

general conditions  
of sales, delivery and  
payment of DTILE bv

**DTILE**<sup>®</sup> we tile  
the world

## 1. Applicability of these terms and conditions

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- 1.1 These Terms and Conditions shall apply to all offers and deliveries made by DTILE bv, further referred to as “DTILE”, and to all agreements to which DTILE is a party, unless the Parties have expressly agreed otherwise in writing.
- 1.2 The terms and conditions, including terms and conditions of sales, of the party with whom DTILE enters into a contract, further referred to as the “contracting party”, shall not apply even if the contracting party expressly refers to such terms and conditions in its correspondence and documents.

## 2. Offers and prices

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- 2.1 An order given by the contracting party shall be binding on the contracting party, regardless of the manner in which the contracting party gave such order. This shall also apply if the order was given by agents, representatives or other intermediaries. The burden of proof that the order is found to not be binding lies with the contracting party, pursuant to article 7:900 of the Netherlands Civil Code.
- 2.2 All offers/quotations shall be without any obligation for DTILE. Agreements shall be formed only when DTILE, after it has received the order, confirms the order in writing, or has started to carry out the order.
- 2.3 Offers/quotations shall be based on the information supplied by the contracting party with regard to its anticipated use and its (corporate) requirements etc., and it shall always be deemed that DTILE can assume such information to be correct.
- 2.4 An offer/quotation shall in any case be deemed to have been rejected if an order based on this offer/quotation has not been signed and returned to DTILE within six weeks.
- 2.5 The contracting party must notify DTILE in writing of changes to the order. Changes to the order shall take effect only after DTILE has accepted such changes in writing. Any additional or decreased costs resulting from changes to the order accepted by DTILE shall be payable by, or credited to, the contracting party. Changes to the order may cause the agreed delivery period to be exceeded. DTILE shall not

- be liable for this in any way, notwithstanding the provisions of Article 3.3.
- 2.6 Samples/specimen copies shall always be provided as an indication, and the goods do not have to conform to such samples/specimen copies. It shall be prohibited to sell and/or use or consume such samples/specimen copies.
- 2.7 All prices shall be exclusive of turnover tax and shall be EXW (ex works, Incoterms 2010) at the DTILE site/storage location, in accordance with the price lists drawn up by DTILE, valid on the day of delivery.
- 2.8 If during the period between the date of quotation or formation of the Agreement and the date of delivery, there is an increase in one or more cost price factors, DTILE shall be entitled to increase its prices accordingly, provided that:
- if the goods are delivered within thirty days of the Agreement being formed, the prices mentioned in the Agreement remain unchanged;
  - if there is a price increase within three months of the Agreement being concluded, the contracting party shall be entitled to dissolve the Agreement for the part which has still to be carried out, within eight days of notification of the price increase being sent, which dissolution may take place only in writing. The contracting party shall in that case have no right to compensation.
- 2.9 The contents of DTILE’s brochures and its printed matter etc. shall not be binding on DTILE unless this has been expressly stipulated in the Agreement or reference is expressly made thereto in the Agreement. In the latter case, DTILE shall never be bound by any printing errors and/or misprints.

## 3. Delivery

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- 3.1 DTILE shall deliver the goods EXW (ex works, Incoterms 2010) at the DTILE site/storage location. From the time of delivery, the goods shall be at the contracting party’s expense and risk.
- 3.2 The contracting party must inspect the goods for visible defects at the time of delivery, and must also check the goods for size, shade, sort, type and quantity, all insofar as applicable. If the contracting party takes posses-

sion of the goods and does not make any written criticisms or observations within eight days, the contracting party is deemed to have accepted the goods completely and without reservation. Complaints relating to visible defects shall in that case not be accepted and the right to dissolve the Agreement and the right to claim performance and/or compensation shall lapse.

- 3.3 The delivery periods and times stated shall be approximate and shall not be regarded as deadlines. If the delivery times stated by DTILE are not met, this may not be deemed to be an attributable failure on the part of DTILE, and shall not give the contracting party the right to dissolve the Agreement or to cancel the order, nor shall it constitute grounds for compensation, except on the expiry of a period of three months counting from the delivery time agreed upon, followed by a notice of default sent by registered letter or bailiff's notification, which grants DTILE a reasonable period to still fulfil its delivery obligation, or to still carry out the order given. In any case, the exceeding of delivery times shall never constitute grounds for compensation. If at any time (timely) delivery proves impossible, Mosa shall make this known as quickly as possible.
- 3.4 The contracting party must take possession of the goods purchased within the agreed period. If it fails to do so, DTILE shall be free, at its own discretion, to dispose of the goods, without prejudice to the contracting party's obligation to pay the purchase price.
- 3.5 If no period was agreed upon for taking possession of the goods, the contracting party must take possession of the goods within one month of the delivery time stated. In the unlikely event that DTILE is unable to meet the delivery time stated, the contracting party must take possession of the goods within one month of the delivery time adjusted by DTILE. If the contracting party fails to do so, DTILE shall be free, at its own discretion, to dispose of the goods, without prejudice to the contracting party's obligation to pay the purchase price.
- 3.6 The contracting party shall notify DTILE in writing of when it intends to collect the goods at least 24 hours before taking possession of the goods. If it fails to do so, any (addition-

al) costs arising therefrom shall be payable by the contracting party.

- 3.7 If the contracting party wishes to have the goods transported by DTILE, and DTILE agrees to do so, then this shall be without prejudice to the fact that the goods are delivered EXW (ex works, Incoterms 2010) at the DTILE site/storage location. The goods shall therefore be at the contracting party's risk from the time of delivery EXW (ex works, Incoterms 2010) at the DTILE site/storage location. Furthermore, the goods shall be transported at the contracting party's expense and risk. The minimum call period for the contracting party shall in that case be 48 hours.

## 4. Payment and security

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- 4.1 Invoices shall be issued at the same time as the closing of the Agreement. Unless otherwise agreed, the contracting party must pay invoices before delivery.
- 4.2 If the invoice amount has not been paid on the due date, the contracting party shall be in default by the mere expiry of that period, without any notice of default being required. In that case, DTILE shall not deliver the goods and DTILE's claim shall be increased by operation of law by default interest at the rate of 1.5% per month (or part thereof) on the invoice value including turnover tax, calculated from the due date. If the statutory commercial interest over a particular period should be higher than the aforementioned percentage, DTILE shall have the right to charge the statutory commercial rate of interest. If the contracting party is in default, it must also pay collection costs, which shall be fixed at 15% of the invoice amount, with a minimum of EUR 115,-.
- 4.3 Payments made by the contracting party shall always serve to settle firstly all costs payable, secondly all interest payable, and thirdly those invoices which have been outstanding the longest, even if the contracting party states that a payment relates to a later invoice.
- 4.4 All of DTILE's claims shall be due and payable as a lump sum immediately if:
- a. the contracting party fails to pay or fails to pay in time;

- b. a petition is filed for the contracting party's liquidation or an application is filed for debt rescheduling in respect of the contracting party, or a legal concept in the contracting party's country considered equivalent thereto applies;
  - c. any part of the contracting party's property or assets is attached, or a legal concept in the contracting party's country considered equivalent thereto applies;
  - d. the contracting party applies for, or is granted, a moratorium on payments, or a legal concept in the contracting party's country considered equivalent thereto applies;
  - e. the contracting party sells or discontinues all or part of its business/company, or a legal concept in the contracting party's country considered equivalent thereto applies;
  - f. the direct or indirect control within the contracting party's organization changes;
  - g. the contracting party fails to fulfil its obligations vis-à-vis Mosa.
- 4.5 In the cases described in Article 4.4, DTILE shall have the right:
- a. to suspend performance of its contractual obligations until the contracting party has fulfilled its obligations in full;
  - b. to cancel and/or dissolve all or part of the Agreement by means of a simple statement, without notice of default or judicial intervention being required, and without prejudice to DTILE's right to performance and/or compensation.
- 4.6 DTILE shall be entitled to offset the contracting party's claims against one or more claims which the contracting party has at any time against DTILE or against one or more companies within the concern to which DTILE belongs.
- 4.9 If DTILE has agreed with the contracting party that DTILE may make use of direct debits, the contracting party is not permitted to reverse a direct debit payment collected automatically by DTILE pursuant to deliveries made to the contracting party without prior permission in writing from DTILE.

## 5. Retention of title

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- 5.1 All goods delivered or still to be delivered shall remain the sole property of DTILE

until all claims which DTILE has or shall obtain against the contracting party, including in any case the claims referred to in Section 3:92 paragraph 2 of the Netherlands Civil Code, have been paid in full.

- 5.2 As long as the contracting party has not paid the claims in full, the contracting party shall expressly be prohibited from disposing of or processing (or having processed) the goods delivered, other than within the context of its normal business activities. As long as the aforementioned claims have not been paid to DTILE in full, the contracting party shall not be entitled to encumber the goods delivered. The contracting party guarantees that it will explicitly inform any third parties with security interests of the contents of this article, 5.2. The contracting party undertakes, at DTILE's first request, to cooperate in the establishment of a right of pledge in respect of claims which the contracting party obtains or shall obtain against its customers as a result of it reselling goods within the context of its normal business activities.
- 5.3 The contracting party must keep the goods which are delivered subject to a retention of title with due care and as the recognizable property of DTILE.
- 5.4 DTILE shall be entitled to take back the goods which are delivered subject to a retention of title and which are still available to the contracting party if the contracting party fails to fulfil its payment obligations or is experiencing financial difficulties, or there is a risk that it shall experience financial difficulties. The contracting party must grant DTILE (or a representative appointed by DTILE) free access at all times to its grounds and/or buildings for the purposes of inspecting the goods and/or exercising its rights.
- 5.5 The stipulations contained within Articles 5.1 to 5.4 inclusive shall not affect DTILE's other rights.

## 6. Intellectual property

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- 6.1 All intellectual property rights relating to DTILE's products and their design, its brochures and software, and to goods which DTILE develops and/or uses during the performance of

the Agreement, shall belong to DTILE, insofar as they do not already belong to third parties, and unless agreed otherwise in writing.

- 6.2 The contracting party shall not be permitted to remove or change any indications about copyright, trademarks, trade names or other intellectual property rights on the products, brochures, software and/or other goods belonging to DTILE.
- 6.3 If an order must be carried out according to the contracting party's designs, drawings or other instructions, the contracting party shall guarantee that this shall not entail any infringement of intellectual property rights or other third-party rights. The contracting party shall indemnify DTILE against all third-party claims on account of an infringement of their intellectual property rights, whether or not such claims are for compensation, and shall also indemnify DTILE against all costs which DTILE incurs in connection with third-party claims, including the costs of legal assistance.

## 7. Goods returned

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Goods returned shall be accepted only if their return was approved in advance by DTILE, and provided that the goods are offered in good condition and in their original packaging. Goods returned which meet these requirements shall be credited at the original purchase price less 25% as compensation for costs incurred by DTILE. The contracting party must return the goods to DTILE at its own expense and risk. If damage arises during transportation, DTILE shall not be obliged to credit the purchase price.

## 8. Complaints and expiry period

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8.1 Complaints must be notified to DTILE directly and in writing, stating the precise nature and extent of the complaints. In the case of visible defects, complaints must be submitted in accordance with Article 3.2. In the case of hidden defects, complaints must be submitted within 14 days of the defect being discovered, failing which the right to dissolve the Agreement and the right to claim performance and/or compensation shall expire.

- 8.2 Complaints about goods delivered shall not be accepted if the goods have been treated and/or processed after any defect has become manifest.
- 8.3 Deviations in size and shade which fall within the usual tolerances shall give no right to complaint.
- 8.4 With respect to all complaints, DTILE shall be given the opportunity to check such complaints. If the complaint is found to be valid by DTILE, DTILE shall have the choice of taking back the goods, exchanging the goods, giving a price reduction or taking other steps.
- 8.5 If the contracting party has not instituted a claim at law within one year of delivery by DTILE, the right to claim dissolution of the Agreement at law and the right to claim performance and/or compensation shall lapse.

## 9. Force majeure

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9.1 Failures on the part of DTILE in its performance of the Agreement as a result of force majeure, including for example and understood to mean: war, mobilization, civil commotion, flood, closed shipping, transport gridlocks, delays, restrictions or the halt in the supply by public utility companies, lack of means of generating energy, fire, cave-ins/collapse, subsidence, explosions, machine breakdowns and other accidents, strike action, lockouts, trade union action, export restrictions, pandemics, lightning strikes, other government measures, non-delivery of necessary materials (and/or semi-finished goods) and/or services which are necessary for the production, either by the government or by third parties, intentional act or gross negligence on the part of auxiliary persons, and other similar circumstances, shall in any case be regarded as not attributable to DTILE, and shall therefore give the contracting party no right to dissolve the Agreement or claim compensation.

- 9.2 If, contrary to these Terms and Conditions, DTILE has agreed upon a strict delivery deadline with the contracting party, and DTILE is faced with temporary force majeure, DTILE shall be entitled to extend the delivery period by the duration of the force majeure situation. This extension shall therefore not constitute any failure in DTILE's performance, and the

contracting party shall have no right to claim dissolution or compensation. Contrary to these General Terms and Conditions, a strict delivery period may be agreed upon only in writing.

## 10. Liability

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- 10.1 DTILE's liability for damage resulting from its attributable failure to perform, to be ascertained by means of proof provided by the contracting party pursuant to article 7:900 of the Netherlands Civil Code, shall be limited to a maximum of the invoice value for the delivery concerned.
- 10.2 DTILE's liability for damage caused by faults in its designs and errors in its advice, shall be accepted only insofar as the designs and advice were supplied in writing and the work concerned was carried out entirely in accordance with the design and advice and using the material prescribed and supplied by DTILE, without prejudice to the provisions of article 10.1.
- 10.3 The liability referred to in Article 10.2 shall be limited to a maximum of the invoice value of the materials recommended and supplied by DTILE, which were processed in that part of a project to which any design fault or error in advice relates.
- 10.4 DTILE shall not be liable for damage if the goods are treated or processed incorrectly.
- 10.5 DTILE shall not be liable for damage if the goods are used for a purpose other than the purpose for which they are suitable based on the information given by DTILE, and in any case the purpose for which they are normally used.
- 10.6 DTILE shall not be liable for damage resulting from non-functional properties of the goods and relating to deviations in size and shade which fall within the usual tolerances.
- 10.7 DTILE shall not be liable for damage to, or loss of, goods belonging to the contracting party or third parties, which are made available to it in connection with the preparation and/or performance of the Agreement.
- 10.8 The tiles from DTILE comply with European standards on hairline crack resistance. Hairline cracks in glazed tiles are caused by stress differences, often resulting from

incorrect processing. DTILE gives no guarantee whatsoever for the non-appearance of hairline cracks. The appearance of hairline cracks after delivery shall therefore constitute no grounds for rejection or compensation.

- 10.9 DTILE is not liable for the consequences of the contracting party's failure to comply with the EU Construction Product Regulation, which entered into effect on 1 July 2013. The contracting party indemnifies DTILE against any third-party liability the contracting party incurs through any contravention of the Construction Product Regulation.
- 10.10 The contracting party shall indemnify DTILE against liability towards third parties.
- 10.11 Under no circumstances shall DTILE be obliged to compensate for trading loss, consequential damage, loss of sales or decreased goodwill in the contracting party's business or profession howsoever caused, including delays in the delivery of goods. The contracting party guarantees the application of this provision with respect to its buyers. DTILE is entitled to invoke this provision vis-à-vis third parties.
- 10.12 Any claim against DTILE for compensation shall lapse after a period of one year, calculated from the time that the claim arose.

## 11. Disputes

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- 11.1 Dutch law shall apply to the relationship/agreement and to the legal relationships arising (in)directly therefrom between DTILE and the contracting party and/or other contracting parties. The effect of any international treaty concerning the purchase of moveable goods, whose effect may be ruled out between the Parties, shall not apply and is hereby expressly ruled out. In particular, the applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention 1980) is expressly ruled out.
- 11.2 All disputes arising from an Agreement concluded with DTILE shall be adjudicated exclusively by the competent court in the district of Gelderland in The Netherlands.