

WAREHOUSING nlen070801

These General Purchase Conditions apply to and form integral part of all requests for proposal, quotations and Purchase Orders for the supply of warehousing services by Warehouseur to Customer (all as defined hereinafter). Customer expressly rejects the applicability of any other general terms and conditions or stipulations of Carrier.

1. DEFINITIONS

- a. Warehouseur means the person, corporation or company performing the Services identified in the Purchase Order. The words (logistic) service provider, supplier or any equivalents thereof, which may be used elsewhere in the Purchase Order, shall have the same meaning as Warehouseur.
- b. Customer means the corporation or company which issues the Purchase Order or request for proposal. The words company, principal or equivalents thereof, which may be used elsewhere in the Purchase Order, shall have the same meaning as Customer.
- c. Goods means the Customer's goods and/or products accepted, stored and/or handled by Warehouseur pursuant to a Purchase Order, and their packing materials and/or transport devices, including but not limited to pallets, containers, tanks, drums, reels and bags.
- d. Purchase Order means the order, call-off order, purchase order or equivalents thereof, issued by Customer and accepted by Warehouseur, including all specifications, drawings and documents explicitly listed or referred to therein.
- e. Receipt means the bearer warehouse receipt issued by Warehouseur in accordance with the Purchase Order.
- f. Services means the storage and/or handling of Goods and/or any service related thereto and/or incorporated therein as specified in the Purchase Order.
- g. Sub-contractor means any person, corporation or company, other than Customer, having a contract with Warehouseur for the supply of the Services or a part of the Services.

2. PURCHASE ORDER

- a. Conclusion. The Purchase Order will be issued by Customer in writing, by fax, electronically, or otherwise, depending on the business practises of the Customer and will be binding to Parties at Warehouseur's acceptance in writing, by fax, electronically or otherwise pursuant to Customer's instruction. Any modifications or comments to the Purchase Order by Warehouseur are binding only, if accepted by Customer in writing. Performing of any part of a Purchase Order by Warehouseur will operate as Warehouseur's unconditional acceptance of the Purchase Order.
- b. Changes. Customer reserves the right to make changes in, deductions from and additions to the scope of supply under a Purchase Order. In the event such changes, deductions and/or additions result in a material change in the Purchase Order price, Parties shall negotiate in good faith an equitable change thereof. In order to be valid and binding any change in, deduction from and/or addition to the Purchase Order shall be made in writing and approved by the Parties. Approval by Customer of drawings, documents, samples or proposals shall not imply approval by Customer of a change of the Purchase Order unless explicitly confirmed in writing.
- c. Termination for default. Without prejudice to its right to claim damages Customer may terminate the whole or any part of a Purchase Order with immediate effect and without compensation to or indemnification of Warehouseur, in case of any default by Warehouseur that has not been remedied within reasonable time after written notice of default to Warehouseur stating such reasonable time.
- d. Termination for change of control. Customer may terminate the Purchase Order with immediate effect and without compensation or indemnification of Warehouseur in case of a change of control of Warehouseur. For the purpose of this clause "control" means the ability to direct the business affairs of the Warehouseur whether by virtue of contract, ownership of shares or otherwise howsoever.
- e. Termination or suspension for convenience. Customer may terminate or suspend the whole or any part of a Purchase Order for convenience by written notice to the Warehouseur. Upon such termination or suspension Customer and Warehouseur shall negotiate reasonable termination or suspension charges. Warehouseur agrees that any termination or suspension charges shall be limited to its inevitable costs of

materials and labour incurred to the date of termination or suspension and its inevitable costs as a direct consequence of such termination or suspension, plus, in case of termination, reasonable profit and overhead on work completed to the date of termination.

- f. Termination/cancellation for insolvency. In the event Warehouseur has been declared bankrupt, is in a state of liquidation, has ceased or suspended whole or substantial part of its business, is the subject of a court order or preventative legal scheme of settlement, or is in any similar situation arising from a procedure of a same nature, prior to delivery of all Services pursuant to the Purchase Order, Customer may at its option and without any compensation to Warehouseur (i) cancel the Purchase Order or part thereof and have the Goods at matter returned or (ii) terminate the Purchase Order forthwith, in both cases without prejudice to its right to claim damages.
- g. Survival. Expiry, termination or cancellation of the Purchase Order shall not affect any right and/or obligation, which expressly or by its nature survives such expiry, termination or cancellation, including but not limited to representations, warranties, confidentiality obligations, intellectual property rights and accrued rights.
- h. Parties' independency. Nothing in the Purchase Order shall be deemed to create a partnership or joint venture between the Parties.

3. PRICES AND PAYMENT

- a. Prices. Warehouseur shall perform the Purchase Order against the price(s) mentioned therein. Unless expressly stated to the contrary, prices stated in the Purchase Order are (i) fixed and firm, (ii) not subject to any changes and (iii) inclusive of all taxes, duties, levies, fees, charges.
- b. Payment. Unless explicitly agreed otherwise Customer shall pay the amount invoiced by Warehouseur for its Services by bank transfer sixty (60) days after the end of the month of the date of the invoice, provided and to the extent that the invoice is correct and not under dispute. Customer may authorize DSM Finance BV or any other agent to effect (part of) the payment of the amounts due by Customer. Such payment shall discharge Customer from its respective payment obligation towards Warehouseur. Any interest charged by Warehouseur for delayed payments shall not exceed the annual rate of the 1-month Euribor at the first day of delay plus 2%, calculated from the first day of delay until the day of payment.
- c. Set-off. Amounts, which Customer at any time owes to or can claim from Warehouseur and/or any of its affiliates, can be set off by Customer against amounts, which Customer and/or any of its affiliates can claim from or owes to Warehouseur and/or any of its affiliates.

4. SERVICES

- a. Specifications. Warehouseur shall ensure that the deployed warehouse and other means for the Services will be suitable for the purpose, well maintained and in all respects be capable to meet the requirements of the Purchase Order.
- b. Regulations. Warehouseur warrants that the Services including the deployed warehouse and other means do comply with all applicable regulations, including but not limited to safety, health and environmental regulations.
- c. Instructions. Warehouseur shall properly and timely inform and instruct Customer in writing of any special handling or pre-treatment regarding the Goods required for or beneficial to (i) the safety, health and environment of Customer, its employees or other persons concerned and/or (ii) the integrity, quality and performance.
- d. Completeness. Items of Services not specified in the Purchase Order but necessary for the proper, safe and efficient performance of the Services and for the fulfillment of Warehouseur's warranties are deemed to be included in the Purchase Order and shall be supplied and/or performed by Warehouseur at no extra cost to Customer unless otherwise specified in the Purchase Order.

- e. Transfer. Transfer of Goods to another place in the warehouse or another warehouse requires the prior written approval of Customer.

5. DELIVERY

- a. Delivery. Unless parties have agreed otherwise, the Warehouseur shall deliver the Goods, if applicable upon presentation of the Receipt, in the quantity, state and condition in which the Warehouseur initially took charge of the Goods.
- b. Delivery time. The delivery time of the Goods as specified in the Purchase Order is of the essence and any delay shall be considered a material default.
- c. Foreseeable delay. Without prejudice to Warehouseur's obligations to perform the Services at the specified time and place, Warehouseur shall immediately notify Customer in writing of any foreseeable delay and submit its proposal indicating the measures Warehouseur shall take for its own account to avoid or make good the delay in order to maintain the agreed delivery time. Should Warehouseur fail to take foresaid measures or should Customer not approve of the measures, Customer reserves the right to require Warehouseur to forthwith implement, for Warehouseur's account, the measures Customer deems necessary. In the event Customer determines that Warehouseur's performance is such that it will cause a substantial delay in delivery of the Services, Customer reserves the right to assume possession, upon written notice to Warehouseur, of the Goods or any part thereof from Warehouseur's and/or Sub-contractor's premises and to complete or have the Services completed by any means for Warehouseur's account and without prejudice to any other rights Customer may have under the Purchase Order or in law.
- d. Expediting. Warehouseur shall expedite the progress and the performance of the Services within its own organization and with its Sub-contractors. Customer reserves the right to expedite the progress and the performance of the Services and to enter for that purpose at any time any place, where the Goods are situated, and Warehouseur shall fully co-operate with Customer. For the benefit of Customer, Warehouseur shall stipulate the same rights from its Sub-contractors. Customer may – for the purpose of expediting - request Warehouseur to submit un-priced copies of contracts with Sub-contractors.

6. PERFORMANCE

- a. Licenses and permits. Warehouseur shall timely obtain any and all licenses, permits and other documents, which are required to perform the Purchase Order.
- b. Acceptance. The Customer has the right, but not the obligation, to check the performance of any Services on any non-conformity with the agreed specifications. If the Services are not in conformity with the specifications, the Customer may, at no cost to Customer, choose between:
 - having the non-conformity corrected by the Warehouseur;
 - replacement of the Services by the Warehouseur;
 - replacement of the Services by equivalent Services, in conformity with the specification of the Services;
 all of this without prejudice to Customer's rights to claim damages and other compensation. Payment of the Services does not imply acceptance of the Services in question by Customer. Final, provisional or partial acceptance of the Services shall only appear from Customer's explicit and written acknowledgment thereof.
- c. Triple P Policy. The three P's of sustainable development (People, Planet and Profit) are essential to Customer's activities. All suppliers and business partners are required to comply with and act in accordance with the DSM Supplier Code of Conduct, which can be found at DSM.com under Sustainability/Supplier Policy, or sent at request.
- d. Safety, Health and Environment. Safety, Health and Environment are essential to Customer's activities. All suppliers and business partners are required to comply with and act in accordance with the applicable

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- Customer requirements. Warehouse shall report any irregularity to this respect and the Parties will discuss possible remedies.
- e. Pollution. To the extent the Services are performed at a Customer site and/or an industrial area on which a Customer site is located, the Warehouse shall in the performance of the Purchase Order avoid pollution of the soil and the groundwater and limit air and noise pollution on such site or area. The Warehouse shall notify the Customer immediately of any incident occurring, no matter how started or caused. In case of an incident the Warehouse shall immediately take all measures to clean up, isolate or prevent pollution resulting from such incident.
- f. Local instructions. To the extent the Services are performed at a Customer site Warehouse and its Sub-contractor shall observe all Customer's local instructions, site regulations and site access regulations.
7. **ASSIGNING AND SUBCONTRACTING**
- a. Assigning and Subcontracting. Warehouse shall not assign or subcontract the Purchase Order, in whole or in part, to any third party without Customer's written consent. If Customer consents to any assignment or subcontract, such consent shall not relieve Warehouse of or from any of the obligations or duties under the Purchase Order, and such consent shall be subject to Warehouse's compliance with all such duties and obligations under the Purchase Order. Customer reserves the right to assign the Purchase Order or any part thereof or any benefit or interest there under to others no consent of Warehouse being required.
8. **GENERAL**
- a. Applicable transport conditions. Any transport of Goods to or from a warehouse, including domestic transport, which may part of the Services under a Purchase Order, shall be subject to the provisions of the respective Treaty governing the transport mode at matter.
- b. General liability and indemnification. Unless and to the extent Warehouse's liability is limited or restricted under a Purchase Order, Warehouse shall be liable and hold Customer and its affiliates and their directors, officers, employees, visitors, agents, representatives and contractors (herein referred to as "Indemnified Parties"), harmless from and indemnify them against any and all actual or contingent damage, loss, (personal) injury (including death), expense, cost, fine, penalty, claim, including reasonable attorney fees and litigation costs, suffered or incurred by or brought against Indemnified Parties resulting from or connected with the Purchase Order or the performance of Warehouse's Services under the Purchase Order, except to the extent that such damage, loss, (personal) injury, expense, cost, fine, penalty or claim is caused by Customer's fault or negligence.
- c. Insurance. The Warehouse shall take out and maintain the insurance policies, including but not limited to general commercial, environmental and automobile liability, which Customer considers appropriate to cover the risks resulting from or connected with the Purchase Order. At the request of the Customer Warehouse will provide the insurance certificates evidencing Warehouse's coverage and keep Customer informed of any changes. Warehouse shall procure, that all Sub-contractors will also meet the insurance requirements.
- d. Ownership of Goods. Warehouse shall not be the owner of the Goods under custody. Warehouse shall deliver any of the Goods only to Customer in accordance with its instructions to that respect or, if applicable, to the holder of the Receipt.
- e. Liens. Warehouse waives and shall have its Sub-contractors waive any lien, encumbrance, pledge or right of retention with regard to the Goods they may have under law or otherwise.
- f. Transfer of risk. Unless agreed otherwise in the Purchase Order the risk of the Goods is transferred to Warehouse at presentation and acceptance of the Goods and ends after delivery to and acceptance of the Goods by Customer or, if applicable, the holder of the Receipt.
- g. Intellectual Property Rights. Warehouse is not entitled to make use of or refer to any trademark, trade name, domain name, patent, design, copyright, or other intellectual property right of Customer or any of its affiliates, unless prior obtained written consent of Customer.
- h. Ownership of developments. All intellectual property rights and know-how relating to Services generated and/or developed by Warehouse or its Sub-contractor under the Purchase Order for the benefit of the Customer will be exclusively owned by Customer and shall at first request be fully assigned and transferred at no costs to Customer. Warehouse will procure that the same obligations will apply to each of its Sub-contractors.
- i. Confidentiality. All information, including but not limited to specifications, drawings, sketches, data or other documentation, disclosed to or developed by the Warehouse or its Sub-contractor in the context of the Purchase Order, (i) remains respectively becomes the property of Customer, (ii) will be treated by Warehouse as confidential information, (iii) shall not be used by Warehouse for any other purpose than for the performance of the Purchase Order, and (iv) will only be communicated and distributed to those of the Warehouse's or Sub-contractor's employees, who need to be informed. At Customer's request Warehouse shall sign a separate agreement on confidentiality and non-use.
- j. External publication. Warehouse is not entitled to refer to (part of) the Purchase Order in external communication or publication without prior written consent of Customer.
- k. Force Majeure. Neither party shall be liable towards the other party for any failure to fulfil any term or condition of the Purchase Order, if fulfilment thereof has been delayed, interfered with or prevented by any event beyond the control of the party concerned, was not for its risk and not reasonably foreseeable, provided that Warehouse is not already in default of those obligations under the Purchase Order, which are being delayed, interfered with or prevented. The mere fact of late supply of materials, labour or utilities to Warehouse or its Sub-contractors shall not be deemed force majeure. In case a situation of force majeure continues for more than 30 days, Customer shall be entitled to (partly) terminate or cancel the Purchase Order by written notice.
- l. Severability. If (a) provision(s) of the Purchase Order should be or become ineffective or invalid for whatever reason, the other provisions will not be affected thereby. The Parties agree to replace the ineffective or invalid provision(s) by an effective and valid arrangement, which achieves as closely as possible the purpose intended by the ineffective or invalid provision(s) (as evidenced by the wording contained herein).
- m. Waiver. Failure by either party to require strict performance by the other party of any obligation hereunder shall in no way affect its right thereafter to enforce any obligation, nor shall a waiver by either party of any breach be held to be a waiver of any previous or later breach. No waiver will have any effect unless specific, irrevocable and in writing.
9. **GOVERNING LAW / DISPUTES**
- a. Governing law. The Purchase Order shall be governed exclusively by the laws of The Netherlands with the exception of its conflict of laws principles.
- b. Disputes. Any dispute arising from the Purchase Order shall in first instance be submitted to the competent court at Maastricht, The Netherlands. Pending a dispute neither party shall be excused from performing any of its obligations under the Purchase Order, except for obligations directly affected by the dispute.
- These Conditions shall be referred to as "DSM General Purchase Conditions, Warehousing nlen070801"