

DSM Terms and Conditions of Business

Issue Date 28th April 2017 V3

Sale of goods and/or provision of services is made according to the following Terms and Conditions to include those as listed on document headed 'Engineering Works – Terms & Conditions'.

1. DEFINITIONS

"Company" & "Seller" shall mean DSM (GB) Limited or any of its subsidiaries.

"Customer" shall mean the company or person (if a non limited company) signing or accessing/downloading (if via web site) this Agreement.

"Licence(s)" shall mean the legal right to install and/or use the software to which the "Licence" is purported to relate.

"Buyer" means the person who accepts, on behalf of the Customer, a quotation from the Seller for the sale of the Goods and/or Services or whose order for the Goods and/or Services is accepted by the seller.

"Goods" means a tangible product and/or Services (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these terms and conditions.

"Services" shall mean the supply of facilities and/or labour or any other items which are not wholly product based.

"Agreement" shall mean the terms and conditions contained herein.

2. WARRANTY DISCLAIMER OR WARRANTIES LIMITATION OF LIABILITY (See also clause 15).

2.(a) Seller warrants that the Goods sold hereunder shall remain free from defects in workmanship and material, if installed, operated / maintained in accordance with Seller's instructions and specifications and under normal conditions of use for such Goods, for a period of twelve months from date of sale. Subject to the next sentence hereof, it is expressly agreed and understood that Seller's sole obligation and Buyer's exclusive remedy under this warranty or any other warranty, express or implied, is the Seller replacing the defective Goods or, at Seller's sole election, repairing the defective Goods without charge. Seller's liability shall in no event exceed the purchase price for such Goods, and in the event that, for whatever reason, Seller cannot effect a repair or replacement as aforesaid, then Seller's sole obligation and Buyer's exclusive remedy shall be Seller returning the purchase price of such Goods, to the extent the same has been paid to the Seller by Buyer. Seller shall in no event be responsible for any incidental or consequential damage, whether foreseeable or not, caused by defects in the Goods sold hereunder, whether before or after repair or replacement. Claims under this warranty must be made in writing within 30 days after the defect is discovered, which period of time is expressly agreed to be reasonable and all such claims are subject to substantiation by Seller's inspection department. Seller may require the return of alleged defective goods, transportation prepaid, to establish a claim under this warranty. Seller shall in no event be responsible for repairs made other than by Seller without Seller's prior written consent. All alleged defective goods must be held by Buyer pending instructions from Seller as to their disposition. Seller will not accept Goods returned to it without its prior consent and any returned goods must be accompanied by packing slips showing Seller invoice numbers.

2.(b) SELLER HEREBY EXCLUDES ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PURPOSE, AND ALL OTHER WARRANTIES EXPRESS OR IMPLIED, ON SELLER'S GOODS, OTHER THAN THE WARRANTY STATED IN SUBPARAGRAPH (a), ABOVE. Statutory rights will not be affected.

2.(c) If Buyer makes any warranty or representation inconsistent with or in addition to the warranty stated in Subparagraph (a) above, Buyer shall, at its own expense, defend and hold the Sellers Goods harmless from any claim thereon of any nature whatsoever.

3. TERMS

3.(a) Unless otherwise agreed, all sales shall be made on the basis of advance payment in full to the Seller's office /bank account.

3.(b) If any credit terms are allowed by the Seller to the Buyer and the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 2% per month above the Barclays base rate, until payment in full is paid, part of a month being treated as a full month for the purposes of calculating interest. Should payment not be received within the agreed terms the Seller has the right to cancel the contract, or suspend any further services or deliveries to the Buyer, and to appropriate any payment made by the Buyer to such of the Goods as the Seller deems fit.

4. Unless otherwise agreed in writing, given that credit has been granted, payment in total (inc. VAT) shall become due 30 days from date of invoice.

5. SHIPMENT - RISK OF LOSS. Delivery dates quoted are approximations only and Seller shall incur no liability for failure to deliver on such dates. Seller reserves the right to deliver the Goods sold hereunder in instalments or separate lots.

6. NONCONFORMITY OF GOODS: Buyer may reject or revoke its acceptance of the Goods sold hereunder only if the nonconformity in such Goods is substantial. No nonconformity or defect in any lot, instalment or commercial unit shall constitute grounds for claiming breach of the whole agreement and any lots instalments or commercial units not in dispute shall be paid for separately regardless of dispute as to other deliveries or undelivered goods. Seller reserves the right to cure, either by repair or replacement, any defects within a reasonable time after receipt of written notification from Buyer of such defects. If Buyer does not notify Seller in writing within 14 days after receipt of Goods hereunder, which period of time is expressly agreed to be reasonable of any claimed defect the Buyer shall be deemed to have irrevocably accepted such Goods and shall be barred from any remedy therefor.

7. RETENTION OF TITLE

7.(a) The risk in the Goods shall pass to the Buyer on delivery, but notwithstanding delivery property in the Goods shall not pass to Buyer until payment in full shall have been made therefor, and until such time the Buyer shall insure goods to the full value.

7.(b) The Buyer shall hold the Goods until such time as payment is made or until resale or conversion into or incorporation with other Goods as bailee of the Goods for the Seller and shall if required by the Seller store the Goods separately from other goods in such a way as to be identifiable as the property of the Seller.

7.(c) In the event of resale of the Goods by the Buyer before such payment is made the Buyer shall hold such part of the proceeds of resale as represents the sale price of the Goods on trust for the Seller and shall place such sum in a separate bank account so as to be identifiable as being in the beneficial ownership of the Seller.

7.(d) In the event that the Goods are processed into or incorporated in, used as materials for, or mixed with other goods or materials before such payment is made then such mixed or processed goods shall be held by Buyer on trust for sale for the benefit of Seller and the Buyer shall forthwith upon sale account to Seller for part of the proceeds of sale as represents the sale price of the Goods and until such payment shall place such part of the proceeds of sale in a separate bank account so as to be identifiable as being in the beneficial ownership of Seller.

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8. **SOFTWARE LICENCE(s)**: It is the responsibility of the Customer to ensure that all software currently installed or being requested to be installed has a legal Licence. The Company will not install any software without sight of a current legal licence. The Company shall not be responsible for any misinterpretation with regard whether a Licence is legal or otherwise. It is the Customers sole responsibility to ensure the Licence(s) is legal and relates to the software to which is being or is installed. The Customer shall indemnify the Company against any claim that may arise as a result of the Licence(s) being deemed illegal.

9. **EXCUSE**: A basic assumption of this Agreement, is the non-occurrence of the following: fire, flood, explosion, riot, strike or other difference with workmen, shortage of utility, facility, material or labour, freight embargo, transportation delay, breakdown or accident, act of God or the public enemy, compliance with or other action taken to carry out the intent or purpose of any law or regulation, or any other cause beyond Seller's reasonable control which prevents or delays the Seller's performance hereunder, and delay in delivery or non-delivery, in whole or in part, by the Seller shall be excused if delivery is made impracticable by the occurrence of any of the above.

10. **INSOLVENCY**: In the event of the Buyer's insolvency, the Seller is entitled to cancel all contracts and recover Goods, for which full payment has not been received, in accordance with these Terms and Conditions.

11. GENERAL PROVISIONS

11.(a) This Agreement may not be assigned or otherwise transferred by Buyer without the prior written consent of Seller, and any such assignment or transfer without such prior written consent shall be null and void and of no force or effect whatsoever.

11.(b) The paragraph headings in this Agreement are used for convenience only. They form no part of this Agreement and are in no way intended to alter or affect the meaning of this Agreement.

11.(c) The invalidity in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any other of its provisions.

11.(d) Any notice or other communication required or permitted hereunder shall be sufficiently given if sent in writing by registered mail, return receipt requested, postage prepaid, and addressed to the other party hereto at its respective address as set forth on the face hereof. Any such notice if so mailed, shall be deemed to have been received on the third business day following such mailing, regardless of when or whether received. Either party hereto may change its address for notice purposes by written notice to the other party.

11.(e) Seller's failure to insist, in one or more instances, upon the performance of any terms of this Agreement shall not be construed as a waiver or relinquishment of Seller's right to such performance or the future performance of such term or terms, and Buyer's obligation with respect thereto shall continue to full force and effect.

11.(f) These conditions of sale and all contracts for the sale of Goods to which they apply shall be construed in accordance with and in all respects governed by English law and shall be exclusively justifiable in England.

11.(g) The Buyer accepts that these terms and conditions may be varied from time to time and such variation will be posted to the Seller's web site; the latest version shall be those with the most recent issue date. The version which is applicable shall be that as stated on the relevant communication from the Seller to the Buyer ie: quotation. If nothing is stated then the latest version shall apply. The Buyer accepts it is their responsibility to maintain currency with any variations. Web link is: <https://dsm-gb.co.uk/terms-of-business/DSMTermsOfBusinessV3.pdf>.

12. ORDER ACCEPTANCE AND CANCELLATION.

All orders, verbal or written, given to the Seller, are based on the Seller's quotation or offer and the above Terms and Conditions, and unless otherwise stated by the Seller, are accepted in good faith and processed accordingly. Cancellations after 3 days from placement of the order, in whole or in part, are at the discretion of the seller subject to a minimum 10% cancellation processing charge provided the Goods are re-salable. On products which have been specially designed or built to customer's specifications, or on services of any kind, a pro-rata cost will be added to the minimum 10% cancellation processing charge. On placing an order with the Seller the Buyer accepts these terms and conditions as integral to a purchase contract and no other terms and conditions will apply unless specifically noted in writing by the Seller as superseding these terms and conditions. Where an order relates to services then cancellation

13. NON SOLICITATION

The Customer warrants that during the course of business with the Company and specifically until the expiry of six months following the most recent completed order for Goods and/or Services that they [the Customer] will not directly or indirectly employ any person employed by the Company.

14. Period of Validity

All quotations/estimates are based on prices received from our suppliers at the time of issue. Validity of any quotation/estimate is offered only on the basis that no price increase has come into effect from the Sellers suppliers since the date of submission. In any event any quotation/estimate will remain valid for no more than 14 days. All Goods are subject to availability.

15. Engineering Works - DISCLAIMER

Reference, in this clause, to 'you', 'your' means the Customer. Reference to 'our', 'we' means the Company.

Our aim is to carry out any work, as so described, using our very best endeavours to complete each task as agreed however, the nature of the work, its complexity and dependency on product compatibility mean errors and/or failures may occur, which could result in loss of use of the systems and/or loss of information/data. We cannot and do not guarantee that the work, as so described in any attached, accompanying or subsequent related document, will flow as stated or be able to be completed as originally planned/documented. We will endeavour to correct any errors/failures in a timely manner, to your satisfaction and in most cases at our own cost; however, should the nature of the errors/failures reveal the need for additional services/products then additional charges may apply. Should this become apparent then we will, unless urgency dictates, stop all works and consult with you first. Where works are being conducted out-of-hours it is important, particularly where disruption/risk is considered to be high, that persons with appropriate financial authorisation are readily available. Unless we have specifically agreed otherwise (in writing) then responsibility for ensuring, full and current, backups of your systems exist and are readily available, lays with you. Our financial liability to you shall be limited to that of the quoted value of the contracted works in respect of the portion which has errored/failed. No liability is accepted for consequential loss of any kind.

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Engineering Works – Terms & Conditions

Issue Date 28th April 2017

1. Estimates. All times relating to installation/configuration/set-up are **estimates** based on the Company's experience of similar installations. The actual time taken to install any product may extend over that estimated. Actual time is dependent, but not limited, to the specific features required by each company/user. Migrating of any existing software and/or the integration of existing hardware may considerably extend the estimated times. The Company uses best endeavours to complete within estimated times however **no guarantee can be or is given** nor liability accepted for any costs incurred, by the Customer, as a result of times extending beyond that estimated.

2. "Hourly" (per hour). This consists of the provision, either on or off site, of one Engineer/Consultant at a cost chargeable by the hour at the Company's prevailing or agreed rate. In order to obtain the hourly rate a written order must be received no later than 24 hours prior to the requested date. Cancellation within 8 working hours will attract a cancellation fee of 25%. Chargeable time shall be calculated from the moment that the Engineer/Consultant leaves the offices of the Company to their return. The minimum time charged shall be one hour.

3. "Daily" (per day). This consists of the provision, either on or off site, of one Engineer/Consultant for a minimum of 6.5 hours, during normal business hours at the Company's prevailing or agreed rate. In order to obtain the Daily rate an order must be received no later than 3 working days prior to the requested date. The minimum time charged shall be one day.

4. "Fixed" (fixed price). This consists of the provision of services in order to complete the work as described. No refunds shall be given for completion of the work ahead of estimated times. In the event of delays, brought about by the Customer or third parties not under the control of the Company ie: its agents, subcontractors or any party outside the reasonable control of the Company (howsoever arising) that prevent or delay the Company from carrying out the works described, shall entitle the Company to levy additional charges. Travel and other expenses shall not be inclusive unless specifically agreed in writing. Such costs shall be charged at cost +5%.

5. "Incident". This consists of the provision, either on or off site, of one Engineer/Consultant at a cost chargeable in 20 minute blocks at the Company's prevailing or agreed rate. The minimum time charged for 'on-site work' shall be equal to 3 * 20 minute blocks. The Company endeavours to respond to "Incident" requests within 24 hours. Cancellation of an "Incident" may be made up to 15 minutes following the request after which a charge equal to 50% shall be applied. If the work has already commenced or been completed then the full rate shall be charged.

6. General. Cancellation of requests, within 8 working hours, will attract a cancellation fee of 25%. In the absence of a written estimate, given by the Company, for the time required to complete the works and where work has been completed ahead of time, no refunds or credits shall be given. No guarantees can be given for the time being fully productive; Delays outside the control of the Engineer/Consultant or Company shall not be redeemable. Any time, requested by the Customer, to be worked that falls outside of the hours/times listed above shall become chargeable. Travel costs and other disbursements shall be charged at cost +5%.

7. Survey. All quotations are subject to confirmation by survey. Additional parts or labour subsequently established as being required shall not be included. Failure to carry out a survey shall not be deemed as acceptance that no further parts and/or labour is required and the Company shall not be liable to include such as part of the original quotation.

8. Disclaimer/Liability. Attention is drawn to clauses 2 and 15 on page 1 of DSM Terms and Conditions of Business.