



## DS SMITH PAPER VIANA, S.A. - STANDARD SALE CONDITIONS

### 1. INTRODUCTION

- a) "DS SMITH", "we" or "our" are DS SMITH PAPER VIANA, S.A.; "you" or "your" are anyone to whom we are supplying goods or services ("supply"); and "us" are DS Smith and you.
- b) We are a company part of the DS Smith Group Company (defined below), registered in the commercial register department of Viana do Castelo number and tax number 503093055 and our registered office is Deocriste, Viana do Castelo, Portugal.
- c) We have issued a quotation ("Quotation"). Your acceptance of this Quotation shall constitute an offer by you to purchase the supply specified in the Quotation upon these supply conditions (the "Conditions"). No offer made by you shall be accepted by DS Smith other than by our written acknowledgement of our agreement to make that supply (the "Acknowledgement") or, if earlier, by DS Smith starting to make the supply, at which point a contract for the supply on these Conditions will be established. Both the Quotation and the Acknowledgement incorporate these Conditions (as may be specifically amended in the Quotation and/or Acknowledgement) and which shall set out:
  - a specification of the supply (if not, our standard specification will apply)
  - the price agreed (the "Price"); and
  - the delivery or collection details.
- d) The Quotation, the Acknowledgement and these Conditions (together the "Agreement") constitute the whole of our agreement for the supply, and supersedes any previous agreement we may have had with you, 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 which may be contained in or referred to in any quotation, catalogue, price list, order, acknowledgement or any other document (including, without limitation, any terms or conditions which you purport to apply under any purchase order, confirmation of order or other correspondence or documentation) or which are implied by law (unless the law in question cannot be excluded), trade custom, practice or course of dealing.
- e) If there is any inconsistency between the parts of the Agreement, then each part of the Agreement shall take precedence over the next, in the order set out in clause 1(d) above. Save as provided under clause 2, no variation to the Agreement is valid.
- f) Each party agrees that it shall have no remedy in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

### 2. CANCELLATION AND VARIATION

- a) You may cancel, postpone or amend your order at any time prior to delivery of the goods. If you do, you are to pay DS Smith on demand a reasonable cancellation charge which takes into account all work we have done under the Agreement, all costs

- b) we have incurred and any costs we are committed to pay, and our loss of profit.
- b) If you ask DS Smith to vary your order and agree with DS Smith an appropriate variation to the price and to the time scale for delivery, we agree to make the supply in accordance with those variations, provided this has been agreed in writing by our authorised representative.
- c) We may vary the Price by an amount sufficient to cover any significant increase in the cost of materials or other costs we incur to fulfil your order. We may also substitute suitable alternative materials without notice to you unless such substitution will result in a delay, in which case we will advise you of the estimated delay in fulfilling your order. If we are unable to fulfil your order within a reasonable time due to materials being unavailable for reasons beyond our reasonable control, we may cancel the order with no further obligation to you.

### 3. PRICE

- a) Unless otherwise stated, you are to pay, in addition to the Price:
  - all applicable VAT (or equivalent), import or export duties and any and all other taxes, tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory (either directly or indirectly) in respect of the sale, supply, delivery or use of the goods and/or services; and
  - the cost of packaging, carriage and insurance, ("Costs")
- b) Unless otherwise agreed in the Quotation or the Acknowledgement, the Price shall be the Price ruling at the date of despatch of the relevant goods to you.

### 4. PAYMENT

- a) We will invoice you for the Price and the Costs once the goods have been dispatched. You are to pay the invoice within 30 days of the end of the month in which the goods were dispatched and in the manner set out in the Invoice, unless otherwise agreed in writing, and without set-off, deduction or counterclaim of any kind. If you have a claim against DS Smith, you must notify DS Smith of it promptly and make all reasonable efforts to resolve the dispute amicably.
- b) We are not obliged to supply any goods to you while any payment is overdue on this or any other agreement we or any other DS Smith Group Company (defined below) may have with you.
- c) If any payment is late we may charge you interest at the rate of 8% or the legal interest rate has determinate from time to time by law on any overdue payment from the due date for payment until the date payment is made and charge you for all costs we incur in recovering the outstanding payment. We may also at our discretion require you to pay any future amounts upfront, or may require security for any payment, before continuing with or delivering any order.
- d) We may set off any sums that have fallen due and payable by you to DS Smith or a DS Smith Group Company against any sums owed by DS Smith to

you. "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.

## 5. WARRANTY, DEFECTS AND INDEMNITY

a) We warrant to you that the goods at the time of delivery will not infringe the intellectual property rights of a third party within Portugal; provided that this warranty shall not apply to goods, specifications, designs, logos, prints, artwork, instructions or other intellectual property provided by you or on your behalf to DS Smith ("Your Materials").

b) We warrant to you that the goods will be at the time of delivery and for 3 months thereafter free from any material defect due to faulty materials and workmanship, provided that:

- you give DS Smith full details of any defect immediately it becomes apparent; and
- the goods have not, in our view, suffered excess wear and tear by improper or careless use or storage, excessive stressing, improper installation, or the like.

Subject to the foregoing, and after inspecting the goods we may, at our discretion, repair or replace the defective goods, or take them back and refund the relevant portion of the Price attributable to the returned goods. Any complaint that is submitted after the stipulated period shall not be admitted.

c) All implied warranties or conditions are excluded to the fullest extent permitted by law. Any samples, illustrations or descriptive material shall be treated as approximate and for guidance only. We shall not be liable for their accuracy.

d) You shall sign the delivery note and/or any export documentation and examine the goods as soon as practicable, and in any event within 3 days following delivery. If you endorse on the delivery note that goods are unexamined and within 3 days of delivery notify DS Smith in writing of any defects we may, after inspecting the goods (and if we are satisfied that their condition has not deteriorated following delivery and in the case of water damage that this was endorsed on the delivery note at the time of delivery) at our discretion repair or replace the defective goods, or take them back and refund the relevant portion of the Price attributable to the returned goods. If you do not notify DS Smith within such time period, then, subject to clause 5(b), you shall not be entitled to reject the goods and DS Smith shall not be liable for any defect or quality failure.

e) You undertake to indemnify and hold DS Smith harmless on demand from and against any and all liabilities, losses, damages, costs, charges, expenses (including without limitation legal fees and expenses on a full indemnity basis), actions, proceedings, claims and demands incurred by or brought against DS Smith:

- arising directly or indirectly out of or in connection with any breach of any of your obligations under any contract or any wilful default or negligence on your part or on the part of any of your officers, employees or agents in relation to the goods; or
- resulting from our acting reasonably in accordance with your instructions (including, without limitation, any claim from a third party

that we have infringed any intellectual property rights in the work carried out).

## 6. DELIVERY OR COLLECTION

a) We shall use our reasonable endeavours to deliver the goods as stated in the Quotation or Acknowledgement, but this is only an estimate of the delivery or collection date and we shall not be liable for any loss or damage arising as a result of failure to deliver the goods by that time. You can only refuse to accept delivery after that time if:

- after the date of our Acknowledgement you have sent DS Smith a written notice specifying a deadline date; and
- we have specifically accepted that deadline date in writing.

b) Where we are delivering goods to you, you are responsible for unloading them.

c) Where you are collecting the goods from DS Smith, you are responsible for loading and unloading them.

d) Where you fail to take delivery or collect goods in accordance with the Agreement, you must pay on demand our storage and additional carriage costs as well as any reasonable administration charge or other claim we may have. If you do not take delivery or collect the goods within a reasonable period (not to exceed 30 days) from the original date, then we will be entitled to cancel the Agreement for your material breach.

e) You have no right to reject the supply if it varies from the specification and that variation is not material to the use or functionality of the supply or is a variation in quantity which is within 10% of the quantity ordered ("Range") (but we will adjust the Price to take account of the variation within the Range).

f) Where the supply is ordered for delivery by instalments, each instalment shall constitute a separate contract and any failure to deliver any instalment in accordance with these Conditions ("Failure") shall not entitle you to treat the Agreement as repudiated. Where a Failure arises, you shall only be entitled to terminate that instalment provided that DS Smith has had a reasonable opportunity to remedy the failure.

## 7. PASSING OF RISK AND TITLE

a) The goods are at your risk:

- when you start loading any of the relevant goods onto the collection vehicle, if you are collecting them; or
- when you start unloading any of the relevant goods at the delivery address, if we are responsible for delivery; or
- from the agreed time for delivery or collection if you fail to accept delivery or to collect the goods as agreed.

b) Title in the goods does not pass to you until we have received payment of the Price and all additional payments due (whether under that order or under any other agreement between us or between you and a DS Smith Group Company) in full. Until then you hold the goods as our fiduciary agent, must clearly identify the goods (and any new product into which they are incorporated) as our property, keep them separate from your property and keep them properly stored and insured.

c) We may require you to deliver the goods to DS

Smith in the event that you fail to pay the Price and other payments when due or we reasonably believe that you will not be able to pay the price and other payments when due. If you fail to do so, we may enter your premises or any third party premises where the goods are stored at any time to repossess the goods (and for these purposes you grant DS Smith, its agents and employees an irrevocable licence to enter any premises where the goods are located).

- d) You shall not be entitled to pledge or charge by way of security any of the goods which remain our property, but if you do so or purport to do so, all money owing by you to DS Smith shall become immediately due and payable and we shall the right to recover our goods in accordance with this clause.

## 8. TERMINATION

- a) Either of us may terminate the Agreement immediately on written notice if the other is in material breach of an obligation and cannot put it right or does not put it right within 21 days of receiving notice to do so.
- b) We may terminate the Agreement immediately on notice if we reasonably believe that you will not be able to pay the Price or other payments when due and in that event we have no further liabilities under the Agreement.
- c) On termination of the Agreement for any reason, you shall immediately pay to DS Smith all indebtedness to DS Smith with applicable interest calculated in accordance with clause 4.
- d) Subject to clause 8(b), termination of the Agreement, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination. Clauses which expressly or by implication survive termination of the Agreement include without limitation clause 5(e), this clause 8, clause 9 and clause 11.

## 9. LIABILITIES

- a) Nothing in these Conditions shall exclude or restrict our 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.
- b) Subject to clause 5(a) and 9(a), we shall have no 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 profit, 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.
- c) Subject to clause 9(a) and 9(b) where we or our employees or agents negligently damage your property when delivering goods, our total liability to you in respect of an event or series of connected events is limited to €100.000.
- d) Subject to clauses 5(a), 9(a), 9(b) and 9(c), in respect of any claim 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 our liability shall in

all circumstances be limited, to the maximum extent permitted by law, to 10% of the Price paid for the supply giving rise to the claim.

- e) You acknowledge that the above provisions of this clause 9 are reasonable and reflected in the Price which would be higher without those provisions and you shall accept such risk and/or insure accordingly.
- f) Neither of us is liable for any failure to fulfil their respective obligations to the other where such failure is due to circumstances beyond their reasonable control, provided that this clause 9(f) shall not apply to any obligation to make payments due to DS Smith under the Agreement.

## 10. 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 Portuguese Law nr. 83/2017, of 18 of August with the changes of Decree-Law nr. 58/2010, of 31 of August, preventing and combating money laundering and financing of terrorism 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 any Anti-corruption Laws;
  - comply with 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 Portuguese tax evasion facilitation offence or a foreign tax evasion facilitation offence in accordance to the Portuguese Criminal Code; and
  - not cause, facilitate or contribute to the commission of an offence of failing to prevent the facilitation of tax evasion.
- b) If you become aware of any breach or suspected breach of this clause 10, 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 access to your personnel, documents and systems.
- c) In addition to our rights in clause 8, if, in our reasonable opinion, you have breached this clause 10, 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) For the purposes of clause 10(a), the question of whether a person is associated with another person shall be determined in accordance with clause 2º of the Portuguese Law nr. 83/2017, of 18 of August. with section 44 of the Criminal Finances Act 2017 (and any guidance issued under section 47 of that Act)
- e) Each party to the Agreement acknowledges that they act as independent controllers of any personal data processed in the course of this Agreement and shall comply with their respective obligations under the Data Protection Legislation. You agree not to provide or otherwise make available personal data to DS Smith, other than business contact information (for example, business, telephone number, job title and email address). In the event that any personal data is processed by a party in the capacity of a processor in relation to this Agreement, the parties shall enter into a separate written agreement regulating such process in accordance with Article 28 of the GDPR. For the purpose of this clause, "Data Protection Legislation" shall mean the EU General Data Protection Regulation 2016/679 ("GDPR") and the Portuguese Data Protection Law (notwithstanding any exit from the European Union), and the terms "controller", "personal data" "processed" and "processor" shall have the same meaning as they are given in the Data Protection Legislation.

## 11. GENERAL

- a) If any licence or consent of any government or other authority shall be required for the acquisition, carriage, storage or use of the goods by you, you shall obtain the same at your own expense and if requested by DS Smith, produce evidence of the same to DS Smith.
- b) No benefits are to be conferred on any third party by the Agreement and a person who is not a party to the Agreement shall not have the right to enforce any of its terms other than DS Smith Group Companies.
- c) Any notice hereunder and any notice given under the Agreement shall be in writing and served by delivering it personally or sending it by pre-paid recorded delivery or 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 pre-paid recorded delivery or 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.
- d) 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. In our sole discretion, we may terminate the Agreement by not less than seven (7) days written notice to you in the event that we consider that such deletion will have a materially adverse effect on DS Smith's rights under the Agreement.

- e) No waiver by DS Smith of any breach of the Agreement by you shall be considered as a waiver of any subsequent breach of the same or any other provision.
- f) All copyright, patent, trade mark, trade secret, design rights, domain names and other proprietary and intellectual property rights whether registered or unregistered in the products, containers and equipment and information and know how which we may provide in relation to the goods ("intellectual property rights") shall (as between you and us) remain vested in DS Smith and you shall not acquire any title in such intellectual property rights. You may not copy or imitate the intellectual property rights in the goods, or do or omit to do, or permit any third party to do or omit to do, anything which may damage such intellectual property rights. Any goodwill arising from the use of such intellectual property rights shall accrue to DS Smith. Where necessary, you are to assign or procure the assignment of all such rights to DS Smith and, if relevant, shall waive or shall procure the waiver of any moral rights pertaining thereto. Subject to payment by you in full for the goods, we grant you a non-exclusive, non sub-licensable right to use the goods in the course of your business within Portugal.
- g) We are responsible for making the supply to you but we may arrange to do so through agents or subcontractors.
- h) You must not novate, assign 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) The Agreement and its subject matter are confidential and must not be disclosed to any person without our permission.
- j) 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.
- k) Any reference in the Agreement to communications being written or in writing includes electronic forms of communication such as e-mail. If we communicate with you electronically, it will be effective from when it leaves our mailbox. Any electronic communication from you to DS Smith will be effective when it arrives in our mailbox.

## 12. 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 Portugal.

- b) Subject to sub-paragraph c) below, DS Smith and you irrevocably agree and acknowledge that the courts of Portugal have exclusive jurisdiction for the purpose of hearing and determining any suit, action or proceedings and/or to settle any disputes (including any non-contractual disputes or claims) arising out of or in any way relating to the Agreement or its formation or validity ("Proceedings") and for the purpose of enforcement of any judgment against its property or assets..
- c) Nothing in this paragraph 12 shall (or shall be construed so as to) limit the right of DS Smith to take Proceedings against you in the courts of any country in which you have assets or in any other court of competent jurisdiction nor shall the taking of Proceedings in any one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.