

TERMS AND CONDITIONS OF SALE

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These general terms and conditions of sale of ADS Europe B.V. ("Seller") apply, to the exclusion of any general terms and conditions used by the contract party of the Seller ("Buyer") which shall not apply in the relationship between Seller and Buyer, even if Buyer refers to or has included its general terms and conditions in the order or any other correspondence between Seller and Buyer, to all sales of products and/or delivery of services by Seller.

1. **PRICES:** Unless otherwise stated by Seller the offer for products as quoted by Seller will no longer be valid after Buyer's acceptance term of 30 days from the quotation date has expired. Seller reserves the right to change any pricing terms when the quantities change by more than 10%.

2. **CREDIT APPROVAL:** All sales and shipments are subject at all times to credit approval by Seller.

3. **TAXES:** Any taxes which Seller may be required to pay or collect upon the sale, delivery, storage, processing, use or consumption of any of the products covered hereby shall be for the account of Buyer who shall promptly pay the amount thereof to Seller upon demand.

4. **TRANSPORTATION AND RISK OF LOSS:** Unless otherwise specified by Seller, delivery of products hereunder shall be FCA - FREE CARRIER (Incoterms 2010).

5. **PERMISSIBLE VARIATIONS:** Variations in the products as to components, dimensions and quantity and the like shall be permissible and shall not constitute cause for Buyer's rejection of any product variations that fall within the applicable ASTM and/or AASHTO product specifications in effect at the time of manufacture.

6. **INSPECTION AND REJECTIONS:** Any claim by Buyer based upon delivery of products that are inter alia of incorrect size or type or quantity, ascertainable upon visual inspection thereof, must be presented to Seller or its representative within 15 days following date of receipt of such non-conforming products by Buyer. In the absence of any such claim within 15 days, Buyer's receipt of any products delivered hereunder shall be an unqualified acceptance and a waiver by Buyer of any and all claims related to incorrect size, type or quantities.

7. STATEMENT OF LIMITED WARRANTY:

a) **Limited Warranty.** Subject to the limitations and exclusions set forth below, Seller warrants that the products to be delivered hereunder shall be free from defects in materials and workmanship in normal use and service. This warranty does not constitute a third-party clause (*derdenbeding*).

b) **Warranty Limitations and Exclusions.**

(i) For the warranty to apply, the products must be installed in accordance with all site conditions required by applicable law and local codes, applicable product or industry specifications and guidelines, and manufacturer's installation recommendations. Specifically excluded from the warranty are damages to the products arising from ordinary wear and tear, alteration or repair by anyone other than Seller, accident, misuse, abuse or neglect, or any other event not caused by Seller.

(ii) Seller's obligation under this warranty shall not include any transportation charges or costs of installation.

(iii) Except as specified above, no other express warranty is given and no affirmation on Seller's part or on the part of

Seller's representatives or agents, by word or act, shall constitute a warranty or otherwise alter, vary or expand the express warranty set forth above.

(iv) In no event shall Seller be liable for special, indirect, derivative (*afgeleide schade*) or consequential damages (*gevolgsschade*) of Buyer or any third party, including loss of production and profits, labor and materials, overhead costs or other loss or expenses incurred by Buyer or any third party.

(v) To the extent allowed by law, the warranty set forth herein is exclusive and in lieu of all other warranties with respect to the products (whether express, implied or statutory), including any implied warranty of merchantability or fitness for a particular purpose.

(vi) No claim of any kind, whether as to products delivered or for nondelivery of products, and whether or not based on negligence or other tort, shall be greater in amounts than the purchase price of the products in respect of which such claim is made.

c) **Claims; Remedies.** All claims made under this warranty shall be presented to Seller by written notice, no later than sixty (60) days after Buyer's discovery of defects in the products for which such claim is made. Any claim under this warranty that is not so presented to Seller in writing within sixty (60) days after discovery shall be deemed unconditionally waived. Seller agrees to replace those products determined by Seller to be defective and covered by this warranty. The supply of replacement products is the sole remedy of Buyer for breaches of this warranty. Seller's liability specifically excludes the cost of removal of the replaced products and/or installation of the replacement products.

8. **EXCUSED PERFORMANCE - FORCE MAJEURE:** Seller shall not be held liable for any delay in performance of any contract made on the basis of these terms and conditions of sale resulting in whole or in part from or made impossible or impracticable by any cause beyond the control of Seller, including, but not limited to, terrorism, natural disaster, war, fire, explosion, accident, breakdown, strike, adverse weather conditions, failure or refusal of any carrier to transport materials, delay in transport thereof, inability to obtain, on terms deemed by Seller to be commercially practicable, any raw material or other needed resources (including energy), failure of any transportation media, sale or transfer of manufacturing facilities, embargo or any act of God or action or request of any governmental authority, failure or refusal of any carrier or contractor, or any other contingency or delay or failure or cause beyond Seller's control.

9. **HANDLING AND USE OF PRODUCTS:** Even if Seller offers directions, recommendations or suggestions for the use of products delivered hereunder, it is solely Buyer's responsibility to determine whether products are suited for Buyer's specific needs, and there are no representations or warranties except as set forth herein. Buyer assumes full responsibility for compliance with all governmental laws, rules and regulations governing, and assumes all risks and liabilities arising from, unloading, discharge, storage, handling, installation, and use of Seller's products, including use of Seller's products as part of or in connection with other equipment or materials. Buyer agrees to indemnify Seller, its agents and employees for any and all claims, liabilities and expenses arising out of or caused by the failure to comply with the terms set forth herein or to follow instructions, warnings or recommendations furnished by Seller in connection with any products delivered hereunder.

10. **LIMITATION OF ACTIONS:** No action arising out of these terms and conditions of sale shall be brought by Buyer against Seller more than two years after the accrual of the cause of action therefor.

11. RETURNS/RESTOCKING CHARGES: Seller reserves the right to reject the return of any products returned by Buyer pursuant to these terms and conditions of sale. All returned products must be in resaleable condition, undamaged and in standard inventory packages and/or coils (no partial coils, pieces, etc. will be accepted for credit). Products accepted for return by Seller are subject to a restocking charge, including any applicable freight /shipping charges, based upon the price in effect at the time of original sale. Special order items cannot be returned.

12. SERVICE CHARGE AND EXTRAJUDICIAL COSTS: A 1% per month (a rate of 12% per annum) service charge will be due and billed on past due amounts with a minimum amount, if applicable, as provided by law. Buyer shall pay extrajudicial costs (*buitengerechtelijke kosten*) amounting to 10% of the principle amount and as permitted by applicable law where any action to collect is brought.

13. GOVERNING LAW AND JURISDICTION: All agreements to which these terms and conditions of sale apply in part or in whole, are governed by Dutch law. The parties hereby expressly agree to exclude application of the United Nations Convention on Contracts for the International Sale of Goods. With regard to all disputes relating to, resulting from, or in connection with an agreement to which these terms and conditions of sale apply in whole or in part, Seller and Buyer shall try to reach an amicable settlement in mutual consultation. If such consultation does not achieve a solution, the respective dispute will be submitted to the competent judge in the District Court of Rotterdam.