

1 APPLICATION

- 1.1 These general terms and conditions of supply and payment ("**Terms and Conditions**") constitute an integral part of each contract ("**Contract**") concluded between DS Smith Packaging Denmark A/S, Corp. Reg. No DK-21153702, ("**DS Smith**", "**we**" or "**us**") and the company ordering or purchasing goods or services ("**Products**") from DS Smith, or assuming liability for the payment of such goods or services ("**Customer**" or "**you**"). The parties to the Contract are referred to separately as "**Party**", and jointly as "**Parties**". The Terms and Conditions apply to all goods and services provided by DS Smith.
- 1.2 The Contract consists of offers or quotation, orders and order confirmations, the prices agreed from time to time between the Parties in writing, these Terms and Conditions and other documents on which the Parties intend to base DS Smith's provision of Products to the Customer and for which the Customer undertakes to pay DS Smith.
- 1.3 The latest version of the Terms and Conditions is available on DS Smith's website: <https://www.dssmith.com/da/om-os/leverings-og-betalingsbetingelser>

2 DELIVERY

- 2.1 Delivery is made DAP (Incoterms 2020) if the Products are being delivered to you by DS Smith and otherwise EXW (Incoterms 2020), in which case the transportation is at the risk of the Customer, who also bears the costs of freight and insurance ("**Delivery**").
- 2.2 Upon receipt of the goods the Customer shall check the goods delivered for visible defects, that the number of pallets and the Products matches that given on the packaging slip and that the quantities delivered correspond to those stated for the Products and acknowledge receipt of the Products on the carrier's delivery note.
- 2.3 The delivery is deemed to be completed in accordance with the Contract if the quantity supplied does not exceed or fall short of the quantity ordered by over 10 per cent.

3 LATE DELIVERY

- 3.1 All delivery times given by DS Smith are DS Smith's closest estimation of the calculated delivery date. If DS Smith has reason to believe that the delivery cannot be made by the calculated delivery date, DS Smith shall advise the Customer of this and when the delivery is expected to be made.
- 3.2 If the delivery is delayed for any reason that is attributable to the Customer, DS Smith will be entitled to adequate compensation for the costs and losses incurred by the delay.
- 3.3 DS Smith shall not be liable for any delay in delivery of the Products, or failure to deliver, that is caused by: (i) an event, circumstance or cause beyond our reasonable control; (ii) a shortage of raw materials; or (iii) the Customer's failure to provide adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 3.4 If the delivery is delayed for any reason that is attributable to DS Smith, the Customer will only be entitled to cancel the order for the Products and, subject to Point 8 below, claim compensation for direct damages caused by the delay if (i) it is quite clear from the Contract or other circumstance that the delivery is of no use to the Customer after a certain point in time and (ii) it is obvious that the delivery cannot be completed before this time, or (iii) the Customer has otherwise made it clear to DS Smith that the delivery must be made by this time at the latest.
- 3.5 If the Customer cancels the order, the Customer is liable for all of the costs incurred up until the point of cancellation which takes into account all work we have done under the Contract, all costs we have incurred and any costs we are committed to pay, and any loss of profit in respect of the cancelled order (or part thereof).

4 LIABILITY FOR DEFECTS

- 4.1 Defects in the Products are only recognized by DS Smith if they constitute more than minor deviations from the packaging specification ("**Defective Products**"). DS Smith cannot be held liable, for example, for defects arising out of non-compliance with care advice or instructions by the Customer or a third party, or defects caused by incorrect handling. Less serious deviations in the performance of the (material) packaging or minor deviations in print cannot be deemed as constituting defects in the Products.
- 4.2 Products deviating from what is stated about DS Smith's liability in Point 4.1 constitute Defective Products. DS Smith's liability for Defective Products is limited to defects that were present at the time of delivery to the Customer and that are identified and claimed within 10 days after delivery.
- 4.3 If the Products are defective in accordance with Point 4.1 above and the Customer is entitled to make a claim for the defect, DS Smith undertakes, at its own discretion, to supply a replacement product or to credit the Customer for the Defective Products. The Customer is not entitled to cancel the order or the Contract on the grounds of Defective Products.

5 PRICES AND TAX

- 5.1 Costs incurred as a result of the Customer changing his address or location for delivery (if applicable), providing incomplete documentation or changing the same shall be borne by the Customer.
- 5.2 Prices on Products and services are stated in the offer or quotation ("**Prices**").
- 5.3 All Prices are given exclusive of value added tax ("**VAT**") and other taxes and levies.
- 5.4 You acknowledge and agree that we may vary the Prices set out in the order confirmation to reflect changes in the cost of materials or other costs we incur to make a delivery. DS Smith has an obligation to notify such changes in Prices no later than 14 days before the estimated delivery date.
- 5.5 Any VAT due on the supply of Products and services will be computed on the Price and, depending on the related applicable payment liability rules, either be invoiced by DS Smith in addition to the Price, or be self-assessed by the Customer per the reverse charge mechanism.
- 5.6 DS Smith must issue invoices complying with applicable legislation to ensure that the Customer will be able to deduct/recover the VAT charged on the invoice by DS Smith.
- 5.7 If any such compulsory contents are missing, DS Smith must issue corrective invoices within one month following the Customer's written request.
- 5.8 In the event that VAT is charged in error, a valid VAT credit note or amending invoice must be issued, and the VAT amount will be adjusted accordingly. If VAT was not charged but subsequently it is found that it should have been charged or VAT is assessed by the relevant tax authority as being due on the Price, the VAT due upon that Price will be paid upon presentation of a valid VAT invoice.
- 5.9 If the Customer is arranging or responsible for the transport of Products cross border then, prior to dispatch of the Products, the Customer must provide DS Smith with satisfactory evidence of transport in order to support the exemption from VAT of the sale by DS Smith (if applicable).
- 5.10 If a deduction or withholding for or on account of tax is required by law to be made by the Customer, the amount of payment due from the Customer to DS Smith must be equal to the payment which would have been due if no such tax deduction or withholding had been required.
- 5.11 DS Smith imposes a road fee per pallet on all orders. The road fee is 16.48DKK per pallet place.

6 PAYMENT

- 6.1 Payment terms are 20 days from the invoice date. Payment shall be made in the currency specified on the invoice. Unless otherwise agreed in writing, the currency shall be the currency of the DS Smith country of supply.
 - 6.2 When DS Smith is registered in Denmark, late payment will incur an annual late payment interest of 8 per cent on the overdue sum from the due date until the date of payment. In the event of late payment DS Smith is also entitled to discontinue Deliveries to the Customer and demand that the Customer provides any future amounts upfront or demand acceptable security for any payment, before continuing with the Delivery.
 - 6.3 If the Customer fails to pay on time, DS Smith has the right to send payment reminders and charge for such reminders without prior notification, and to pass the invoice to a debt collection agency and impose a statutory fee for such action.
 - 6.4 If the Customer wishes to contest an invoice, this must be done without delay, at the latest 10 days after receipt of the invoice. If the Customer does not contest the invoice within the prescribed timescale, the invoice will be considered accepted by the Customer.
 - 6.5 DS Smith may set off any sums that have fallen due and payable by the Customer to DS Smith or a DS Smith Group Company ("**Group Company**") against any sums owed by DS Smith to the Customer. Group Company means, in relation to a company, that company, any subsidiary or holding company of that company, and any subsidiary of a holding company of that company.
- 7 TOOLING**
- 7.1 DS Smith will charge the Customer for tooling production costs, but DS Smith has ownership of the die cut tools and printing tools. DS Smith is responsible for the storage and maintenance of such tools as long as the tools are in use. DS Smith is entitled to dispose of die cut tools and printing tools, without prior notification to the Customer, if they have not been used for 18 months. If new tools are needed after such disposal, the Customer will be charged for the new tooling production costs.
- 8 LIMITATIONS OF LIABILITY**
- 8.1 DS Smith's liability under the Contract is limited to direct damages and, for each instance of damage, to an amount of 5 per cent of the price for all Products delivered to the Customer by DS Smith during the previous twelve-month period. DS Smith's total liability under the Contract per calendar year is further limited to 10 per cent of the price for all Products delivered to the Customer by DS Smith during the previous twelve-month period. If DS Smith has delivered Products to the Customer over a shorter period than twelve months, DS Smith's liability for each instance of damage will be limited to an amount corresponding to the order to which the liability relates. DS Smith accepts no liability under any circumstances for indirect losses or consequential losses such as lost profits or loss of production.
 - 8.2 DS Smith accepts no liability for damages caused by the Products to persons or property, unless DS Smith has caused the damage through gross negligence, intent and any other liability that cannot be excluded by law. If DS Smith is held liable for any defect in the Customer's products (packaged in DS Smith's Products), and the Customer is liable for such defect in accordance with the product liability law currently in force, then the Customer shall indemnify DS Smith against any related losses, damages or costs incurred by DS Smith.
 - 8.3 DS Smith's liability for defects, omissions, delays and other breaches of contract is limited to what is expressly stipulated in this Contract. The Customer is not entitled to demand any other penalties, damages, losses or any other costs from DS Smith, than those specified in the Contract.
- 9 DATA PROTECTION**
- 9.1 Each Party to the Contract acknowledges that they act as independent controllers of any personal data processed in the course of this Contract and shall comply with their respective obligations under the Data Protection Legislation.
 - 9.2 The Customer agrees not to provide or otherwise make available personal data to DS Smith, other than business contact information (for example, business, telephone number, job title and email address). In the event that any personal data is processed by a Party in the capacity of a processor in relation to this Contract, the Parties shall enter into a separate written agreement regulating such process in accordance with Article 28 of the GDPR.
 - 9.3 For the purpose of this Point, "**Data Protection Legislation**" shall mean the EU General Data Protection Regulation 2016/679 ("**GDPR**") and any applicable data protection regulation, and the terms "controller", "personal data" "processed" and "processor" shall have the same meaning as they are given in the Data Protection Legislation.
- 10 INTELLECTUAL PROPERTY RIGHTS**
- 10.1 Unless expressly agreed in writing, this Contract does not allow for the transfer of any intellectual property rights from one Party to the other.
 - 10.2 DS Smith owns all rights, including intellectual property rights, in respect of the Products (but not rights to trademarks or protected designs to which the Customer owns the original rights and which are used for the manufacturing of the Products), including, but not limited to, trademarks, protected designs, copyrights and patents.
 - 10.3 The Customer shall notify DS Smith immediately and in writing if a third party makes a claim against the Customer on the grounds that the Products infringe or are alleged to infringe the third party's immaterial property rights. The Customer undertakes to handle all such claims in accordance with DS Smith's instructions and DS Smith will not be held liable for any infringement if the Customer breaches this undertaking. If an infringement is found to exist, or if it is DS Smith's own belief that such an infringement is likely to exist, DS Smith shall, at its own expense and discretion, either (i) assign the Customer the right to continue to use and sell the Products in question, (ii) replace the Products with other similar Products the use of which does not constitute an infringement, or (iii) alter the Products so that the infringement does not exist.
 - 10.4 DS Smith is not liable for infringements or alleged infringements of a third party's intellectual property rights caused by the Products if DS Smith has modified or produced the Products in accordance with the Customer's specifications, as approved by DS Smith. The Customer shall replace and indemnify DS Smith against any claim, court summons or other legal action arising as a consequence of an actual or alleged infringement of the Products and for all losses, costs, damages and expenses (also including the costs of legal consultation and the costs of administrative work carried out) incurred by DS Smith on the grounds hereof or in connection herewith.
 - 10.5 The stipulations given above in this Point 10 shall also apply to requirements that may be imposed on DS Smith after the Contract after expiry or termination of the Contract.
- 11 TERMINATION**

DS SMITHS GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT



- 11.1 Either Party may terminate the Contract immediately on written notice if the other Party is in material breach of an obligation and cannot put it right or does not put it right within 21 days of receiving notice to do so.
- 11.2 DS Smith can at any time suspend or terminate the Contract with immediate effect by giving notice to the Customer if DS Smith has reasonable cause to expect that the Customer is not able to pay the price or other payments at the correct time. In this case, any obligation for DS Smith under this Contract shall be suspended or, in the case of termination, lapse.
- 11.3 Without limiting DS Smith's other rights or remedies, DS Smith may suspend or terminate the Contract with immediate effect by written notice to you if you fail to pay any amount due under the Contract on the due date for payment.
- 11.4 On termination of the Contract for any reason, the Customer shall immediately pay to DS Smith all indebtedness to DS Smith with applicable interest calculated in accordance with Point 6.
- 11.5 The provisions in the Contract regarding guarantees, limitations to liability (Point 8), intellectual property rights (Point 10), confidentiality (Point 14) and termination (Point 11) continue to apply after expiry or termination of the Contract.
- 12 COMMUNICATIONS**
- 12.1 Communications in respect of the requirements of Point 8, notification in respect of Point 10.3, consent as referred to in Point 14.1 or assignment as referred to in Point 15 will only be valid if sent to the recipient's address, as given below.
- 12.2 Such communications to DS Smith should be sent to:
DS Smith Packaging Denmark A/S
Aastrupvej 30
8500 Grenaa
E-mail: DK.Bestilling@dssmith.com
- 12.3 Such communications to the Customer should be sent to the Customer's general postal address or email address.
- 13 FORCE MAJEURE**
- 13.1 If a Party's fulfilment of its obligations under the Contract is essentially hindered or made particularly difficult for reasons including, but not limited to, strikes, epidemics, pandemics, natural disasters or war, over which the Party has no control and which the Party cannot reasonably be expected to foresee on entering into the Contract and the consequences of which could not reasonably have been avoided or overcome, this shall constitute grounds for releasing the Party from claims for damages and other penalties for as long as the circumstances prevail.
- 14 CONFIDENTIALITY**
- 14.1 Both Parties undertake, during the contract period and afterwards, not to disclose to a third party any information (whether verbal or in written, electronic or other form) about the other Party's business that may be regarded as a business or trade secret (including but not limited to drawings, construction solutions and costs calculations) or otherwise use such information for any purpose other than the Party's fulfilment of its obligations under the Contract without the other Party's written consent. Information the Party specifies as confidential shall be regarded as a business or trade secret at all times.
- 14.2 The duty of confidentiality does not apply to such information that the Party can demonstrate it was aware of by means other than through the Contract or information that is generally known. Nor does the duty of confidentiality apply when the Party is obliged to provide the information in compliance with the law, regulations or the decisions of the authorities.
- 15 ASSIGNMENT**
- 15.1 Neither of the Parties may assign its rights or obligations under this Contract in whole or in part without the other Party's prior written consent. DS Smith has the right, however, to assign the Contract, including its rights and obligations, to another company within the group without the Customer's prior consent.
- 16 ENTIRE CONTRACT**
- 16.1 The Contract constitutes the Parties' entire regulation of the Contract's purpose and replaces all previous and current negotiations and agreements, written as well as verbal, between the Parties in connection therewith. The Customer's general terms and conditions of supply or purchase or similar regulations that are referred to in, for example, an order, delivery note or similar shall not be applicable between the Parties under this Contract.
- 17 AMENDMENTS AND ADDITIONS**
- 17.1 Additions and amendments to this Contract, including its annexes, shall only be valid if made in writing and duly signed by both Parties.
- 17.2 Irrespective of the stipulation in Point 17.1 above, DS Smith reserves the right to make amendments to these Terms and Conditions at any time. All amendments to these Terms and Conditions will be posted on the Website 30 days prior to the date when the amendments will enter into force. Unless otherwise agreed with the Customer in writing, the amendments will be valid upon the Customer's acceptance of the Terms and Conditions (through a new purchase) or 30 days after DS Smith posts the amendments on the Website, whichever is the earlier. DS Smith recommends, therefore, that the Customer regularly checks the Website to be aware of any amendments to the Terms and Conditions.
- 18 DISPUTE RESOLUTION AND APPLICABLE LAW**
- 18.1 Disputes arising out of these Terms and Conditions and where DS Smith is registered in Denmark will be resolved, if DS Smith so wishes, by the Danish Institute of Arbitration in accordance with the Rules of Arbitration adopted by the Board of the Danish. The Institute shall also decide whether the arbitration panel should consist of one or three arbiters taking into account the amount in dispute, the complexity of the case, and other relevant circumstances. The place of arbitration shall be Copenhagen, Denmark. The language of the arbitration shall be Danish.
- 18.2 DS Smith's clear and overdue compensation claim in the event of non-payment may always be recovered through an application for a payment order to the Swedish Enforcement Authority or subject to the jurisdiction of Swedish courts (or through the equivalent competent court or public authority in the jurisdiction where the Customer is registered, to the extent permissible by applicable law).
- 18.3 The Parties undertake and agree that all arbitral proceedings conducted with a reference to this arbitration clause shall be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this confidentiality undertaking may not be disclosed to a third party without the prior written consent of the other Party. Exceptions to the foregoing shall only apply to the extent that disclosure may be required of a Party due to mandatory law, an order of a competent court or public authority, or to protect, fulfil or pursue a legitimate legal right or obligation or to enforce or challenge an award.
- 18.4 This Contract shall be interpreted and applied in compliance with substantive law in the jurisdiction where DS Smith is registered without regard to conflict of law principles.