hours per year. The running hours as shown on the counter display are leading. At DZM Machinery's first request, the Customer must provide a truthful statement of the number of running hours. Any exceeding of the number of running hours will be invoiced annually. If the number of running hours per year is at least 20% lower than estimated, the Customer may, if it can reasonably be expected that this is of a structural nature, request adjustment of the agreement. DZM Machinery shall not be obliged to compensate less hours.
4. If the agreed number of running hours is exceeded by at least 10%, (or when it is foreseeable that such an exceeding will take place), DZM Machinery shall be entitled to change the duration of the agreement and/or the term amount proportionally. If DZM Machinery changes the instalment amount, DZM Machinery shall be entitled to charge the changed amount retroactively.

Article 20 Maintenance

1. DZM Machinery shall only be obliged to carry out maintenance if this is included in the agreement.
2. If it has been agreed that DZM Machinery shall carry out maintenance work, DZM Machinery shall make every effort to carry out such work as is necessary to keep the goods in question in a good state of repair, also in view of the nature and purpose of the goods to be maintained
3. Customer shall be obliged to inform DZM Machinery in timely and written form of all changes that may affect the performance of the goods to be maintained, including the operating conditions. Customer is aware that the rates for maintenance are based on the deployment conditions made known by Customer.
4. The Customer shall ensure that the service engineer at the location can start his work immediately. The costs incurred as a result of waiting times and/or as a result of the fact that the work cannot take place for whatever reason will be charged to the Customer separately at the applicable rates.
5. DZM Machinery offers the Customer the possibility to have maintenance carried out in DZM Machinery's workshop.
6. Each object has specific maintenance characteristics. Depending on these characteristics, maintenance guidelines, operating conditions and operating hours, DZM Machinery will periodically check objects. In this context, items must be made available to DZM Machinery at DZM Machinery's request, at least one working day per calendar year.
7. If desired, DZM Machinery shall draw up a maintenance schedule in consultation with the Customer.
8. Maintenance work shall take place on working days (with the exception of generally recognised public holidays) from 08:00 to 17:00. Work performed outside these days and times shall be subject to a surcharge.
9. If the object has not been repaired within 48 hours after diagnosis, a bridging case can be made available upon request. The provision of a bridging case does not apply to cases with a lifting capacity of more than 8 tonnes, EX trucks, VKA trucks and attachments.
10. If repairs are necessary as a result of incorrect, careless or incompetent use of goods, DZM Machinery is entitled to charge separately for the execution of these works and any replaced parts. In case of such damage, no bridging case will be provided.
11. Activities such as repairing damage caused by the Customer, or replacing parts as a result thereof, are not part of regular maintenance activities and will be charged separately.
12. Adjusting as a result of changed government regulations are not part of regular maintenance work and will be charged separately.
13. Without prejudice to DZM Machinery's other rights, all obligations of DZM Machinery regarding maintenance shall lapse as soon as goods are outside the Netherlands, or if Client deploys them at a location other than the agreed location(s).

Artikel 21 Service contracts

1. The exact nature and scope of the maintenance to be carried out is set out in the service agreement. The Customer is not permitted to terminate a service agreement prematurely.
2. Additional work, such as repairing damage, including, if necessary, replacing parts in the event of breakdowns as a result of causes outside the case, will be at the Customer's expense at the rates applicable at that time.

Article 22 Customer's obligations

1. The Customer shall inform DZM Machinery in writing of changes in the address of the Customer and of the locations where goods are located.
2. Customer shall ensure that DZM Machinery has access to the goods. The Customer must have a suitable and safe workplace that at least meets the most recent VCA requirements and must make this available to DZM Machinery. The workplace shall be provided with lighting, ventilation possibilities, normal working temperature, sufficient working space around the item, limitation of risks (other traffic, noise level, hazardous substances). In addition, facilities relating to hygiene, toilet, escape routes and first aid must be available for employees.

3. If maintenance cannot reasonably be carried out at the Customer's location, the costs of transporting the item to DZM Machinery's nearest workshop shall be at the expense of the Customer.
4. The Customer declares to fully cooperate with DZM Machinery if, in the opinion of DZM Machinery, an object needs to be maintained or repaired, and shall make the good available to DZM Machinery upon first request. The Customer is obliged to carry out small daily and weekly maintenance as described in the documentation relating to the case, to the battery/charger and to attachments, independently and at his own expense. In doing so, use must be made of prescribed fuels, lubricants and fluids. At the request of DZM Machinery, the Customer shall provide access to small daily and weekly maintenance carried out.
5. The Customer is responsible for the removal of waste materials and liquids.
6. The hours and costs related to circumstances as a result of which work cannot be carried out, or cannot be carried out properly, will be charged separately, unless these circumstances are attributable to DZM Machinery.

Article 23 Reporting

1. DZM Machinery shall record the work performed in a work report, stating the hours worked and the parts replaced.
2. The work report will be sent (digitally) to the Customer. In case of a safety inspection, the Customer may also request a copy of the inspection report.

Article 24 Faults reports

1. Faults and defects must be reported by e-mail: e.dezeeuw@dzmmachinery.com or by telephone: +31 345 520 715 stating the date, time, serial number, brand type and location of the Customer.
2. Urgent malfunctions outside office hours must be reported via telephone number: +31 345 520 715.

Article 25 Translations General terms and conditions

1. If these General Terms and Conditions are translated and differences in interpretation arise between the Dutch text and the texts in the foreign language, the Dutch text will be decisive.

Article 26 Applicable law and choice of forum

1. Dutch law shall apply.
2. The Vienna Convention on Contracts for the International Sale of Goods shall not apply, nor shall any other international regulation of which exclusion is permitted.
3. Only the civil court having jurisdiction in the place of business of DZM Machinery shall take cognizance of disputes, unless this is contrary to mandatory law. DZM Machinery may deviate from this rule of jurisdiction and apply the statutory rules of jurisdiction.
4. Parties may agree on another form of dispute resolution such as arbitration or mediation.

Article 27 Personal data

1. We will of course handle your personal data with care in accordance with applicable laws and regulations. More information about how DZM Machinery handles your personal data can be found in the privacy statement.