

**STANDARD TERMS AND CONDITIONS OF PURCHASE OF  
GOODS AND/OR SERVICES  
July 2018**

**1. Applicability**

- a) These Standard Terms and Conditions of Purchase ("Conditions") constitute an integral part of all agreements concerning the supply of goods (with the exception of the purchase of paper), and/or the provision of services, by any supplier ("Seller") for the benefit of DS Smith Paper Italia S.r.l. ("DS Smith").
- b) Unless a specific contract has been entered into between DS Smith and the Seller, the terms of the supply agreement ("Agreement") shall prevail on any other agreement and shall be governed by (i) these Conditions and (ii) the terms of DS Smith's order ("Order"), which shall be deemed accepted also by course of dealing. In the event of any inconsistency between these Conditions and the Order, the latter shall prevail. For their convenience only, the parties may refer to standard practice for the same supplies previously requested by DS Smith to the Seller.
- c) Any approval or reply to the Order by the Seller (including, e.g., execution of any obligation in the Order), including if it refers to provisions which are in addition or contrary to those set forth in the Agreement, will be considered as acceptance of the Order by the Seller, and the provisions which are in addition or contrary to those set forth in the Agreement shall be considered as invalid, unless specifically accepted by DS Smith in writing. Any Seller's standard terms and conditions shall in no circumstances apply.
- d) With the exception of activities that are marginal and secondary, the Seller may not entrust to third parties the supply, either full or partial, without the prior written authorization of DS Smith, failing which authorization, the Order will be deemed as invalid and the Seller shall be liable for damages and reimbursement of expenses.
- e) Save as otherwise provided in Article 2 hereinafter, any amendment to the Agreement must be in writing and signed or expressly approved in writing by DS Smith.

**2. Cancellation, variation and suspension of the Order**

- a) Until the Seller has started carrying out the delivery of the goods or the performance of services or DS Smith receives confirmation of the Order by the Seller, DS Smith shall be entitled – freely and without being responsible for any damage – to vary, cancel or suspend the Order, by giving written notice to the Seller.
- b) DS Smith shall be entitled to suspend and/or cancel the Order in a date later than the date mentioned in point a) hereinabove; in such a case, when suspension or withdrawal are due to reasons other than Seller's default, parties shall agree a fair compensation taking into consideration Seller's expenses, if any, properly documented by the Seller and that are directly caused by such suspension/cancellation.

**3. Price and manner of payment**

- a) With the exception of Value Added Tax, when applicable, and all other applicable taxes, charges and duties, the price indicated in the Order is fixed and non-adjustable, the Seller expressly waiving its rights under article 1664 of the Italian Civil Code. Unless otherwise agreed, the price includes any cost, included shipment, packing, insurance and delivery.
- b) Unless otherwise agreed in writing, the Seller shall not issue and deliver the invoice until the goods and/or services have been delivered or provided, according to the Order. The Seller's invoice shall bear the description of the goods or services provided, the number of the Order and the delivery address of the supply, failing which, the invoice shall be considered as irregular and DS Smith shall have the right to withhold payment until the irregularity is rectified.
- c) Unless otherwise agreed in writing, DS Smith shall pay the invoice according to the payment terms detailed in the Order; the place for payment is conventionally deemed to be DS Smith's registered office. No extra charges of any kind shall be allowed unless expressly agreed in writing by DS Smith in a change Order. DS Smith shall be entitled at any time to set-off any and all amounts owed by Seller or a Seller Affiliate (defined below) to DS Smith or a DS Smith Affiliate (defined below) on this Agreement or any orders or agreements. "Affiliate" shall for the purposes of this Agreement mean, with respect to either party, any entity, including any individual, corporation, company, partnership, limited liability company or group, that directly, or indirectly

through one or more intermediaries, controls, is controlled by or is under common control with such party.

- d) DS Smith shall have the right to withhold payment in case of claim for non-conformity of the goods delivered or of the services performed by the Seller.
- e) DS Smith shall be entitled to precautionary reduce, withholding deductions, also partially, any amount due to the Seller with the sums that are requested or that DS Smith assumes may be requested in the future (i) by public authority and/or the competent body, as a penalty should the Seller fail to comply with relevant legal provisions, even when the relevant procedure is not initiated/concluded yet; (ii) by a party injured by the Seller, for whatever reason, included the third party entrusted by the Seller to carry out the services or the supply of goods; (iii) by the injured party or in any event by the third party towards which the Seller is obliged, for its failure to regularly pay wages, contributions, social security contributions, insurance contributions and pay roll and employment taxes in general. DS Smith is also entitled to the same right to withhold payments – and eventually to offset and deduct any amount owed by the Seller from payments – when DS Smith is entitled to liquidated damages from the Seller, according to the Agreement.

**4. Warranties. Claims**

- a) The Seller represents and warrants that the supply (i) shall be in compliance with the terms set forth in the Order and with all laws and regulations applicable in Italy and in the European Union; (ii) free of all claims, liens, or encumbrances and the Seller shall erase any liens or encumbrances at his own expenses, within 30 days from when a third party has claimed his own rights (except if the liens or encumbrances derive from uncontested breaches of DS Smith, including payment obligations); (iii) new and of merchantable quality, not used, rebuilt or made of refurbished material unless approved in writing by DS Smith; (iv) free from all defects in design, workmanship and material; and (v) fit for the particular purpose for which they are intended. Any attempt by the Seller to limit, reject or restrict any warranty will be null and void and, in any event, ineffective. In case of provision of services, Seller further warrants that it shall perform the services in a competent, safe, and professional manner in accordance with the highest standards and best practices of Seller's industry and that the personnel employed comply with laws and regulations applicable to the services and to the obligations under the Agreement, included local, regional, national and Community laws and regulations, including but not limited to those concerning health, safety and hygiene at work for workers and those on preventing illegal working and labour exploitation, such as for example Italian Law 29 October 2016 no. 199.
- b) The warranty hereunder runs from the time of delivery to DS Smith or time of performance of the service, for two years plus delays such as those due to non-conforming goods and services. The warranties shall apply to DS Smith, its successors and assignees. DS Smith shall be entitled to make a warranty claim for non-conformity, faults and/or defects in the supply within sixty days from the actual discovery thereof and DS Smith may, at its discretion, do any one or more of the following: (i) request replacement of the goods subject of the warranty claim or a new performance of services, (ii) request an appropriate reduction of the price, (iii) take such actions as may be required to cure all defects and/or bring the goods and/or services into conformity with the Order, in which event all related costs and expenses shall be for Seller's account (including costs for materials, workmanship, logistics and services), (iv) reject the goods or services and terminate the Agreement. Any repaired or replaced good, or part thereof, or re-performed services shall carry warranties on the same terms as set forth above for an additional period of twenty-four (24) months.
- c) The remedies hereinabove are without prejudice to DS Smith's right to seek compensation for the damages suffered, including all indirect and consequential damages, and to its right to any other remedies provided by law.

**5. Delivery time**

- a) The date of delivery indicated in the Order is of the essence. When the Order provides a specific date for delivery of the goods or for performance of the service and the Seller fails to comply with such a date, DS Smith is entitled to consider the delay as a fundamental breach of the Agreement and thus to reject the delivery or the service. In that event, DS Smith would not have further obligations to the Seller concerning the relevant supply

and the Seller would be liable for any damage and/or loss which may be suffered by DS Smith.

- b) When the Order does not provide for a specific date for delivery or date for performance, the goods shall be delivered or the services shall be performed according to practices existing between the parties, if any, and, in any case, within a reasonable time from the date of the Order that shall not exceed sixty days from the Order.
- c) In case of delivery delay, DS Smith shall be entitled to liquidated damages in the amount of 1% for each day of delay up to a maximum of 10% of the price Order. Without limiting any other rights herein, DS Smith may require delivery by the fastest method and the total cost of such shipment and handling shall be borne by Seller. Unless agreed otherwise, the rights set forth herein are cumulative and DS Smith reserves its right to have recourse to any action set forth by the applicable law or in the Agreement, including, but not limited to, the right to terminate the Agreement and to claim damages.

6. **Delivery terms. Passage of risk**

- a) Unless otherwise specified in the Order, delivery shall be according to the delivery term DAP ("Delivered at place" - Incoterms 2010, or "Carriage paid to" or similar) at DS Smith's premises indicated in the Order or at any other location indicated in the Order. Unless otherwise specified in the Order, all delivery costs and any other expenses, charges or duties shall be borne by the Seller up to delivery and shall be deemed as included in the purchase price agreed.
- b) Passage of the risk (including but not limited to destruction and/or deterioration) occurs upon delivery to DS Smith, according to the agreed delivery terms.
- c) When the Seller holds goods that are property of DS Smith, the Seller is held to be in custody of such goods which must be stored separately from goods of the Seller or of third parties, duly put and stocked in accordance with their nature and features, labelled as owned by DS Smith and insured for their value.
- d) The Seller, previously informed with reasonable notice, shall consent DS Smith to access the premises where the goods subject matter of the Agreement are manufactured or stored.

7. **Early termination**

- a) DS Smith shall be entitled to terminate the Agreement with immediate effect, by sending written notice by PEC, if possible, or registered mail with return receipt, if the Seller (i) breaches its obligations under the Agreement and cannot remedy such breach or, notwithstanding the possibility to remedy the breach, it does not do so within seven days from receipt of the formal notice or has already previously received at least one formal notice for breaches of the same kind of obligation; (ii) DS Smith has justified reasons to deem that the Seller's financial standing may prejudice its capability to perform its contractual obligations.
- b) In case of termination according to Article 7.a) DS Smith would not have further obligations to the Seller with respect to the Agreement, without prejudice to DS Smith's right to seek compensation for the damages suffered.

8. **Execution. Indemnity. Seller's obligations and liability**

- a) The Seller shall hold DS Smith indemnified and harmless from all and any liability, loss, prejudice, cost, burden, expense (including but not limited to legal expenses in full), legal claims, procedures, claims and requests which stem out, directly or indirectly, or in any way connected to the supply of goods and to the performance of services and, in particular (i) to any breach of the Seller's obligations provided for by the Agreement, (ii) to acts, failures, non-performances or breaches committed by the Seller, its employees or agents, (iii) to the early termination provided for by Article 7 and (iv) to the events provided for by Article 3 e).
- b) The Seller undertakes to enter into a suitable insurance policy insuring against risks arising out of the supply and shall duly provide a copy of such policy to DS Smith with any relative information.
- c) In no case shall DS Smith be deemed liable for loss of profit, accidental, consequential or indirect damages of any kind to the Seller regarding performance of the Agreement.
- d) Without prejudice to the obligations of payment provided for by Article 3 c) and according to the applicable law, DS Smith's cumulative liability towards the Seller, deriving from and/or related to the Agreement, both in contract and in tort, may not exceed 10% (ten percent) of the price of the relevant supply, unless the liability arises directly as a consequence of wilful misconduct and/or gross negligence.

9. **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 performance of services supplied to DS Smith, Seller shall obtain the same at its own expense and shall produce evidence of the same to DS Smith, if requested.
- b) The Seller acknowledges and agrees that any right, title or interest on DS Smith intellectual property will remain property of DS Smith. The Seller shall not use, reveal or reproduce the DS Smith intellectual property or the confidential information revealed to the Seller, or made aware to him, for a scope different from the execution of the Order.
- c) While performing the services under the Agreement, the Seller undertakes (and shall procure its personnel to undertake) to comply with all products safety, health and safety in the workplace rules and regulations and security and environmental safety requirements that apply at DS Smith's premises they can access. The Seller furthermore undertakes to take all reasonable precautions to protect the environment, its employees and DS Smith's employees while performing the services. The provisions hereinabove shall be integrated with specific provisions provided for by Italian law concerning the *appalto* contract (private tender) and, specifically, with article 26 of Italian Legislative Decree no. 81/08.
- d) The Seller shall, at its own expense, provide with all equipment and materials to perform the services, unless otherwise agreed in writing.
- e) Seller may not assign, delegate, subcontract, or transfer this Order or any of its rights or obligations hereunder, including payment, without DS Smith's prior written consent. Should DS Smith grant consent to Seller's assignment, Seller shall ensure that such assignee shall be bound by the terms and conditions of this Order.
- f) Any notice given under the Agreement and concerning the Agreement shall be in writing, and served by PEC, if possible, or by email to Parties' usual contacts.
- g) The invalidity or ineffectiveness of one or more clauses of the Agreement shall not prejudice the validity and effectiveness of the Agreement as a whole. When an invalid or ineffective clause of the Agreement would result valid and effective following the elimination and/or amendment of some provisions, those provisions shall apply with the elimination/amendment/s necessary so that the clause results valid and effective.
- h) The Agreement and its contents are private and confidential and may not be disclosed to third parties without DS Smith's prior consent, during the contractual relationship and thereafter for two years following the termination of the Agreement.
- i) Clauses concerning warranty, limitation of liability and obligations arising out from the termination of the Agreement, shall be effective also after the termination of the Agreement or its expiration.

10. **Code of Conduct and Organization and Management Model according to Italian Legislative Decree 231/01**

- a) The Seller undertakes (and shall procure its personnel to undertake, according to art. 1381 of the Italian Civil Code) to comply with DS Smith's Code of Ethics and Organization and Management Model (in line with the provisions of Italian Legislative Decree no. 231/2001), that the Seller acknowledges that it has read and that, in any case, fully knows. Acceptance to principles and rules of conducts set forth in said Code of Ethics and to standards of conduct set forth in the Organization and Management Model is requested to any business partner of DS Smith, as far as it is concerned. The Seller expressly acknowledges and undertakes to comply with DS Smith's undertaking to constantly pursue, in its corporate actions, the ethical values and behavioural rules contained in its Code of Ethics and in the Organization and Management Model, with particular reference to respect of human life, product safety, protection of health and safety in the workplace, protection of the environment, compliance with all rules against public and private corruption and money laundering, with the laws on privacy, industrial intellectual property and copyright, as well as with the provisions and rules aimed at preventing the crimes detailed in the Italian Legislative Decree no. 231/2001. The Seller states that it has operated and undertakes to operate in future in full compliance with DS Smith's commitments hereinabove. In particular, the Seller undertakes not to offer, promise or provide (or permit to offer, promise or provide) any economic advantage or benefit of any nature whatsoever in connection with the

performance of the Agreement or of any other relationship with DS Smith and/or not to obtain in the interest or the benefit of DS Smith any personal advantage which may violate any anti-corruption provision applicable to Seller and/or to DS Smith.

- b) If Seller becomes aware of any violation or alleged violation of any obligations provided in this Article 10, shall immediately notify DS Smith that shall be entitled to precautionary suspend the execution of the Agreement, by sending written notice, for all time necessary in order to conduct suitable checks of the violation or alleged violation. The Seller undertakes to extend its fullest cooperation to DS Smith, including, without limitation, to allow any access to any document and information, as well as interviews with its personnel.
- c) The Seller shall be entitled to immediately terminate the Agreement as well as any further contractual relationship in force with the Seller, according to article 1456 of the Italian Civil Code, at any time forthwith upon notice sent to the Seller by PEC, if possible, or by registered mail with return receipt, if the Seller implements actions or conducts not compliant with the Code of Conduct and/or with the Organization and Management Model or does not carry out actions or behaviours provided by the Code of Ethics and/or by the Organization and Management Model, or in the event of non-compliance by the Seller of the information obligations specified in Article 10 b) hereinabove, or in the event the Seller has been subject to any prosecution for the offences specified in the Italian Legislative Decree 231/2001 or has been convicted for an offence covered by the said Legislative Decree by a judgment – whether or not having the force of *res judicata* – according to article 444 of the Italian Criminal Procedure Code. The remedies hereinabove are without prejudice to DS Smith's right to seek compensation for any damage suffered.
- d) **Applicable law. Jurisdiction.** Italian law shall apply to the Conditions and to the Agreement, with express exclusion of the Convention on Contracts for the International Sale of Goods signed in Vienna in 1980. Any dispute arising out of or relating to the Agreement shall be settled by arbitration under the Rules of the Milan Chamber of Arbitration (the Rules), by a sole arbitrator appointed in accordance with the Rules and shall be seated in Milan.
- e) **Privacy.** The parties individually process the personal data collected within the scope of this Agreement. Data processing shall be carried out fully independently by the parties acting as data controllers in accordance with the actual Regulations for personal data protection. The parties herein represent that the processing, and possible transfer of personal data to thirds shall be carried out in strict compliance with the applicable Regulations, including those on the application of efficient security measures. Further to the enforcement of Regulation (EU) no. 679/2016 on the processing of personal data ("GDPR"), the Parties undertake to comply with the formalities and measures required by the Regulation, and therefore shall enter into specific agreements.

#### Place and date

The Seller \_\_\_\_\_

Pursuant to Article 1341 of the Italian Civil Code, the Seller expressly accepts the following clauses:

Article 1 c) – Prevalence of the Conditions

Article 2 – Cancellation, variation and suspension of the Order

Article 3 – Set off

Article 3 e) – Withholding/reduction and set off

Article 4 – Warranties. Claims

Article 7 – Early termination

Article 8 – Execution. Indemnity. Seller's obligations and liability

Article 9 e) – Subcontract

Article 10 a), b) and c) – Suspension and termination for violation of DS Smith's Code of Conduct and/or of the provisions of the Organization and Management Model

Article 11 – Applicable Law. Jurisdiction

The Seller \_\_\_\_\_