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:

(a) “Company” & “Seller” shall mean DSM (GB) Limited or any of its subsidiaries.
(b) “Customer” shall mean the company or person (if a non limited company) signing or accessing/downloading (via web site) this Agreement.
(c) “Licence” shall mean the legal right to install and/or use the software to which the “Licence” is purported to relate.
(d) “Goods” means a tangible product and/or Service(s) (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these terms and conditions.
(e) “Services” shall mean the supply of facilities and/or labour or any other terms which are not wholly product based.

2. AGREEMENT

“Agreement” shall mean the terms and conditions contained herein.

3. WARRANTIES

3.1. The Goods sold hereunder shall be of merchantable quality and suitable for the purpose mentioned in the order or quotation, if any.
3.2. The Seller warrants that the Goods sold hereunder shall be free from defects in workmanship and materials.
3.3. The term “Goods” means all products, services, and/or any other items which are not wholly product based.

4. RETENTION OF TITLE

4.1. The goods shall not pass to Buyer until payment in full shall have been made therefor, and until such time the Buyer’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 of the Goods, then Seller shall refund the purchase price to Buyer 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 all defective or damaged Goods and/or materials, 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 defects or damaged Goods and/or materials shall be subject to visual inspection by 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 a complete documentation showing Seller invoice numbers.
4.2. The Buyer 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.
4.3. If Buyer makes any warranty or representation inconsistent with or in addition to the warranty stated hereinafter, Buyer shall indemnify Seller for all such claims from any claim thereon of whatever nature whatsoever.

5. TERMS:

5.1. Unless otherwise agreed, all sales are made on the basis of advance payment in full to the Seller’s office bank account.
5.2. In the event that any credit terms are agreed by the Seller to the Buyer and the Buyer fails to make any payments due thereunder without prejudice to any other rights, unless otherwise agreed or remivable 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 past, 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.
5.3. 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.

6. SHIPMENT - RISK OF LOSS

6.1. Delivery dates quoted are approximate and only 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.
6.2. NONCONFORMITY OF GOODS:

Buyer may reject or revoke its acceptance of the Goods sold hereunder if at any time, it is found to be non-conforming in any way, according to the requirements of the Seller and/or Buyer.
6.3. 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 bales of the Goods for the Seller and shall require by the Seller store the Goods separately from other goods in such a way as to be identifiable as the property of the Seller.
6.4. 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 immediately deposit such proceeds of resale in a separate bank account so as to be identifiable as being in the beneficial ownership of the Seller.
6.5. 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 resale or mixed processed goods shall be deemed to be the goods of the Buyer 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 hold 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.
6.6. 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 resale or mixed processed goods shall be deemed to be the Goods of the Buyer 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 hold 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.
6.7. 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 the right of ownership. The Customer shall provide the Company with a Licence(s) for the software to which or by which 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.
6.8. EXCUSE: A basic assumption of this Agreement is the non-occurrence of the following: fire, flood, explosion, riot, strike or other interference with workmen, shortage of utility, facility, material or labour, war, 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 governmental action, any causes 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.
6.9. 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.
6.10. GENERAL PROVISIONS

6.10.1. 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.
6.10.2. The paragraphs headings in this Agreement are used for convenience only. They form no part of this Agreement and shall not affect the meaning of this Agreement.
6.10.3. 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.
6.10.4. 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 the last 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.
6.10.5. 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 perform or enforce the future performance of such term or terms, and Buyer’s obligation with respect thereto shall continue to full force and effect.
6.10.6. 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.
6.10.7. 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 most current issue date. The version which is applicable shall be that as stated on the relevant communication from the Seller to the Buyer re; quotation. If nothing is stated then the latest version shall apply. The Buyer accepts it as their responsibility to maintain currency with any variations. Web link is: https://dsmgb.co.uk/termsandbusiness/DSMTermsOfBusinessV3.pdf.
11. 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 Buyer’s specifications, or on services of any kind, a pro-rata cost will be added to the minimum 10% cancellation processing charge 10%. On orders which the Seller with the Buyer accepts these terms and conditions as integral to a purchase contract and no other terms and conditions shall apply unless specifically noted in writing by the Seller as superseding these terms and conditions.
12. NON SOLICITATION: The Company warrants that during the course of business with the Company it will not, specifically until the expiry of six months following the most recent contract concluded with the Goods and/or Services that they [the Customer] will not directly or indirectly employ any person employed by the Company.
13. 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 Seller 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.
14. ENGINEERING WORKS - DISCLAIMER

Reference, in this clause, to ‘you’ and ‘your’ means the Customer. Reference to ‘our’ and ‘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 work can result in delays and our inability to perform the work to any implied standard. 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 the work become apparent then you become responsible for payment and consult with you before proceeding. Where works are being conducted by the Company out-of-hours it is important particularly where disruption/loss or damage is considered to be high, that persons with appropriate financial authorisation for the Customer are readily available. Unless we have specifically agreed otherwise (in writing) then it is your responsibility to ensure that all systems exist and are readily available. 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 been completed. No liability for consequential loss of any kind is incurred.

DSM Group, DSM Continuity and DSM IT are trading names of DSM (GB) Ltd (the Company).
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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 before 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 14 on page 1 of DSM Terms and Conditions of Business.