

DSM GENERAL PURCHASE CONDITIONS  
GOODS - JAPAN

These General Purchase Conditions apply to and form integral part of all requests for proposal, quotations and Purchase Orders for the supply of Goods by Supplier to Customer (all as defined hereinafter).

**1. DEFINITIONS**

a. Customer means the corporation or company which issues the Purchase Order or request for proposal. The words Buyer, Purchaser, Company, Owner or equivalents thereof, which may be used elsewhere in the Purchase Order, shall have the same meaning as Customer.

b. Goods means the goods, products, materials, liquids, equipment, design, services and/or all pertaining documents to be supplied as specified in the Purchase Order and any part or component thereof or incorporated therein.

c. Purchase Order means the order, call-off order, purchase order or equivalents thereof, issued by Customer and accepted by Supplier, including all specifications, drawings and documents explicitly listed or referred to therein.

d. Sub-supplier means any person, corporation or company, other than Customer, having a contract with Supplier for the supply of the Goods or a part of the Goods.

e. Supplier means the person, corporation or company identified in the Purchase Order as the Supplier of the Goods. The words Vendor, Seller, Contractor, Successful Bidder or equivalents thereof, which may be used elsewhere in the Purchase Order, shall have the same meaning as Supplier.

**2. PURCHASE ORDER**

a. Conclusion. The Purchase Order will be issued by Customer in writing, by fax, electronically, or otherwise, depending on the business practices of the Customer and will be binding to Parties at Supplier's acceptance in writing, by fax, electronically or otherwise pursuant to Customer's instruction. Any modifications or comments to the Purchase Order by Supplier are binding only, if accepted by Customer in writing. Performing of any part of a Purchase Order by Supplier will operate as Supplier'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 without compensation to or indemnification of Supplier, in case of any default by Supplier that has not been remedied within reasonable time after written notice of default to Supplier stating such reasonable time. After such termination Customer may return received Goods in whole or partly against repayment and retransfer of ownership therein to Supplier.

d. Termination for change of control. Customer may terminate the Purchase Order with immediate effect and without compensation or indemnification of Supplier in case of a change of control of Supplier. For the purpose of this clause "control" means the ability to direct the business affairs of the Supplier 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 Supplier. Upon such termination or suspension Customer and Supplier shall negotiate reasonable termination or suspension charges. Supplier 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 date of termination.

f. Termination/cancellation for insolvency. In the event Supplier 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 Goods pursuant to the Purchase Order, Customer may at its option and without any compensation to Supplier (i) cancel the Purchase Order or part thereof and return the received Goods in whole or partly against repayment and retransfer ownership therein to Supplier or (ii) terminate the Purchase Order forthwith, in all 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 constitute either party as the agent of the other or create a partnership or joint venture between the Parties.

**3. PRICES AND PAYMENT**

a. Prices. Supplier 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 inclusive (iii) of all taxes, duties, levies, fees, charges and (iv) of the costs of packaging and delivery in accordance with the specified delivery-condition(s).

b. Payment. Unless explicitly agreed otherwise Customer shall pay the amount invoiced by Supplier for Goods delivered 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.

**4. GOODS**

a. Specifications. Supplier warrants that the Goods will be unused, of good materials and workmanship, free from any and all defects and from any and all liens and encumbrances and will in all respects meet the specifications of the Purchase Order. Supplier warrants that the Goods will be and remain suitable for the purpose for which Customer wants to use it, as far as this purpose can be known to Supplier.

b. Regulations. Supplier warrants that the Goods are designed, manufactured, produced, assembled, composed, transported and delivered in compliance with all applicable national and/or international laws, standards and regulations, including but not limited to registration, export, safety, health and environmental regulations and industry standards. Supplier shall timely obtain any and all licenses, permits or other documents, which are required in the country of origin, of transit and of destination to perform the Purchase Order.

c. Instructions. Supplier shall properly and timely inform and instruct Customer in writing of any special handling, storage, transportation, treatment, use or maintenance of 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, functioning and lifetime of the Goods.

d. Equivalent. In case the expression 'or equivalent' is used

in a Purchase Order, Supplier shall require prior written approval of Customer for any 'equivalent' of Goods Supplier intends to supply.

e. Title. Supplier expressly warrants that it has good and marketable title to the Goods supplied under the Purchase Order. Supplier further warrants that the supply of the Goods and the simple use, sale or application thereof by Customer will not result in or give rise to any infringement or misappropriation of any patent, copyright, trademark, design, trade secret, proprietary data or license.

f. Transfer of ownership. The title of the Goods supplied under the Purchase Order shall pass to Customer upon delivery at the delivery point as stated in the Purchase Order. However, in case a Purchase Order requires advanced or progress payments by Customer, Supplier shall mark and identifiably store (i) any raw materials and semi-finished goods allocated for the manufacture/production of the Goods and (ii) the finished Good(s) itself and transfer of ownership thereof shall coincide with and to the extent of Customer's payments. The risk of such Goods shall nevertheless remain with Supplier until acceptance thereof.

**5. DELIVERY**

a. Conditions. Unless explicitly agreed otherwise, the Goods shall be delivered DDP to site of Customer.

b. Delivery time. The delivery time of the Goods specified in

the Purchase Order is of the essence and any delay shall be considered a material default.

c. Foreseeable delay. Supplier shall immediately notify Customer in writing of any foreseeable delays and submits its proposal indicating the measures Supplier shall take for its own account to avoid or make good the delay in order to maintain the agreed delivery time. Should Supplier fail to take foresaid measures or should Customer not approve of the measures, Customer reserves the right to require Supplier to forthwith implement, for Supplier's account, the measures Customer deems necessary for remedy.

d. Expediting. Supplier shall expedite manufacture /production and delivery of the Goods within its own organization and with its Sub-suppliers.

e. Packaging. Delivery of the Goods shall be effected in adequate packaging commensurate with the required mode of transportation, handling and storage of the Goods. The costs of packaging are included in the prices and Customer will not pay any costly and re-usable packaging, caution money, rental or cost of wear. Costly and re-usable packaging shall be taken back by Supplier.

**6. PERFORMANCE**

a. Inspection and testing.

1) In order to assure that the Goods will comply with the requirements of the Purchase Order, Supplier shall diligently and continuously control and test the quality of the materials and the operations during manufacture/production, storage and delivery of the Goods. In case of serial, continuous and batch manufacture/production of the Goods or parts thereof Supplier shall retain quality and production records, including those of its raw materials, and samples, for not less than two years.

2) Supplier shall ensure that Customer or its nominee has the opportunity to inspect the Goods at any time during and after the manufacture/production, construction, assembly or composition, either at Supplier's works or at the works of its Sub-supplier(s) or wherever else the Goods may be or the manufacture/production is carried out.

3) In order to allow Customer to attend tests on any materials or carry out inspection at agreed hold-points, Supplier shall inform Customer at least five working days in advance of the foreseen testing date. Supplier shall clearly indicate which materials, Goods or parts are ready for testing and/or inspection.

4) In addition to the above, Customer has the right to ask for additional tests. If Goods appear as a result of such tests not to be in compliance with the requirements of the Purchase Order Customer's costs of additional tests are for Supplier's account.

5) Unless agreed otherwise in writing, inspection and/or testing of the Goods may also take place after arrival of the Goods on the premises of Customer. Such inspection and/or testing may be additional to earlier inspections and/or tests at other locations.

6) Customer reserves the right to entrust the inspection and/or testing to third parties.

7) Supplier shall make available to Customer's inspector the measurement equipment required to perform the inspection and/or testing with sufficient accuracy.

8) Certificates shall be issued by qualified institutes.

9) Costs for re-testing and/or re-inspection due to any non-conformity appearing from earlier tests or inspections shall be for Supplier's account.

10) Performance or non-performance of any inspection, check or test does not relieve Supplier of any obligation, warranty or liability under the Purchase Order.

b. Acceptance. The Customer has the right, but not the obligation, to check the Goods on any visible defects and on any non-conformity with the agreed specifications. Payment, use or (re)sale of the Goods does not imply acceptance of the Goods in question by Customer. Final, provisional or partial acceptance of the Goods shall only appear from Customer's explicit and written acknowledgment thereof.

c. Non-compliance. If the Goods are not in conformity with the specifications, the Customer may, at no cost to Customer, choose between:

- having the non-conformity corrected by the Supplier;
- replacement of the Goods by the Supplier;
- replacement of the Goods by equivalent Goods, which are in conformity with the specifications;
- termination of the Purchase Order in whole or in part and return of the Goods already delivered against repayment,

all of this without prejudice to Customer's rights to claim damages and other compensation.

Customer shall further be 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), without prejudice to Customer's right to compensation for the losses and damages suffered by it as a result of Supplier's non-compliance.

Returning of rejected Goods shall be for the account and risk of Supplier. If requested, Supplier shall repair at no costs to Customer rejected Goods as far as possible or necessary and leave them in free use with Customer until Customer has received Goods in replacement, which meet the relevant requirements, and the rejected Goods can be returned.

d. Warranty. Supplier warrants the properties and the proper functioning of the Goods and shall repair or replace any and all Goods, which will not proper function or perform or get defective 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.

The warranty period shall be extended by any period(s) during which the Goods have been out of operation or use or their first operational use has been delayed as a result

of a defect to which this warranty applies.

During the warranty period Supplier shall, upon notification by Customer, repair for its own account and risk all existing or subsequently occurring defects of the Goods or replace the Goods, to Customer's satisfaction promptly upon receipt of the notification or at a point in time mutually agreed by the parties.

If Supplier fails to comply with its obligations set forth under this warranty, Customer is, upon formal notification to Supplier, entitled to carry out the repair work or replacement itself or to have it carried out by a third party for Supplier's account, without prejudice to Supplier's obligations under the warranty.

e. 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.

f. 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 Customer requirements. Supplier shall report any irregularity to this respect and the Parties will discuss possible remedies.

g. Pollution. The Supplier shall in the performance of the Purchase Order avoid pollution of the soil and the groundwater and limit air and noise pollution on the Customer site and/or the industrial area the Customer site is located on. The Supplier shall notify the Customer immediately of any incident occurring, no matter how started or caused. In case of an incident the Supplier shall immediately take all measures to clean up, isolate or prevent pollution resulting from such incident.

h. Local instructions. Supplier and its Sub-supplier shall observe all Customer's local instructions, site regulations and site access regulations.

#### 7. ASSIGNING AND SUBCONTRACTING

a. Assigning and Subcontracting. Supplier shall not assign

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or subcontract the Purchase Order, in whole or in part, to any third party without Customer's prior written consent. If Customer consents to any assignment or subcontract, such consent shall not relieve Supplier of or from any of the obligations or duties under the Purchase Order, and such consent shall be subject to Supplier'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 Supplier being required.

#### 8. GENERAL

a. General liability and indemnification. Supplier 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, its performance and the use and/or sale of Supplier's Goods by Indemnified Parties or any third party, except to the extent that such damage, loss, (personal) injury, expense, cost, fine, penalty or claim is caused by Customer's willful misconduct or gross negligence.

b. Insurance. The Supplier shall take out and maintain the insurance policies, including but not limited to general commercial, product, 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 Supplier will provide the insurance certificates evidencing Supplier's coverage and keep Customer informed of any changes. Supplier shall procure, that all Sub-suppliers will also meet the insurance requirements.

c. Customer's intellectual Property Rights. 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.

d. Ownership of developments. All intellectual property rights and know-how relating to Goods generated and/or developed by Supplier or its Sub-supplier 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. Supplier will procure that the same obligations will apply to each of its Sub-suppliers.

e. Confidentiality. All information, including but not limited to

specifications, drawings, sketches, data or other documentation, disclosed to or developed by the Supplier or its Sub-supplier in the context of the Purchase Order, (i) remains respectively becomes the property of Customer, (ii) will be treated by Supplier as confidential information, (iii) shall not be used by Supplier for any other purpose than for the performance of the Purchase Order, and (iv) will only be communicated and distributed to those of the Supplier's or Sub-supplier's employees, who need to be informed. At Customer's request Supplier shall sign a separate agreement on confidentiality and non-use.

f. External publication. Supplier is not entitled to refer to (part of) the Purchase Order in external communication or publication without prior written consent of Customer.

g. 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 Supplier 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 Supplier or Sub-suppliers 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.

h. 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).

i. 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 Japan with the exception of its conflict of laws principles. The United Nations Convention on contracts for the International Sale of Goods, concluded at Vienna on 11th of April 1980, shall not be applicable to the Purchase Order.

b. Disputes. Any dispute arising from the Purchase Order shall in first instance be submitted to the competent court at Tokyo, Japan. 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, Goods nlen070801 Japan"