



DS SMITH NORTH AMERICA PACKAGING AND PAPER PURCHASING TERMS AND CONDITIONS

1. INTRODUCTION

a) **"Buyer"** is the DS Smith entity as specified in the Purchase Order; **"Seller"** is the person, company, or other entity from whom Buyer is purchasing goods or services as specified in the Purchase Order; **"Purchase Order"** is an order for goods or services that Buyer issues to Seller and which is subject to these Standard Purchase Terms and Conditions (**"Terms"**);.

b) The Purchase Order shall include:

- Specifications (as defined herein);
- Model number and Description;
- Where applicable, a sample reference of the goods or services;
- Price; and
- Delivery or collection details.

c) These Terms together with the Purchase Order is the whole of the agreement between the Buyer and Seller for the purchase and supply of the goods or services (the **"Agreement"**) and supersedes any previous agreement the parties may have had regarding the goods or services. Where the Purchase Order incorporates Seller's proposal or quotation, only those terms that describe the goods or services, such as the Specifications, shall apply. These Terms shall apply to and govern any sale between Buyer and Seller to the exclusion of all other terms and conditions which may be contained in any proposal, quotation, catalogue, price list, order, acknowledgement or any other document (including, without limitation, any terms of conditions which Seller purports to apply under any acknowledgement, confirmation of order or other correspondence or documentation). If there is any inconsistency between the Terms and the Purchase Order, the terms of the Purchase Order shall control.

d) The Purchase Order is an offer from Buyer to purchase goods or services from Seller in accordance with these Terms. Seller will be deemed to accept the offer on the earlier of (i) Seller signing these Terms; (ii) Seller issuing a written acceptance of the Purchase Order or (iii) any act of Seller consistent with fulfilling the Purchase Order.

e) Except for a cancellation, suspension or variation as permitted in Section 6 of these Terms, no change to the Agreement is valid unless it is in writing and is either signed or specifically agreed to in writing by Buyer's authorized representative.

f) Seller must supply the goods or services itself unless Buyer has agreed in writing to accept them from someone else.

g) Buyer may ask Seller to supply the goods or services to any other company within the group of companies DS Smith belongs to and to deal with that other company as if it is Buyer.

2. PRICE AND PAYMENT

a) The price is a fixed price apart from applicable taxes imposed on the supply of the goods or services.

b) Unless otherwise stated in the Purchase Order, Seller shall not invoice Buyer until Seller has completely fulfilled the Purchase Order. Buyer shall pay Seller within 90 days of the date stated on Seller's correctly submitted invoice. Buyer reserves the right to withhold payment or set off any amounts owed if Buyer has a claim against Seller or Seller failed to provide the information required in accordance with Section 2(c).

c) Seller shall send all invoices to the address Buyer stated on the Purchase Order but not before the delivery

date. Seller shall include Buyer's order number reference as stated on the Purchase Order and state the place to which the goods have been delivered or place at which the services were performed and a full description of goods or services provided.

d) Prepayment Risk. Where Buyer pays in excess of \$100,000.00 prior to delivery of the Goods to Buyer's site, Seller shall:

- (1) grant Buyer a security interest in any and all Goods purchased by Buyer, together with all uncompleted or unassembled parts and components thereof in the possession of Seller; or
- (2) provide Buyer a bank guarantee letter; or
- (3) issue a performance bond in favor of Buyer.

If Seller grants Buyer a security interest, Seller shall execute and deliver such financing statements and other documents as may be requested by Buyer to perfect Buyer's security interest in the Goods and related parts or components. Seller also authorizes Buyer to file all financing statements necessary to perfect the security interest granted without Seller's signature. Additionally, Seller shall not attempt to grant a security interest in the Goods to any person and will keep the Goods free from any and all liens, encumbrances and the like. Seller shall not transfer or dispose of the Goods except as provided in this Agreement nor permit any lien, encumbrance, or security interest upon the Goods except that of Buyer. Seller will immediately notify Buyer if the Goods are levied upon or becomes liable to seizure and will take all steps reasonably necessary to preserve Buyer's interest in the Equipment.

3. WARRANTY AND DEFECTS

a) Seller warrants to Buyer that Seller's goods and services shall be:

- in conformity with the design, performance, technical, functional and feature requirements and operating and performance standards, including all descriptions and functions set forth in any written materials (**"Specifications"**)
- in compliance with any and all applicable federal, state, local, and foreign laws, statutes, ordinances, licenses, and regulations including the Occupational Safety and Health Act of 1970 (**"Applicable Law"**);
- for any electronic parts provided by Seller, functional as part of Buyer's system and shall be compatible with other electronic or software components in the system regardless of whether Seller provided all the components of such system;
- free of any third party claims to title or ownership and does not violate any third party's contract or property rights;
- not infringing of any patent, trademark, trade name, copyright, trade secret, or other similar claim of right;
- fit for Buyer's intended use;
- merchantable and free from any defect in material or workmanship; and
- provided with all reasonable care and skill.

b) Seller's warranty will last for two (2) years from Seller's provision of goods or services to Buyer (**"Warranty Period"**).

c) If Buyer becomes aware of any defects in goods or services supplied during the Warranty Period, then Buyer may (at its option, but at Seller's expense):

- reject them and require Seller to replace them (if goods)



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- or re-perform them (if services);
 - accept them but require Seller to pay an appropriate refund;
 - require Seller to carry out remedial work; or
 - reject them, repudiate the Agreement and claim from Seller any loss Buyer suffers as a result.
- d) If Buyer requires Seller to perform remedial warranty work, such work will be provided as soon as reasonably possible after notification to Seller that a good or service is not functioning properly. When remedial work has commenced, Seller shall continue its efforts until such time as the good or service is made to function properly.
- e) Seller shall warrant any and all replacement goods, re-performed services or remedial warranty work from the date Seller provides such goods, services or work for an additional Warranty Period.
- f) These provisions are in addition to any other rights or remedies Buyer may have.

4. TIME AND DELIVERY

- a) Time is of the essence of this Agreement.
- b) If the delay is more than five (5) business days, Buyer may treat that failure as a material breach of Seller and terminate the Agreement immediately without liability. In that event, Buyer will have no further obligations to Seller but Seller would be liable to cover any loss to Buyer.
- c) If Buyer does not specify a delivery date in the Purchase Order, Seller shall deliver the goods or perform the services in a reasonable time from the date of the Purchase Order.
- d) Unless otherwise stated in the Purchase Order, Seller shall deliver all goods INCOTERMS 2010 DDP at the location stated in the Purchase Order.

5. INSPECTION

Seller shall give Buyer access (on reasonable notice) to any premises where goods are being manufactured or stored for Buyer for inspection or any other reasonable purpose under this Agreement.

6. TERMINATION AND VARIATION

- a) Buyer may terminate this Agreement immediately on written notice, and without liability or penalty to Seller, if:
- (1) Seller is in breach of an obligation, promise or duty and the breach cannot be cured;
 - (2) Seller does not cure the breach within seven days of receiving notice from Buyer to do so; or Buyer has given Seller notice of a breach of the same obligation at least once before;
 - (3) Buyer reasonably believes that Seller will not be able to pay its debts as they become due or that Seller will be unable to fulfill its obligations under this Agreement;
 - (4) if, in Buyer's reasonable opinion, Seller has breached any provision of the DS Smith Global Supplier Standard ("GSS");
 - (5) if, in Buyer's reasonable opinion, Seller has breached Section 8 (Compliance); or
 - (6) if a disaster materially affects either party's business and it lasts longer than ten (10) consecutive days, or more than thirty (30) in a twelve (12) month period. With respect to Section 6(a)(6), if the disaster has affected Buyer, Seller is entitled to recover its costs in accordance with Section 6(b); but if the disaster has affected Seller, Buyer is entitled to reimbursement of all monies paid to Buyer prior to the termination. The right to terminate set forth here in Section 6(a) is in addition to any other rights or remedies Buyer may have for breach of the Agreement.
- b) Buyer may terminate this Agreement at any time before Seller supplies the goods or services. If Buyer elects to

terminate the Agreement for reasons other than Seller's breach, Buyer agrees to pay Seller the actual and reasonable costs it incurred in fulfilling the Purchase Order prior to the date of termination.

c) If Buyer asks Seller to vary the Purchase Order and agrees with Seller as to an appropriate variation in the price or time for delivery ("Change Order"), Seller shall supply the goods or services in accordance with the Change Order. No variation in the goods or services shall be permitted unless it is in accordance with a signed Change Order.

d) Seller will have no other recourse to Buyer in the event of Buyer's termination or variation. On termination, Buyer has no further liabilities to Seller under the Agreement.

7. LIABILITY AND INSURANCE

a) The parties agree to indemnify, defend and hold each other harmless for all liabilities, claims, demands, damages, costs, losses, fees and expenses (including, without limitation, reasonable attorneys' fees and costs) ("Losses") to the extent that those Losses were caused by the indemnifying party's negligence or misconduct, the termination of the Agreement under Section 6(a), or failure to comply with Sections 8 or 11(b) herein.

b) Seller shall maintain adequate insurance policies against all risks Seller incurs under this Agreement and provide evidence of those policies at Buyer's request, which shall include general liability coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate and statutorily required limits of workers' compensation. Seller hereby releases and waives any rights to recover against Buyer for claims of injury to or death of its employees relating to or resulting from the performance of this Agreement, including claims for contribution, indemnity or reimbursement of worker's compensation benefits where permitted by law. Seller's agrees that its insurers shall waive all rights of subrogation.

8. COMPLIANCE

a) In addition to Seller's obligations to comply with applicable laws and regulations, Seller shall and shall procure that its officers and employees shall comply with all anti-corruption laws applicable to Seller or Buyer (and for this purpose, the UK Bribery Act 2010 shall be deemed to apply);

b) If Seller becomes aware of any breach or suspected breach of this Section 8, Seller shall immediately notify Buyer and Buyer may immediately suspend operation of the Agreement by giving written notice to Seller, pending an investigation into the breach or suspected breach. Seller shall assist Buyer in any such investigation, including by providing Buyer with access to Seller's personnel, documents and systems.

9. GOVERNING LAW AND JURISDICTION

a) The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including any non-contractual disputes or claims) will be governed by and construed with the laws of the State of Georgia, United States.

b) Subject to Section 10(c) below, Buyer and Seller irrevocably agree and acknowledge that the state courts of Forsyth County, State of Georgia, United States are to have exclusive jurisdiction for the purpose of hearing and determining any suit, action or proceedings and/or to settle any disputes (including any non-contractual



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disputes or claims) arising out of or in any way relating to the Agreement or its formation or validity ("Proceeding") and for the purpose of enforcement of any judgment against its property or assets. Seller shall not claim, and expressly waives any right to, litigating any Proceeding in another jurisdiction.

c) Nothing in this Section 10 shall (or shall be construed so as to) limit the right of Buyer to bring a Proceeding against Seller in the courts of any other jurisdiction in which Seller has assets to enforce a judgment against it.

10. GENERAL

a) If any license or consent of any government or other authority is required for the supply, carriage, storage or use of the goods or services supplied by Seller to Buyer, Seller shall obtain the same at Seller's own expense and, if requested by Buyer, produce evidence of the same to Buyer.

b) In providing the supply at Buyer's premises, Seller shall (and ensure that its personnel) comply with all health and safety rules and regulations and security and other site operational requirements that apply at Buyer's premises (which are available upon Seller's request). Seller shall also take all reasonable precautions to protect Seller's employees and Buyer's employees while performing the services or delivering the goods.

c) Seller shall, at its own expense, provide all equipment and materials to deliver the goods or perform the services unless otherwise agreed in writing.

d) No benefits are to be conferred on any third party by this Agreement and a person who is not a party to the Agreement shall have not have the right to enforce any of its terms.

e) Any notice given under the Agreement shall be in writing and served by delivering it personally or sending it by a reputable overnight courier service (such as Federal Express or United Parcel Service) with the charges prepaid to the registered address of Buyer or Seller (as applicable). Any such notice shall be deemed to have been received:

- if delivered personally, at the time of delivery; and
- in the case of overnight courier, one business day after being sent,

provided, that if deemed receipt occurs before 9am, on a business day the notice will be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a business day, or on a day which is not a business day, the notice will be deemed to have been received at 9am on the next business day.

f) Each provision of the Agreement is severable and distinct from the others. If any part of the Agreement is or at any time becomes invalid or unenforceable under any enactment or rule of law in any jurisdiction that does not affect the remainder of the Agreement, the other provisions of this Agreement will continue in full force and effect. If any provision of the Agreement is so found to be invalid, illegal or unenforceable, but would be valid, legal or enforceable if some part of the provision were deleted or amended, that provision will apply with whatever modification(s) as are necessary to make it valid, legal and enforceable. Invalidity or unenforceability in one jurisdiction does not affect validity or enforceability in another.

g) Buyer owns all intellectual property created by any services performed by Seller. With respect to the sale of

any good, Seller grants to Buyer a non-exclusive, royalty-free license to use Seller's confidential and proprietary information for the purpose of the installation, operation, maintenance and repair of the good(s) that are the subject of this Agreement. Where necessary, Seller shall assign or procure the assignment of all such rights (including moral rights) to Buyer.

h) The Agreement and its subject matter are confidential and must not be disclosed to any person without Buyer's written permission.

i) With the exception of notice means specified in Section 10(e), any reference in the Agreement to communications being written or in writing includes electronic forms of communication such as e-mail. E-mail communications will be deemed delivered when they are sent, except in the event that the sender receives a notification that the e-mail failed to deliver for any reason.

j) Provisions relating to warranties, indemnification, intellectual property, confidentiality and obligations on termination survive termination or expiration of this Agreement.

k) Seller shall not assign this Agreement, or any rights or obligations provided under this Agreement, without Buyer's express prior written consent (which shall not be unreasonably withheld).

l) If Seller possesses goods that belong to Buyer, then Seller must clearly label them as Buyer's property, keep them separate from goods belonging to Seller or others and keep them properly stored and insured.

m) The failure to exercise or enforce any right or provision of these Terms shall not constitute a waiver of that right or provision.

n) Neither the Purchase Order nor these Terms intend to create an agency, joint venture, partnership or similar relationship between the parties. Each party will act solely as an independent contractor and neither party will have the right to act for or bind the other party.

o) Seller shall at all times fully comply with the GSS which can be found at [this webpage](#).

Accepted by Seller:

Signature

By: _____

Its: _____