



## General conditions governing supply of R&D services by DSM Materials Science Center B.V. ("DSM")

### Article 1 - Agreement

**1.1** These General Terms and Conditions ("Conditions") govern and apply to the sale, performance and delivery of research, analysis, characterization, engineering and/or consultancy services (in the following referred to as: "the Work") from or on behalf of DSM to customer ("Client").

**1.2** These Conditions supersede any and all prior oral and written quotations, communications, agreements and understandings of the parties in respect of the sale and performance of the Work and shall apply in preference to and supersede any and all terms and conditions of any order placed by Client and any other terms and conditions submitted by Client, regardless of the time at which they may have been brought to DSM's attention. Failure of DSM to object to terms and conditions set by Client shall in no event be construed as an acceptance of any terms and conditions of Client. Neither DSM's commencement of performance nor DSM's delivery shall be deemed or constituted as acceptance of any of Client's terms and conditions. Any communication or conduct of Client which confirms an agreement for the performance of the Work by DSM, as well as acceptance by Client of any delivery of results of the Work from DSM or any payment of an invoice by Client shall constitute an unqualified acceptance by Client of these Conditions.

**1.3** These Conditions may only be varied or waived by a duly executed written agreement between DSM and Client.

**1.4** By contracting on the basis of these Conditions, Client agrees to the applicability thereof in respect of future dealings as described in paragraph 1.1, even if this is not expressly stated. DSM shall be entitled to update and/or amend these Conditions regularly and by and as of the moment of notifying Client of such update or amendment or by sending Client the updated or amended Conditions, these revised Conditions shall apply to all dealings between DSM and Client.

**1.5** DSM and Client agree that valid, enforceable and binding obligations may result from electronic means of communication. Any electronic communication between DSM and Client shall be considered to be a "writing" and/or "in writing".

### Article 2 - Quotations / Order

**2.1** Quotations, made by DSM in whatever form, are not binding upon DSM and merely constitute an invitation to Client to place an order. All quotations issued by DSM are revocable and subject to change without notice. Orders are not binding until accepted by DSM in writing ("DSM's Confirmation" or "Agreement"). DSM is always entitled to refuse an order without indication of its reasons.

**2.2** Price quotations are based on an estimated or projected scope of the Work and are subject to change in the event that actual scope is different.

**2.3** Oral statements and agreements made by DSM's employees, officers, representatives and/or agents are not binding upon DSM unless and only to the extent that such oral statements are confirmed or made in writing by duly authorized representative(s) of DSM.

### Article 3 - Samples

**3.1** If the Client provides DSM with any samples that have to be examined or any other materials in order to enable DSM to perform the Work, the Client warrants that these are carefully selected and are representative and are correctly provided with code, brand and product name indications. If samples have hazardous properties, the Client shall clearly communicate these

in writing to DSM and shall mark the samples as hazardous.

**3.2** Client shall timely provide DSM with all necessary samples and other materials as required for the Work in order to enable DSM to perform the Work within the agreed timelines, if any. Client shall deliver all samples and other materials DDP (at the Incoterms 2010).

**3.3** Unless agreed otherwise, samples, materials or, as the case may be, what is left thereof, which the Client has made available to DSM in connection with the execution of the Agreement, shall immediately be picked up at DSM by the Client upon completion of the Work and the Client shall give DSM a confirmation of receipt for this. If the Client fails to pick up the (remnants of the) samples within two (2) weeks after finalizing the Work, DSM shall have the right to store, to destroy or dispose otherwise of these for risk and account of the Client. Transport and storage of the samples and other materials and the remnants thereof shall be for risk and account of the Client.

**3.4** Client warrants that the samples or any other materials provided to DSM will not result in or give rise to any infringement or misappropriation of any intellectual property right of a third party.

### Article 4 - Results of the Work

**4.1** Without DSM's prior approval in writing the Client shall not be entitled to publish or cause to be published, in whole or in part, any reports on the Work, or to allow any such reports to be inspected by third parties or to use these in support of or defense against claims brought by or against the Client. The preceding part of this clause 4.1 is not applicable for analytical services. The Client shall not use the name of DSM in connection with the Work. If DSM does give its approval as meant in the preceding sentence, such approval shall entail the condition, unless agreed in writing to the contrary that the Client shall not use the results of the Work in such a way as detracts from or conflicts with the correctness or the tenor of those results.

**4.2** The IP rights in the results of the Work, provided that such results have been fully ordered and financed by Client, shall upon full and final payment of the invoices be transferred to the Client, except for prior existing IP or know how used for the Work, applied DSM working methods or technologies, and any improvements thereto (jointly referred to as "DSM IP"). The Client is hereby granted a non-exclusive, worldwide, license under the DSM IP, to the extent needed for the use of the results of the Work, solely for its current business activities.

### Article 5 - Quality and storage of results

**5.1** DSM is working according to a management system based on ISO 9001:2015. To continuously improve the work process of DSM, Client surveys and other means of quality assessment are used. Client expressly agrees on such use.

**5.2** It is the sole responsibility of the Client to store the results of the Work for later use. DSM will use commercially reasonable efforts to store the raw data of the Work for a period of 1 (one) year after it reported the results of the Work to the Client. However, DSM cannot be held responsible for the storage of the results of the Work and raw data after reporting the results of the Work to the Client.

### Article 6 - Price and payment

**6.1** Prices and currencies of DSM's Work are as set out in DSM's Confirmation. Unless agreed otherwise, DSM's prices do not include Value Added Tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Work or the delivery thereof ("Taxes"). The amount of any Taxes levied in connection with the Work to the Client shall be

for Client's account and shall be added to each invoice or separately invoiced by DSM to the Client. If DSM grants a discount, this discount only relates to the Work specifically mentioned in DSM's Confirmation.

**6.2** Unless the prices have been indicated as firm by DSM in DSM's Confirmation, DSM is entitled to increase the price of the Work still to be delivered, if the cost price determining factors, have been subject of an increase. These factors include but are not limited to: raw and auxiliary materials, energy, products and services obtained by DSM from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. DSM shall notify the Client of such increase.

**6.3** Unless expressly stated otherwise in DSM's Confirmation, payment shall be made on the basis of net cash, to be received by DSM within thirty (30) days following the date of DSM's invoice for the Work by means of transfer into the bank account mentioned on the invoice. All payments shall be made without any deduction and free of set-off or counterclaim.

**6.4** With regard to payment of the price for the Work, time is of the essence. DSM may, without prejudice to any other rights of DSM, charge interest on any overdue payment at the higher rate of either twelve percent (12%) per annum or one and a half times the prevailing rate under applicable law per annum, but not to exceed the maximum interest rate permitted under applicable law, from the due date computed on a daily basis until all amounts outstanding are paid in full. All costs and expenses incurred by DSM with respect to collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, court costs and other expenses of litigation) shall be for the Client's account.

**6.5** Every payment by the Client under the Agreement shall in the first place serve to pay the judicial and extra-judicial costs and the interest owed by it and afterwards shall be deducted from the eldest outstanding claim regardless of contrary advice from Client.

**6.6** Any complaint by the Client with respect to the invoice must be notified to DSM within eight (8) days after the date of invoice. Thereafter the Client shall be deemed to have approved the invoice.

**6.7** DSM retains title to all goods and results of the Work until the moment that the amount(s) which the Client owes to DSM in relation with the Work has/have been fully paid.

### Article 7 - Contracting out

DSM has the right to contract work out to affiliates as defined in Article 2:24a Dutch Civil Code ("Affiliate"). Affiliates are held to all stipulations of the Agreement. The Client's approval shall be required for the involvement of third parties not being Affiliates in the performance of an assignment if and in so far such involvement of any third party entails confidentiality risks. The liability stipulations laid down in Article 8 below shall apply in relation with Work carried out by such Affiliates and third parties and shall be applicable mutatis mutandis to such Affiliates and third parties.

### Article 8 - Limitation of Liability

**8.1** DSM shall use commercially reasonable efforts to perform the Work but does not guarantee that any result envisaged by the Client will be achieved. DSM furthermore disclaims any warranties, representations, conditions or other terms, express, implied, statutory, contractually or otherwise, including, without limitation, any warranty of merchantability, suitability or fitness for



any purpose, or absence of infringement of any claim in the results of the Work.

**8.2** The Client shall provide DSM with all available relevant information which may be useful in the performance of this Agreement. The Client shall be liable and indemnify DSM and any of its Affiliates, employees or third parties called in by DSM ("Indemnified Parties") against any and all actual or contingent damage, loss, costs and claims suffered by or brought against Indemnified Parties caused by incorrect or incomplete information provided to DSM. If DSM presents documents to the Client for approval and comment, it shall be the Client's duty to check these for any errors and inaccuracies, also with respect to the technology covered.

**8.3** DSM shall only be liable for direct damage suffered by the Client as a result of imputable non-performance or delayed performance on the part of DSM or by employees, Affiliates or third parties called in by DSM, but only up to a maximum equal to the amount that the Client owes to DSM for the performance of the relevant Work. This restriction of liability does not apply in the case of damage which is attributable to an intentional act or omission or gross negligence of DSM. If the performance of an Agreement takes more than one (1) year, DSM's liability shall be limited to the (average) yearly amount that the Client owed to DSM in the past year(s). DSM shall in no case be liable for indirect or consequential damage.

**8.4** The Client must utilize and solely rely on its own expertise, know-how and judgment in relation to (the results of) the Work and the Client's Use thereof and in the Client's application of any information obtained from the part of DSM for the purposes intended by the Client. Consultation provided by DSM shall not give rise to any additional obligations. Details and information provided with regard to the suitability and use of (the results of) the Work shall not be binding and DSM does not assume any liability based on such consultations. The Client shall indemnify and hold Indemnified Parties harmless from and against any and all damage, losses, costs, expenses, claims, demands and liabilities arising out of or in connection with (the results of) the Work, the Client's use thereof and/or the Client's use or application of any information disclosed or provided by or on behalf of DSM.

**8.5** Claims of the Client with respect to (the results of) the Work against DSM which arise from or are in any other way connected with the Agreement or (performance of) the Work done by DSM or by persons or third parties called in by DSM in the performance thereof shall become completely void if they have not been notified explicitly and in writing to DSM within three (3) months of the date of the final invoice or three (3) months from the day on which the Client has or should have had knowledge of DSM's (supposed) failure, whatever is sooner.

#### **Article 9 - Suspension and termination**

**9.1** If (a) the Client is in default of performance of its obligations towards DSM, or (b) if DSM has reasonable doubts with respect to the Client's performance of its obligations to DSM and the Client fails to provide to DSM adequate assurance (such as by means of ongoing credit approval) of the Client's performance before the date of scheduled delivery and in any case within thirty (30) days of DSM's demand for such assurance; or if the Client becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (otherwise than for the purposes of a reconstruction or amalgamation) or any bankruptcy proceeding shall be instituted by or against the Client or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of the Client or if the Client enters into a deed of arrangement or makes any assignment for the benefit of its creditors, then, without prejudice to any other rights of DSM, DSM may by notice in writing forthwith suspend its performance or terminate DSM's Confirmation for outstanding performance of Work unless the Client makes such payment for the Work on a cash in advance basis or provides adequate assurance of such payment for the

Work to DSM, without any intervention of courts being required and without liability for DSM of whatsoever kind arising out of or in connection with such suspension or termination.

**9.2** In any such event pursuant to Article 9.1 all outstanding claims of DSM towards the Client shall become due and payable instantly in proportion to the quantity of Work performed.

#### **Article 10 - Confidentiality**

The Client shall observe secrecy in respect of all information which may come to his knowledge in respect of DSM's business or business operation, working methods and DSM knowledge.

#### **Article 11 - Safety**

**11.1** If DSM employees or persons (including third parties) called in by DSM carry out the Work in whole or in part on sites designated by the Client, the Client shall see to it that these DSM employees and persons are informed, clearly and on time, about the safety rules to be respected on those sites. The DSM employees and persons called in by DSM shall comply with such rules, if and in so far as these are standard and reasonable.

**11.2** If DSM's rules in respect of personal safety go beyond those of the Client or if the DSM employees or persons called in by DSM are of the opinion that enhanced safety standards should be applied on the spot, they shall be entitled to act in accordance with the DSM rules or, as the case may be, said enhanced safety standards. If in the opinion of any such DSM employee or third party the situation is such that the Work cannot be carried out in a safe manner and the Client is unable or not prepared to take adequate measures to remedy this situation, DSM shall be entitled to suspend or terminate the Agreement in whole or in part, without the Client having any right on that ground to claim indemnification from DSM.

#### **Article 12 - Hiring of personnel**

For a period of at least two years counting from the date of termination of the Work by DSM under the Agreement, the Client shall not hire any of the DSM personnel who have been involved in performance of the Work, unless DSM has authorized the Client in writing to do so.

#### **Article 13 - Force majeure**

**13.1** Neither party shall be liable in any way for any damage, loss, cost or expense arising out of or in connection with any delay, restriction, interference or failure in performing any obligation towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, laws, statutes, ordinances, regulations, legislative measures, acts of governments or other administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, strike, lockout, slowdown, labour disturbances, difficulty in obtaining necessary labour or raw materials, lack of or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown or shortage of utilities, delay in delivery or defects in goods and/or services supplied by suppliers or subcontractors ("Force Majeure").

**13.2** Upon the occurrence of any event of Force Majeure, the party suffering thereby shall promptly inform the other party by written notice thereof specifying the cause of the event and how it will affect its performance of its obligations under DSM's Confirmation. In the event of any delay, the obligation to deliver shall be suspended for a period equal to the time loss by reason of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period extending to more than two (2) months after the agreed delivery date, either Party is entitled to cancel the affected part of DSM's Confirmation without any liability to the other Party.

#### **Article 14 - Setting off**

DSM, which in this connection shall be understood to include all Groups associated with DSM within the DSM Group, has the right to set off all amounts owed to DSM by the Client, in this connection understood to include all companies associated with the Client within a group, against amounts owed by DSM to the Client.

#### **Article 15 - Waiver**

Failure by DSM to enforce at any time any provision of these Conditions shall not be construed as a waiver of DSM's right to act or to enforce any such term or condition and DSM's rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by DSM of any breach of the Client's obligations shall constitute a waiver of any other prior or subsequent breach.

#### **Article 16 - Severability**

In the event that any provision of these Conditions shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity or enforceability of the remaining provisions between the parties and shall be severed therefrom. Parties agree to replace the invalid or unenforceable provision(s) by a provision of similar import, which reflects as closely as possible the intent of the original clause.

#### **Article 17 - Applicable Law / Competent Court**

**17.1** These Conditions as well as the Agreement shall exclusively be governed by the laws of the Netherlands, excluding its conflicts of laws principles.

**17.2** Any disputes which may arise in connection with the present Agreement shall exclusively be submitted by the parties to the competent District Court of Limburg, without prejudice to the right to take to appeal a judgment pronounced by such judge.

*Only the English version of these Conditions shall be authentic and shall prevail, in case of inconsistency, over any translation of these Conditions in another language.*

DSM Materials Science Center B.V.  
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