

GENERAL TERMS AND CONDITIONS OF SALE – DNP IMAGINGCOMM EUROPE B.V.

In these general terms and conditions, DNP Imagingcomm Europe B.V. will be referred to as “DNP”; the other party to the agreement will be referred to as “Buyer”.

Any agreement concluded between DNP and the Buyer with regard to the purchase or sale of products and/or services, every amendment and/or supplement thereto, and all acts, legal or otherwise, for the preparation and/or execution of that agreement and/or performance will hereinafter be referred to as “Agreement”.

Clause 1. Applicability

1. These terms and conditions shall apply to and form part of all quotations and offers made by DNP, all orders placed with DNP, and any Agreement.
2. In the event of any conflict between the content of the Agreement and these terms and conditions, the provisions of such Agreement shall prevail.
3. DNP shall carry out its activities subject to the applicability of these terms and conditions only. DNP herewith explicitly rejects the applicability of any general terms and a condition used by Buyer, even if Buyer refers to such general terms and conditions and/or has sent a copy thereof to DNP
4. If DNP should enter into more than one Agreement with Buyer, these terms and conditions, as amended from time to time, also apply to all follow-up or future Agreements/offers/quotations. By concluding an Agreement with DNP, Buyer is deemed to have waived all other (terms and) conditions and/or provisions, even if express reference is made thereto, or these are expressly referred to by Buyer..
5. Reference is made to any annexes to these terms and conditions which may apply on a case by case basis. In case of a conflict between an annex and these terms and conditions, these terms and conditions prevail to the extent possible under the relevant local jurisdictions. The annexes only apply to the extent these terms and conditions are in breach of the laws of the relevant jurisdictions; other than this exception these terms and conditions apply.

Clause 2. Offers, quotations and orders

1. All offers and quotations are made in writing and shall not be binding. Although always not binding, offers and quotations shall be valid for sixty days from the date of issue. DNP shall be entitled to withdraw the offer (i) at all times and (ii) within one working day after entering into of the Agreement. Offers and quotations only apply to the specific order (and not to follow-up/recurring orders), unless explicitly agreed between DNP and Buyer
2. Any estimate made shall be as accurate as possible. Buyer cannot derive any rights vis-à-vis DNP in respect of price lists, cost estimates, brochures and other information relating to the products and services of DNP.. DNP shall be entitled to correct any obvious printing errors and/or miscalculations (without being liable for any damages and/or costs).
3. Any alleged inaccuracies in order confirmations must be communicated in writing by Buyer to DNP within the specific time frame that is stated on the order confirmation at the risk of forfeiting this right to communicate such (alleged) inaccuracies.
4. All specifications, depictions, descriptions, dimensions and suchlike included in price lists, cost estimates, brochures and other information relating to the products and services of DNP are subject to alteration at DNP's discretion.
5. No rights may be derived vis-à-vis DNP in respect of the content of DNP's brochures, e.g. colour combinations, dimensions and/or descriptions contained therein.
6. Buyer must submit each order in writing, specifying a clear description of the product, the price, the quantity and the requested delivery date. The minimum order quantities, packaging units and lead times as indicated by DNP must be observed.
7. DNP is not and does not have to be aware of the intended use by Buyer (or its customers) of the products or the circumstances under which the products will be used.

Clause 3. Prices

1. All prices shall be given and shall be deemed to have been quoted in euro, unless explicitly stated otherwise.
2. All prices quoted shall be exclusive of VAT, unless expressly stated otherwise. Buyer is responsible and liable for all duties and taxes levied on the importation of the products into Buyer's country.
3. The prices shall be based on the rates, wages, import duties, taxes and other price-determining factors applicable at the time of the conclusion of the Agreement. Should one or more of these factors change, DNP shall be entitled to adjust the prices quoted or agreed accordingly. Such a price adjustment shall not entitle Buyer to terminate the Agreement, unless the adjustment took place within three months from the date the Agreement was concluded. Notwithstanding the foregoing, one of the factors for price adjustments is the fact that a Buyer has not met its (sales) targets.

Clause 4. Delivery, risk and cancellation

1. DNP reserves the right to stipulate that Buyer provides security for the fulfilment of its payment obligations before commencing the execution of the work and/or delivery of the goods sold. If Buyer fails to fulfil the above within the stipulated deadline, it is immediately in default. In that case, DNP is entitled to terminate the Agreement and to recover its loss from Buyer.
2. Buyer indemnifies DNP against all actions and imminent claims by third parties against DNP, the costs (including reasonable legal costs) for defence against such claims, and all obligations that DNP has towards third parties, if such claims, costs and obligations arise or ensue from any acts or omissions or use of the products or services by Buyer or third parties engaged by it and/or improper performance of the Agreement.
3. Complaints or claims of Buyer regarding the products, of whatever nature, do not entitle Buyer to postpone payment of outstanding amounts towards DNP.
4. If the delivery and/or performance period is exceeded, this will not entitle Buyer to damages, suspension or termination.
5. Buyer must cooperate in order to enable DNP to make delivery.
6. If Buyer fails to provide DNP with the required delivery information, DNP shall be entitled to store the goods at the expense and for the risk of Buyer.
7. Unless agreed otherwise in writing, all deliveries take place “ex works”, at DNP, in accordance with Incoterms 2010. The risk of the products will pass to Buyer at the time of delivery.
8. The delivery and other dates agreed between parties or stipulated by DNP shall not be deemed to be fixed dates, unless this has been stipulated in the order confirmation. In the event of overdue delivery (in case of an agreed fixed date), DNP must be given written notice of default and must be granted a reasonable time to fulfil its obligations. In no event (also in case of a fixed date) DNP shall be obliged to pay any compensation in case a delivery date has not been met. In no event Buyer shall be entitled to terminate the Agreement in such case.
9. If circumstances differ from those known to DNP at the time of setting the delivery period/date, DNP is entitled to extend the delivery period by the period it needs to perform the Agreement under the changed or current circumstances. If the delivery cannot be incorporated into DNP's schedule, it will be performed as soon as its schedule so permits.
10. DNP is entitled to make the delivery in consignments (*‘in delen’*), in which case DNP is also entitled to invoice each consignment separately.
11. If DNP suspends its obligations, the delivery date will be extended by the duration of the suspension. If the continuation of DNP's obligations cannot be incorporated into DNP's schedule, it will be performed as soon as its schedule so permits.
12. If Buyer fails to comply with any provision of this Agreement, DNP shall retain the right to adjourn further deliveries and/or cancel outstanding orders.



Clause 5. Payment

1. DNP is entitled to always demand payment in advance from Buyer. If Buyer fails to comply with DNP's demand, DNP is entitled to suspend delivery.
2. Unless agreed otherwise in writing, the invoices are due and payable within 30 days of the invoice date. All payments by Buyer shall be made by bank transfer at the full invoice value in the currency in which the agreed prices are denominated. Buyer has no right of set-off, suspension of payment, discount or deferral. All transfer fees and beneficiary bank charges are payable by Buyer.
3. If payment is not received by the due date, Buyer shall be liable for statutory interest on the outstanding amount of the invoice until full payment is received, without prejudice to any other rights and remedies that DNP may have, and without any written notice of default being required. Additionally, DNP in such case is entitled to compensation for any other reasonable costs incurred to recover the debt, such as legal expenses or employing a debt collecting agency. The interest is 12% per annum, but is equal to the statutory interest if the latter is higher pursuant to article 6:119a of the Dutch Civil Code.
4. The payments received from Buyer shall always first of all be used to settle any interest and costs owed and then to settle the oldest due and payable invoices, even if Buyer stipulates that a payment relates to a later invoice.
5. As soon as Buyer fails to fulfil any obligation vis-à-vis DNP, all other claims of DNP against Buyer shall become immediately due and payable.
6. Irrespective of whether DNP has fully executed the agreed performance, each and every (future) amount due by Buyer to DNP under the Agreement is immediately due and payable if:
 - a. a payment term is exceeded;
 - b. an application has been made for Buyer's bankruptcy or moratorium, Buyer is declared bankrupt or has been granted a moratorium.
 - c. attachment is levied on products or claims of Buyer; or
 - d. Buyer is dissolved or wound up.

Clause 6. Guarantee

1. DNP guarantees the proper performance of the Agreement for a period of 12 months after delivery.
2. If the product supplied by DNP does not comply with the Agreement DNP will, at its discretion, decide whether it will still properly execute the Agreement or credit Buyer for a proportionate part of the invoice. Should DNP choose to still properly execute the Agreement, it will determine the manner and time of execution.
3. If DNP deems a complaint as referred to in clause 7 justifiable, it will, at its discretion, (i) replace the relevant products by means of a replacement order and will issue a credit note for the relevant products or (ii) repair these within a reasonable period after receipt of the complaint or (iii) give a price discount or (iv) send a credit note. DNP's guarantee obligations are exclusively restricted to the guarantee claims described in this clause 6.
4. At DNP's request, Buyer must send DNP the products to be repaired or replaced.
5. If DNP deems a complaint as referred to in clause 7 not justifiable, Buyer must pay or reimburse (in case DNP deems a complaint not justifiable after the following costs are already incurred):
 - a. all transport and dispatch costs;
 - b. disassembly and assembly costs;
 - c. travel and accommodation costs.
6. Buyer must always allow DNP the opportunity to repair a possible defect and/or to redo the processing.
7. Buyer may only invoke the guarantee after it has fulfilled all its obligations towards DNP.
8. The guarantee given under clause 6.1 will not apply if the defects are the consequence of:
 - a. normal wear and tear;
 - b. improper use;
 - c. no or improper maintenance;
 - d. installation, fitting, adjustment or repair by Buyer or third parties.
 - e. defects in or suitability of products originating from, or stipulated by Buyer;
 - f. minor defects or deviations that fall within the tolerance levels as accepted in relevant commercial practice;
 - g. defects in or unsuitability of materials and auxiliary materials used by Buyer;
 - h. a regulation laid down by the relevant government with regard to the products and/or services or the manufacture or use thereof;
 - i.
9. No guarantee will be provided by DNP in respect of:
 - a. products supplied that were not new at the time of delivery;
 - b. the inspection and repair of products of Buyer;
 - c. parts for which a manufacturer's warranty has been provided.
10. Buyer may not assign any rights under this clause 6.
11. The provisions of clauses 6.1 through 6.8 apply mutatis mutandis to any claims by the Buyer based on breach of contract, non-conformity or on any other basis whatsoever.

Clause 7. Complaints

1. Upon delivery, Buyer is obliged to verify quantity, type, size and quality of the products. In case of discrepancies between the shipment and the relating order and/or invoice and in case of any visible defects, Buyer must make a note on the shipping company's way bill, inform DNP within 8 days after delivery of the products and send a copy of the way bill to DNP. With due observance of clause 7.3, complaints regarding non-visible defects must be reported to DNP in writing within 8 days from the date Buyer should reasonably have detected the defects. The latter can only be accepted if the goods were stored in compliance with the storage conditions indicated by DNP and if the complaints are related to defects resulting from improper material, workmanship or non-conformance to the specifications. Buyer may no longer invoke a defect in performance if it fails to complain to DNP within the periods mentioned.
2. On pain of forfeiture of all rights, Buyer must submit complaints regarding the invoice amount to DNP in writing within the payment deadline. If the payment deadline is longer than thirty days, Buyer must complain no later than thirty days after the date of the invoice.
3. Any complaint does not entitle Buyer to suspend payment or its payment obligations.
4. The processing of a complaint by DNP shall not constitute acceptance of liability in any form whatsoever.



Clause 8. Liability and warranties

1. DNP's liability due to an attributable failure on its part to comply with the Agreement, or by whatever virtue, is limited to the amount DNP receives from the insurer under a commercial insurance entered into by or on behalf of DNP, with regard to the damage for which it is held liable by Buyer.
2. If DNP is not entitled to the limitation referred to in clause 8.1, for whatever reason, DNP shall only be liable for damage up to the amount paid by Buyer for the relevant/specific product(s) that caused the relevant damage, with an absolute maximum liability of EUR 250,000 (two hundred and fifty thousand)
3. Irrespective of the legal basis for a claim, DNP shall not be liable for indirect damages, including but not limited to any trading loss in the broadest sense of the word, consequential loss, damage suffered by Buyer's customers, loss of customers, production loss, transport costs, travel and accommodation costs, loss of profit, reduction of goodwill, (direct or indirect) injury to persons and/or damage to goods, by whatever name, resulting from the acquisition, use or ownership of goods delivered by DNP, nor shall DNP be liable for such loss or damage where services are provided in respect of such goods or where services are provided by DNP in general.
4. Buyer shall indemnify DNP against all third-party claims, imminent or otherwise, the costs (including reasonable legal costs) for defence against such claims, and all obligations on the part DNP towards third parties, if such claims, costs and obligations result from or arise on account of product liability as a result of a defect in a product supplied by Buyer to a third party and compose, in full or in part, products supplied by DNP.
5. DNP may engage one or more third parties in the performance of the Agreement. Any limitation of liability by such a third party may be invoked by DNP against Buyer.
6. All legal and contractual defences available to DNP against Buyer may also be invoked by all natural persons or legal entities — including both employees and independent contractors — involved in the performance of the Agreement and for whom DNP is liable by law.
7. DNP shall not issue any warranties, unless this is expressly confirmed in writing or included in these terms and conditions.

Clause 9. Call-off orders

In the case of a call-off order where no period has been agreed within which a call-off must be made, the call-off date shall be the last day of the delivery period which is ultimately one year after the call-off order has been placed; actual delivery shall take place within 15 working days thereafter.

Clause 10. Force majeure

1. Force majeure shall be deemed to be any circumstance beyond DNP's reasonable control, including but not limited to: strikes, fire, flood, work stoppages, machinery breakdown, raw material shortages, non-performance by DNP's suppliers or transport companies, transport difficulties, production failures, currency limitations, natural or nuclear disasters, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, wars or threats of war and/or terrorist attacks or actions.
2. In the event of force majeure, DNP shall be entitled to rescind, in whole or in part, the Agreement(s) without any compensation being due. If the impossibility is temporary, the obligations may be performed at a later time. Buyer shall be entitled to demand that DNP make a decision about this within 10 days from the day the force majeure situation started. However, the Agreement may in any event be rescinded for the part that was not yet performed by Buyer if performance is impossible for a period of 60 consecutive days. DNP shall under no circumstances be required to pay compensation to Buyer. If DNP has partially fulfilled its obligations towards Buyer at the time of the occurrence of the force majeure, DNP shall be entitled to invoice the partially fulfilled obligations to Buyer. Buyer is held to pay this invoice as this invoice should be considered as a separate Agreement.
3. If DNP's performance is or becomes permanently impossible because of force majeure, DNP and Buyer are entitled to terminate the Agreement with immediate effect for the part of the obligations that has not yet been performed.

Clause 11. Retention of title

1. All goods delivered by DNP shall remain its property until Buyer has fulfilled all obligations with regard to all products supplied or to be supplied. Until this moment DNP will have full ownership of the products and Buyer will ensure that DNP can assert these rights.
2. Buyer shall, at its own expense, take out suitable insurance against the risk of loss or theft of or damage to the products in which title has been retained. In the event of loss or theft of or damage to the products, the rights of Buyer against the insurer in that regard shall pass to DNP. Should Buyer be late in paying a due and payable amount, DNP shall be entitled to dissolve the Agreement in whole or in part without notice of default or judicial intervention being required and to claim back the goods subject to the retention of title of DNP, this without prejudice to the right of DNP to claim compensation. Buyer will cooperate in full in this respect.
3. DNP is entitled to establish a right of pledge on all products it has or will have at its disposal for whatever reason and for all claims it has or may have against Buyer with respect to any person requiring delivery thereof. Buyer undertakes that, if this situation arises, it will fully cooperate with DNP in this respect.
4. DNP has a right of retention ('eigendomsvoorbehoud') on all that DNP has at its disposal of Buyer, for all that is owed to it by Buyer. This applies to both outstanding (due and payable) and future claims. This furthermore applies to damages with regard to the setting aside and/or termination of the Agreement(s) concluded between DNP and Buyer, irrespective of which party invoked the termination. This also applies to all claims, whether or not relating to the Agreement concluded between DNP and Buyer.
5. Buyer will furthermore store and mark these products so that these are easily identifiable as products of DNP delivered subject to retention of title and insure them against usual risks.
6. Buyer will immediately inform DNP if the products are damaged or lost, or if they are attached or claimed by third parties. On DNP's demand, Buyer will inform DNP of the whereabouts of the products.
7. Until Buyer has paid all amounts due in full, it is not permitted to pledge or otherwise encumber the products. Sale or other disposition of the products to third parties by Buyer is only permitted in the normal course of its business and where it acts as an undisclosed agent (lasthebber in eigen naam) of DNP (in other words where Buyer acts in its own name but for the DNP's account).

Clause 12. Intellectual property rights

1. Buyer hereby acknowledges that no intellectual property rights are being transferred and that these shall remain property of DNP. Buyer is not allowed to use any of DNP's intellectual property rights without the prior written consent of DNP. Buyer will owe DNP an immediately due and payable penalty of EUR 25,000 (twenty five thousand) for each violation of this clause, without prejudice to DNP's right to damages, performance and other rights.
2. Buyer must return all data relating to the intellectual property rights provided to it within the time limit set on DNP's demand. On breach of this provision, Buyer will owe DNP an immediately due and payable penalty of EUR 1,000 (one thousand) a day, without prejudice to DNP's right to damages, performance and other rights.

Clause 13. Amendments

These terms and conditions can be amended at any time and unilaterally by DNP without the approval of Buyer being required. Such amendments shall not entitle Buyer to terminate the Agreement.



Clause 14. Conversion

In the event that any provision of these general terms and conditions is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable DNP and Buyer shall amend that provision in such reasonable manner as achieves the intention of DNP and Buyer without illegality and the remaining provisions of these general terms and conditions shall continue in full force and effect.

Clause 15. Termination of the Agreement

1. DNP is entitled to terminate the Agreement in full or in part or to suspend its obligations under the Agreement or any other Agreement with Buyer, with immediate effect, without the intervention of the court and without the requirement of a notice of default if:
 - a. Buyer violates any provision of the Agreement or these general terms and conditions;
 - b. Buyer applies for moratorium of payment or moratorium of payment has been granted;
 - c. the bankruptcy of Buyer is petitioned or pronounced;
 - d. the company of Buyer is shut down or wound up;
 - e. creditors of Buyer are offered an arrangement;
 - f. attachment is levied on a considerable part of Buyer's business assets;
 - g. shares in Buyer are transferred to any other party;
 - h. Buyer's company or a considerable part thereof is sold to a third party.
2. If one of the situations in clause 15.1 occurs, any claim by DNP against Buyer will be immediately due and payable, without DNP being bound to any payment (of costs or damages) or guarantee and DNP will be entitled to reclaim all products. Buyer will cooperate in full in this respect.

Clause 16. Disputes

1. The Agreement is governed by Dutch law. The provisions of the Vienna Sales Convention (CISG) and Book 7 of the Dutch Civil Code shall not apply.
2. Any dispute between DNP and Buyer arising from or in connection with the Agreement or these terms and conditions shall be submitted to the exclusive jurisdiction of the competent Amsterdam court.
3. DNP may deviate from this jurisdiction rule and may apply the statutory jurisdiction rules.