

DSM Nutrition Japan K.K.
General Purchase Conditions for Goods and Services
JP100517en



These General Purchase Conditions apply to and form integral part of all requests for proposal, quotations and Purchase Orders. Customer expressly rejects the applicability of any other general terms and conditions or stipulations of Supplier.

1. Definitions

In this document, Agreement means: the binding contract formed as described in article 2; Affiliate of a Party means any corporation, joint venture, or other business entity which directly or indirectly controls, is controlled by, or is under common control with such Party. An entity shall be deemed to "control" another entity if it has the power to direct or cause the direction of the management or policies of the other entity whether through ownership of voting securities or otherwise; Customer means DSM Nutrition Japan K.K., 2-6-3, Shiba Koen, Minato-ku, Tokyo 105-0011, Japan, or any of its Affiliates, which issues the Purchase Order or request for proposal; DSM (Group) is the group of companies organizationally connected with Koninklijke DSM N.V, each of them a DSM Group Company; Goods are the products, materials, liquids, equipment, design, software, rental properties, stored goods, and all related documentation to be supplied as specified in the Purchase Order. A Party means either the Customer or the Supplier, and Parties means both of the Customer and the Supplier. A Purchase Order is the order issued by a Customer including all related documentation; Services are the services and/or all pertaining deliverables to be provided as specified in the Purchase Order. Supplier means each person or entity that enters into an agreement with Customer.

2. Acceptance

These General Purchase Conditions, together with the relevant Purchase Order issued by Customer, set forth the terms and conditions for the supply of Services and/or the delivery of Goods by Supplier to Customer and will be binding to Parties at Supplier's acceptance (the binding Agreement). Any changes by Supplier are binding only if accepted by Customer in writing. Performance of any part of a Purchase Order by Supplier will operate as Supplier's unconditional acceptance thereof. Any other general terms and conditions shall not be applicable, even if they were not rejected explicitly in any individual case.

3. Commercial conditions

3.1 Supplier shall perform the Services for the price(s) mentioned in the Agreement. Unless expressly stated to the contrary, prices are (i) fixed and firm (ii) exclusive of Consumption Tax or any Value Added Tax but (iii) inclusive of all other taxes, duties, levies, fees (including license fees), charges and inclusive of all costs.

3.2 Unless explicitly otherwise agreed, Customer shall pay the amount invoiced by Supplier for Goods and/or Services delivered by bank transfer ninety (90) days after the end of the month of the date of receipt of an invoice, provided and to the extent that the invoice is correct and not under dispute.

3.3 Customer may authorize any other DSM Group Company to effect the payment due by Customer. Such payment shall discharge Customer from its respective payment obligation towards Supplier. In case an invoice is under dispute, Supplier has no right to postpone its obligations. Customer has the right to set off amounts it owes to Supplier or any of its Affiliates, against amounts which Supplier or any of its Affiliates owes to Customer.

3.4 To the extent Services are supplied on a reimbursable basis, Supplier shall keep records of all costs, expenditures and hours worked and shall provide Customer access thereto.

4. Compliance

4.1 Supplier complies with all applicable (inter)national laws, rules and regulations, standards and orders in connection with the performance of the Agreement, including all applicable laws, rules and regulations on international trade, such as embargos, import and export control and sanctioned party lists.

4.2 Supplier expressly warrants that it has title to the Goods and deliverables of the Services supplied, including the right to grant Customer intellectual property right(s). Supplier holds any and all licenses, permits, end-user statements and any other documents, which are required in the country of origin, of transit and of destination to perform its obligations and will immediately notify Customer of any legal restrictions.

5. Time

Supplier guarantees that it will supply the Goods and/or Services without delay and interruption. Supplier shall immediately notify Customer of any foreseeable delay.

6. Delivery, warranty and acceptance of Goods

6.1 Unless explicitly agreed otherwise, the goods shall be delivered according to Incoterm DDP site Customer.

6.2 Delivery shall be effected in adequate packaging. Costly and re-usable packaging shall be taken back by Supplier. Supplier shall timely provide Customer with (copies of) all applicable licenses, documents, information, specifications and instructions necessary for safe and proper transport, use, treatment, process and storage of the Goods and with all certificates of analysis/conformity as customarily supplied. If applicable, stored Customer's Goods will be redelivered in the original quantity, state and condition.

6.3 Supplier warrants the proper functioning of the Goods and warrants that the Goods will be in conformity with the specifications and requirements, be unused, of good materials and workmanship, free from any and all defects and from any and all liens and encumbrances, pledge or right of retention and suitable for the intended purpose. These warranties shall not be deemed to exclude warranties and/or rights that Customer may have or obtain and shall extend to Customer and its customers.

6.4 Supplier shall promptly repair or replace any and all Goods within a period of 2 years after the date of acceptance or the date of first operational use, whichever date is later. Repaired or replaced Goods or parts will be warranted for another period of 2 years from the repair or replacement date. If requested, Supplier shall as far as possible leave these goods in free use with its user until Supplier has delivered Goods in replacement. The warranty period shall be extended by any period(s) during which the Goods have been out of operation.

6.5 Customer is entitled to reject any Goods, which are delivered (i) not at the agreed time, (ii) not in the agreed volume and/or quantity, (iii) in inappropriate or damaged packaging or (iv) with other defect(s), for risk and account of Supplier and without prejudice to Customer's right to compensation for the losses and damages suffered as a result of Supplier's non-compliance.

6.6 Inspection, testing, acceptance or payment does not release Supplier from its obligations and warranties.

7. Performance and acceptance of Services

- 7.1 Supplier warrants the quality and the results of the Services. Supplier shall perform the Services in accordance with the requirements and specifications of the Agreement, observing due skill and care, using proper and well maintained materials and employing sufficiently qualified staff.
- 7.2 Supplier shall properly and timely instruct Customer of any special use or treatment regarding the Services.
- 7.3 Only written confirmation of acceptance shall constitute acceptance of the Services performed.

8. Transfer of title

- 8.1 The title of the Goods and deliverables of the Services shall pass to Customer upon delivery at the delivery point as stated in the Agreement. However, if Customer pays for any Goods prior to delivery, title shall pass to Customer upon payment.
- 8.2 The title and risk of Goods under a rental service agreement remain with Supplier.
- 8.3 The title of stored Customer's Goods under a warehousing agreement remains with Customer. The risk of such Goods is transferred to Supplier at acceptance of the Goods and ends after delivery of these Goods to Customer.
- 8.4 Supplier shall identifiably store any raw materials and semi-finished goods allocated for the manufacture and or production of the deliverables and the finished deliverable itself. The risk of such goods remains with Supplier until acceptance thereof.

9. Opportunity to inspect

- 9.1 Supplier ensures that Customer or its nominee has the opportunity to inspect the Goods or the manufacturing process of the Goods and/or any place where the Services or part thereof may be carried out.
- 9.2 Supplier diligently and continuously controls and tests the quality of the Goods and Services as well as the operations during manufacturing, storage and delivery. Supplier shall ensure that Customer, or its nominee, has the opportunity to attend tests and/or inspect the Goods at any time.
- 9.3 Inspection and/or testing does not relieve Supplier of any obligation or liability under the Agreement.

10. Controlled changes

The implementation of any and all changes of and/or improvements related to the Goods and/or (performance of the) Services including (business) processes, (raw) materials (including supply source) and/or any other changes that might affect the specifications of the Goods and/or the Services require the prior written approval of Customer. Supplier will inform Customer well in advance of such changes and will enable Customer to control and test the Goods.

11. EU and non EU Chemical Control Regulations

With regard to chemicals supplied under the Purchase Order within or into the European Union, Supplier herewith confirms that it is fully aware of EC Regulation No. 1907/2006 on Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH"). To the extent that any Goods or any of their substances fall within the scope of REACH, Supplier confirms and represents that the Goods or any of their substances, are fully compliant with the requirements of REACH. Supplier will provide the (pre-) registration number(s) to Customer. To the extent Goods or any of their substances fall within the scope of any chemical control regulations under the applicable laws and regulations, Supplier confirms and represents that the Goods or any of their substances, are fully compliant with these regulations.

12. Sustainability, SHE and Security

- 12.1 The Triple P (People, Planet, Profit) values, as determined in the DSM Supplier Code of Conduct, are essential to DSM in creating sustainable value. Supplier agrees to comply with the DSM Supplier Code of Conduct which can be found at the DSM website www.dsm.com/sustainability/supplier-policy [or will be sent at request/ and a hard copy of which will be provided to the Supplier].
- 12.2 Supplier complies with and acts in accordance with all applicable safety, health and environmental instructions, avoid pollution of the soil and the groundwater, limit air and noise pollution on the Customer site, comply with site and site access regulations as well as DSM (network) security regulations. A hard copy of such instructions and regulations will be provided to the Supplier upon request. Supplier must arrange for proper and safe transport and equipment, as well as skilled and qualified staff, able to speak the local languages of the Customer and/or English, in order to work in a safe, healthy and environmentally responsible manner. Customer may audit these aspects of this Agreement. Supplier shall report any irregularity with respect to safety, health and environment and security. In case of an incident, Supplier shall, under supervision of DSM (Group), immediately take all measures to clean up, isolate or prevent pollution resulting from such an incident.

13. Indemnification, Liability and Force Majeure

- 13.1 Supplier shall be liable and hold DSM (Group) and Customer and their directors and employees ("Indemnified Parties"), harmless from and indemnify them against any and all actual or contingent damage, loss, injury/death, costs and claims suffered by or brought against Indemnified Parties, resulting from or connected with the Agreement, the use and/or sale of Supplier's Goods by Indemnified Parties or any third party, the performance of the Services and the deployment of Supplier's Services by Indemnified Parties or any third party, except to the extent that this is caused by Customer's willful misconduct or gross negligence.
- 13.2 Supplier is fully liable for the correct and timely payment of all taxes and levies owed in connection with the performance of the Agreement and will indemnify Indemnified Parties against all claims and damages relating to its obligations concerning taxes, contributions and any claims of third parties, including the Government.
- 13.3 In no event shall Customer be liable for any direct and indirect damages (including but not limited to lost revenue, lost profits or other consequential or incidental damages) based upon the Agreement.
- 13.4 Neither Party shall be liable towards the other Party for any non-fulfillment of the Agreement to the extent fulfillment thereof has been delayed, interfered with or prevented by an event entirely beyond the control of the Party concerned, was not from its area of accountability and not reasonably foreseeable ("Force Majeure"), provided that the Party invoking Force Majeure under this provision shall use its best efforts to fulfill its obligations by any means possible. The mere fact of late supply of materials, labor or utilities 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 Agreement by written notice. Customer may purchase similar goods and/or services from third parties during any period Supplier is unable to fulfill its obligations. The quantities affected shall be excluded from the calculation from any (minimum) volumes.

14. Confidentiality

Any and all information provided by or on behalf of Customer shall be treated as confidential and shall only be used by Supplier for the purpose of this Agreement. Disclosing information is only allowed to any of its employees or a third party on a strict need-to-know basis, except in case Supplier is required to disclose the information by virtue of a court order or statutory duty, provided that the Supplier shall immediately inform Customer. Supplier shall upon demand promptly return to Customer all such information. Supplier shall not retain a copy thereof. Supplier shall treat the existence of the Agreement as confidential. Supplier or its employees will sign a confidentiality agreement at request.

15. Ownership and intellectual property

15.1 Any and all information, property or materials disclosed to Supplier remains the property of Customer. Supplier 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. Any authorized use shall be strictly in accordance with the instructions and for the purposes specified.

15.2 Supplier warrants that the Goods and/or Services, alone or in combination, will not result in or give rise to any infringement or misappropriation of any intellectual property right of a third party.

15.3 Supplier hereby assigns by way of present and future assignment all intellectual property rights, know-how, copyrights and other rights developed by or on behalf of Supplier explicitly for or on instructions of Customer.

15.4 All intellectual property rights to software, including source code, sub-software and documentation, developed explicitly for Customer or on Customer's instructions shall rest with or be transferred to Customer. Intellectual property rights to other software shall remain with Supplier and Supplier shall grant Customer a non-exclusive, non-transferable, irrevocable, perpetual license not limited to specific equipment or location. Customer is allowed to provide sub-licenses to other DSM Group companies.

16. Insurance

The Supplier shall take out and maintain the insurance policies to cover the risks resulting from or connected with the Purchase Order. At the request of the Customer, Supplier will provide the insurance certificates evidencing Supplier's coverage and keep Customer informed of any changes.

17. Termination and suspension

To the extent permitted under applicable laws and regulations, Customer is entitled to suspend the performance of its obligations in whole or in part or terminate the Agreement with immediate effect, without prejudice to its right to claim damages and without any compensation to or indemnification of Supplier (i) in case Supplier has been declared bankrupt, is in a state of liquidation, has ceased or suspended whole or a substantial part of its business, is subject of a court order or preventative legal scheme of settlement (ii) in case of material non-compliance with import, export or chemical control regulations or the provisions of safety, health, environment and security (iii) in case of un-approved material changes pursuant to article 10. After such termination Customer may return received Goods and/or Services in whole or partly against repayment and retransfer of ownership therein to Supplier.

18. Miscellaneous

18.1 If any provision(s) of these General Purchase Conditions should be or become ineffective or invalid the other provisions will not be affected thereby. Parties agree to replace the ineffective or invalid provision(s) by a provision of similar import, which reflects as closely as possible the intent of the original clause.

18.2 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.

18.3 Supplier shall not assign the Agreement in whole or in part without Customer's written consent. Such consent shall not relieve Supplier from, and shall be subject to compliance with, any of the obligations under the Agreement. Customer is entitled to assign this Agreement or any part thereof to any DSM Group company on prompt notice to Supplier.

18.4 Nothing in the Agreement shall be deemed to constitute either Party as the agent of the other or create a partnership, joint venture or employment relation between the Parties.

18.5 This Agreement shall be governed exclusively by the laws of Japan with the exception of its conflict of laws principles. The United Nations Convention on contracts for the International Sale of Goods, concluded in Vienna on 11th of April 1980, shall not be applicable. Any transport of Goods to or from a warehouse which may be part of the Services is subject to the provisions of the treaty governing the transport mode at matter.

18.6 Any dispute arising from the Purchase Order which the parties are unable to amicably resolve shall be submitted exclusively to the competent courts of Tokyo, Japan, without restricting any rights of appeal. Pending a dispute neither Party shall be excused from performing any of its obligations under the Agreement, except for obligations directly affected by the dispute.

18.7 Expiry, termination or cancellation of the Agreement shall not affect any right 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.

These Conditions shall be referred to as "DSM Nutrition Japan K.K. General Purchase Conditions for Goods and Services".