



DS SMITH GROUP - STANDARD PURCHASE CONDITIONS

1. INTRODUCTION

- a) "DS Smith", "we" or "our" are the member of the DS Smith Group Company referred to in the purchase order attached to these conditions; "you" or "your" are anyone from whom we are purchasing goods or services; and "us" means DS Smith and you.
- b) We have issued a purchase order ("Purchase Order") which incorporates these purchase conditions ("Conditions") (as may be specifically amended in the Purchase Order) and which shall set out:
 - a specification of what we have ordered;
 - the price we are to pay (the "Price"); and
 - the delivery or collection details.
- c) The Purchase Order and these Conditions (together, the "Agreement") constitute the whole of our agreement for this purchase and supersedes any previous agreement we may have had with you and all promises, assurances, warranties, representation, and undertakings between us, whether written or oral, relating to its subject matter. These Conditions shall apply to and govern any contract between us to the exclusion of all other terms and conditions.
- d) If there is any inconsistency between the parts of the Agreement, the terms of the Purchase Order shall take precedence over the Conditions.
- e) The Purchase Order constitutes an offer by DS Smith to purchase goods and/or services from you in accordance with these Conditions. The Purchase Order shall be deemed to be accepted on the earlier of:
 - you issuing a written acceptance of the Purchase Order; or
 - any act by you consistent with fulfilling the Order.
- f) You must supply the goods or services (the "supply") yourselves unless we have agreed in writing to accept them from someone else.
- g) We may ask you to make the supply to any other DS Smith Group Company and to deal with that company as if it were DS Smith. "Group Company" means, in relation to a company, that company, subsidiary or holding company of that company, and any subsidiary of a holding company of that company.

2. CANCELLATION AND VARIATION

- a) We may cancel the Purchase Order at any time before the supply is made. If we do and you have accepted the Purchase Order, we agree to pay you a reasonable charge for what you may have done under the Purchase Order, and for any reasonable costs which you properly incurred before the cancellation and which cannot be recouped elsewhere, following which, we shall have no further obligations to you.
- b) We may suspend the Purchase Order at any time. If we do, for reasons other than your default, we agree to pay any reasonable additional costs you incur as a result. If we ask you to vary our order and agree with you an appropriate variation to the Price and to the time scale for delivery, you agree to make the supply in accordance with those variations.
- c) Save in respect of sub-clauses 2a) and b), any other variations to the purchase order must be agreed by DS Smith in writing by our authorised representative or by the issue of a further official purchase order by DS Smith.

3. PRICE AND PAYMENT

- a) The Price is fixed apart from applicable VAT and any other tax imposed on the supply. Unless otherwise agreed in the Purchase Order, the Price is inclusive of all other costs, including without limitation, duties, fees or taxes, cost of carriage, packaging, insurance and delivery.
- b) You may not invoice DS Smith until the goods have been delivered to DS Smith or the supply of services has been made. We shall pay your correctly submitted invoices within 90 days after the end of the month in which the invoice is submitted unless otherwise agreed in writing or required by mandatory law (in which case such amended period or mandatory provision of law shall apply), provided that the invoice is: (i) sent to DS Smith's accounts office address stated on the Purchase Order; (ii) shows DS Smith's order number reference; (iii) states the place to which the goods have been delivered or place at which the services were supplied; and (iv) sets out a full description of goods or services provided.
- c) If any payment is late you may charge us interest at the rate of 2% above the base rate from time to time of the Royal Bank of Scotland on any overdue payment from the due date for payment until the date payment is made.
- d) Payment shall be without prejudice to any other rights which

DS Smith may have against you and shall not constitute any admission by DS Smith as to satisfaction of your obligations under the Agreement. We reserve the right to withhold payment in the event of a dispute, if we have a claim against you or you have failed to provide the information required in accordance with clause 3(b).

- e) We shall be entitled to set off against the Price any sums that are payable to DS Smith or any DS Smith Group Company (without prejudice to any other rights or remedies of DS Smith or the relevant DS Smith Group Company).

4. WARRANTY AND DEFECTS

- a) You warrant to DS Smith that:
 - the goods as delivered shall comply with all specifications set out in the Purchase Order and/or specifications supplied by you to DS Smith or, if none, with your standard specification;
 - the goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended), sound design, materials and workmanship and fit for any purpose held out by you or specified by us;
 - the goods shall comply with all applicable laws and regulations, with all relevant health and safety and environmental regulations, European and British Standards and with best accepted industry standards; and
 - any services supplied by you will be supplied with reasonable skill and care and in accordance with the specification set out in the Purchase Order.
- b) You warrant that you shall not do or omit to do anything which may cause DS Smith to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and you acknowledge that we may rely or act on the services supplied by you.
- c) If we find that the goods and/or the services fail to comply with any of the warranties set out in the Agreement (the "Supplier Warranties"), we may, by giving you notice and at our sole discretion, and without prejudice to any of our other rights or remedies:
 - reject any of the goods or any part thereof (including any or all of the goods not affected by such failure to comply), and/or require the immediate refund of any monies already paid and/or cancel the Purchase Order;
 - refuse any further delivery of any goods or the further provision of any services (including under another agreement between us);
 - require you (at your sole cost, including the cost of any disassembly or reassembly) to make good or replace the goods or re-perform the services to DS Smith's satisfaction (in either case within 48 hours, unless agreed otherwise between the parties); and/or
 - accept the goods or performance of the services, subject to receiving a reasonable reduction in Price to account for the non-compliance.
- d) We or our representatives shall have the right to inspect and test the goods and inspect the provision of the services, and you irrevocably grant to us the right to enter your premises (or those of your subcontractors) for these purposes. If as a result of such inspection or testing we inform you that we are not satisfied that the goods or the services comply with the Agreement, then you shall take all necessary steps to ensure compliance. No inspection or testing shall imply our acceptance.
- e) All Supplier Warranties shall be in force for either (i) two (2) years from the date of delivery of the goods or completion of the services, or (ii) your standard warranty period for the goods or services, whichever is longer.

5. TIME AND DELIVERY

- a) You shall deliver the goods and/or complete the provision of the services by the delivery or completion date(s) stated on the Purchase Order. If no dates are so specified, delivery of the goods and/or completion of the services will be within such date as may be agreed by us in writing. If the supply of the goods and/or services is not completed by that date, we may impose liquidated damages of 0.5% of the Price per day of delay, up to maximum of 5% of the Price. Both parties acknowledge and agree that these liquidated damages represent a genuine pre-estimate of the damages likely to be suffered by DS Smith if you fail to deliver the goods or provide the services in accordance with the agreed timescales.
- b) If delivery of the goods and/or completion of the provision of the services is delayed by more than 5 days, we may treat that failure as a material breach and terminate the Agreement forthwith without liability. In that event we would



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have no further obligations to you but you would be liable to make good any loss to DS Smith.

- c) Unless stated otherwise in the Purchase Order, all goods shall be delivered INCOTERMS 2010 DAP at the location stated in the Purchase Order.
- d) The Supplier shall deliver the quantity of goods stated on the Purchase Order. The Buyer may at its discretion accept a quantity variation and pay pro-rata for the actual quantity delivered.
- e) You shall ensure that the goods shall be properly packed and stored during transit so as to reach their destination in an undamaged condition. All containers and other packaging shall be included in the Price and are non-returnable unless otherwise agreed on the Purchase Order.
- f) Where necessary, you shall, at your own cost, obtain and comply with any export/import licences, permits or consents (including work permits or consents) for the supply and delivery of the goods or provision of the services.

6. PASSING OF RISK AND TITLE

- a) Title and risk in the goods shall pass to DS Smith when they have been delivered to DS Smith.
- b) If items (including without limitation the goods) that belong to DS Smith are in your possession you undertake that you shall: (i) hold the relevant items as the fiduciary agent of DS Smith; (ii) clearly identify the items as our property; (iii) keep the items separate from your property or property belonging to others; (iv) keep the items properly stored and insured; and (v) not exercise, assert or purport to exercise or assert any lien of whatever nature in connection with such items.
- c) You shall give DS Smith access (on reasonable notice) to any premises where goods are being manufactured or stored for DS Smith for any reasonable purpose under this Agreement.
- d) You shall not be entitled to pledge or charge by way of security any of the items which remain our property, but if you do so or purport to do so, we shall have the right to recover our property in accordance with this clause.

7. TERMINATION

- a) We may terminate the Agreement immediately on written notice if:
 - you are in breach of an obligation and
 - you cannot put it right; or
 - you do not put it right within seven days of receiving notice from DS Smith to do so; or
 - we have given you notice of a breach of the same obligation at least twice before; or
 - we reasonably believe that you will not be able to pay your debts as they fall due or that you will be unable to fulfil your obligations under the Agreement.
- b) On termination we have no further liabilities under the Agreement.
- c) Subject to clause 7(b), termination of the Agreement, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that exist as at termination. Provisions relating to warranties, limitation of liability, intellectual property, compliance, confidentiality and obligations on termination survive termination or expiration of the Agreement.

8. LIABILITY AND INSURANCE

- a) You agree to pay DS Smith on demand an amount sufficient to cover any and all liabilities, claims, demands, damages, costs, losses, fees and expenses (including, without limitation legal fees and expenses on a full indemnity basis) which are incurred by or brought against DS Smith or which may otherwise arise, directly or indirectly, as a result of:
 - any breach by you of your obligations under the Agreement;
 - any claim that the supply of goods/services infringe, or their use/resale infringes the rights of any other person;
 - your act, omission, neglect or default or that of your employees, sub-contractors or agents; or
 - the termination of the Agreement under clause 7.
- b) You must maintain adequate insurance cover against risks you incur under this Agreement and provide evidence of that cover at our request.
- c) Nothing in these Conditions shall exclude or restrict either party's liability for: (i) death or personal injury caused by our negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability that cannot be excluded by law.
- d) Subject to clause 8(c), neither party shall have any liability whatsoever (directly or indirectly) whether in contract, tort (including claims for negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in

connection with the performance or contemplated performance of the Agreement for any: (i) loss of business, revenue, opportunity, contracts or goodwill; (ii) anticipated savings, wasted expenditure, corruption or destruction of computer data; or (iii) for any indirect or consequential loss.

- e) Save in respect of our obligation to pay in accordance with clause 3 (and subject to clauses 8(c) and 8(d)), our liability in respect of any other claims in contract, tort (including claims for negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with this Agreement shall in all circumstances be limited, to the maximum extent permitted by law, to any direct loss or damage up to 10% of the amount of the Price paid for the goods giving rise to the claim.

9. COMPLIANCE

- a) In addition to your obligations to comply with applicable laws and regulations, you shall and shall procure that your officers and employees shall:
 - comply with the DS Smith Global Supplier Standard;
 - comply with the Bribery Act 2010 and all anti-corruption laws applicable to you or DS Smith ("Anti-corruption Laws");
 - not, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, promise or give (or agree to offer, promise or give) any financial or other advantage with respect to any matters which are the subject of this or any other agreement between DS Smith and you and/or to obtain any benefit for DS Smith which would violate the Anti-corruption Laws.
 - comply with the Modern Slavery Act 2015 and all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force applicable to you or DS Smith;
 - ensure that neither you nor any of your senior officers have been convicted of any offence involving slavery and human trafficking, nor have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking;
 - not, when acting in the capacity of a person associated with DS Smith, engage in any act or omission which would constitute a UK tax evasion facilitation offence or a foreign tax evasion facilitation offence as those terms are defined in Part 3 of the Criminal Finances Act 2017; and
 - not cause, facilitate or contribute to the commission of an offence of failing to prevent the facilitation of tax evasion under section 45 or 46 of the Criminal Finances Act 2017 or any other legal and regulatory anti-facilitation of tax evasion obligations.
- b) If you become aware of any breach or suspected breach of this clause 9 by you or your subcontractors, you shall promptly notify DS Smith and we may immediately suspend operation of the Agreement by giving written notice to you, pending an investigation into the breach or suspected breach. You shall assist DS Smith in any such investigation, including by providing DS Smith with reasonable access to your personnel, documents and systems.
- c) In addition to our rights in clause 7, if, in our reasonable opinion, you or your subcontractors have breached this clause 9, we may, in our sole discretion, on written notice, immediately: (i) terminate any or all agreements between DS Smith and you; and (ii) suspend operation of the Agreement by giving written notice to you.
- d) In relation to tax evasion offences, the question of whether a person is associated with another person shall be determined in accordance with section 44 of the Criminal Finances Act 2017 (and any guidance issued under section 47 of that Act)

10. INTELLECTUAL PROPERTY

- a) Both parties retain ownership of their own intellectual property rights on the goods or services supplied under this agreement, including but not limited to, patents, trademarks, designs, copyright, domain names, trade secrets, know-how and tradenames.
- b) Nothing contained in the Agreement shall be construed as conferring on each party, save as otherwise expressly provided, any licence or right, under any law (whether common law or statutory law), rule or regulation including, without limitation those related to copyright or other intellectual property rights.



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- c) You grant DS Smith a personal, non-exclusive and royalty free right to use and exploit such intellectual property rights in the goods or services solely to the extent necessary for the use and operation of said goods or services.
- d) Any intellectual property that arises or is obtained or developed by DS Smith (or by a contractor on their behalf) in the course of or in connection with the use and/or operation of the goods or services provided by you to DS Smith, is and will remain the sole and exclusive property of DS Smith.
- e) You shall defend, indemnify, and hold DS Smith harmless against all claims resulting from or arising in connection with any actual or claimed infringement of any intellectual property rights with respect to the goods or services supplied under this agreement.
- f) If any claim is made against DS Smith that the goods or services infringe any intellectual property rights of any third party, you shall indemnify DS Smith against all claims, liabilities, losses, damages, costs and expenses arising in connection with such claim and, in the event of such claim preventing DS Smith from using any of the goods or services you shall, at your sole cost and expense, as soon as reasonably possible:
- obtain the right for DS Smith to continue to use such goods or services in accordance with this Agreement without the infringement of any third party Intellectual Property Rights; or
 - provide alternative non-infringing goods or services or other items of equivalent or increased functionality and performance (as reasonably determined by DS Smith), for use in accordance with this Agreement; or
 - promptly replace such goods or services or other items without any degradation in functionality or performance, so that its use, in accordance with this Agreement, does not infringe any third party intellectual property rights.
- g) This Agreement and its subject matter are confidential and must not be disclosed to any person without our permission.
- h) You must not novate, assign, subcontract or otherwise transfer any or all of your rights, interests or obligations under the Agreement without our prior written consent (which will not be unreasonably withheld).
- i) Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other party.
- h) Save in respect of clause 11(e), any reference to communications being written or in writing includes electronic forms of communication such as e-mail. Any electronic communication will be effective from when it leaves the sender's mailbox.

11. GOVERNING LAW AND JURISDICTION

- a) The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including any non-contractual disputes or claims) will be governed by and construed with the laws of England.
- b) The parties irrevocably agree and acknowledge that the courts of England have exclusive jurisdiction for the purpose of hearing and determining any suit, action or proceedings.

Date: May 2020

11. GENERAL

- a) If any licence or consent of any government or other authority is required for the supply, carriage, storage or use of the goods or services supplied by you to DS Smith, you shall obtain the same at your own expense and if requested by DS Smith, produce evidence of the same to DS Smith.
- b) In providing the supply at our premises, you shall (and shall procure that your personnel shall) comply with all health and safety rules and regulations and security and other site operational requirements that apply at our premises (which are available upon your request). You shall also take all reasonable precautions to protect your employees and our employees while performing the services or delivering the goods.
- c) You shall, at your own expense, provide all equipment and materials to perform the services unless otherwise agreed in writing.
- d) No benefits are to be conferred on any third party by this Agreement and a person who is not a party to the Agreement shall have not have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms, other than by a DS Smith Group Company.
- e) Any notice given under the Agreement shall be in writing and served by delivering it personally or sending it by registered post to the registered address of DS Smith or you (as applicable). Any such notice shall be deemed to have been received:
- if delivered personally, at the time of delivery; and
 - in the case of registered post 48 hours from the date of posting,
- provided that if deemed receipt occurs before 9am, on a business day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a business day, or on a day which is not a business day, the notice shall be deemed to have been received at 9am on the next business day.
- f) Each provision of the Agreement is severable and distinct from the others. If any part of the Agreement is or at any times becomes to any extent invalid or unenforceable under any enactment or rule of law in any jurisdiction that does not affect the remainder and all other provisions of the Agreement will continue in full force and effect. If any provision of the Agreement is so found to be invalid, illegal or unenforceable, but would be valid, legal or enforceable if some part of the provision were deleted or amended, that provision will apply with whatever modification(s) as are necessary to make it valid, legal and enforceable. Invalidity or unenforceability in one jurisdiction does not affect validity or enforceability in another.