

**STANDARD TERMS AND CONDITIONS OF SALE**  
(Revised 03 August 2023)

All quotations by DMG MORI PHILIPPINES INC. 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. In the event of any inconsistency or contradictory terms between these standard terms and conditions of sale and those of the Buyer, these standard terms and conditions of sale will prevail. The "Buyer" referred to herein includes authorized DMG MORI distributors and customers.

**1. SALE PRICES**

Unless otherwise noted, all prices quoted are subject to change without notice. Unless otherwise stated, all prices are FOB port of shipment. Prices do not include VAT 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 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 attorneys fees. 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 reasonable attorney's fees and court costs for the collection of any amounts owing to DMG MORI hereunder and for the costs incurred in the repossession of the property. If a petition in insolvency is filed, 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 only 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 canceled 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. 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. No legal action relating to any manufacturer's warranty relating to the equipment shall be commenced more than four years after the delivery of the equipment by DMG MORI or one year after repair efforts have ended, whichever is later. 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.

## **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 attorney's fees, 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. 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 of Japan or if the equipment is manufactured in another country, by the Government of such country. Buyer shall comply with local Japanese 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 and other countries and that the Buyer will not export or permit the export of the equipment anywhere without proper government 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 stated in the 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 reasonable attorney's fees 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 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 nonperformance 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 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. GOVERNING LAW & ARBITRATION**

The Agreement between Buyer and DMG MORI shall be construed in accordance with the laws of the Philippines. The provisions of this Agreement are divisible and the invalidity or unenforceability of any provision or provisions contained herein shall not in any way affect the validity of this Agreement without the invalid or unenforceable provision or provisions. All disputes, controversies or differences which may arise between the parties hereto, out of or in relation to or in connection with this Agreement shall be finally settled by arbitration in Tokyo, Japan, in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association. Any action to enforce this Agreement shall be commenced no later than one year from the date of the alleged breach.

**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.