

**1. UVOD**

- a) "DS Smith Slovenija d.o.o.", "mi" ali "naš" pomeni člana skupine podjetij DS Smith, ki je naveden v naročilnici, priloženi tem pogojem; "vi" ali "vaš" pomeni tistega, od katerega mi kupujemo blago ali storitve; "nas" ali "nam" pa pomeni skupaj skupino DS Smith in vas.
- b) Izdali smo naročilnico ("Naročilnica"), ki vključuje naslednje nakupne pogoje ("Pogoji") (ki so lahko posebej dopolnjeni v Naročilnici) in vsebuje:
  - specifikacijo naročenega blaga in storitev;
  - ceno, ki jo moramo plačati ("Cena") in
  - podatke o dobavi ali prevzemu.
- c) Naročilnica in ti Pogoji (skupaj "Pogodba") predstavljajo celotno našo pogodbo za ta nakup in nadomestijo vsak prejšnji dogovor, ki smo ga morda imeli z vami, in vse obljube, zagotovila, garancije, zastopanje in obveze med nami, ne glede na to ali so bile pisne ali ustne v zvezi z njeno vsebino. Ti pogoji veljajo in urejajo vsako pogodbo med nami in izključujejo vse druge pogoje.
- d) V primeru neskladnosti med deli pogodbe imajo prednost določbe v Naročilnici pred tistimi v Pogojih.
- e) Naročilnica predstavlja ponudbo DS Smith za nakup blaga in/ali storitev od vas v skladu s temi Pogoji. Šteje se, da je naročilo sprejeto, ko:
  - izdate pisno potrdilo o sprejemu naročila ali
  - opravite kakršno koli dejanje, ki je skladno z izpolnjevanjem naročila.
- f) Blago ali storitev (»dobava«) morate dobaviti oz. opraviti vi sami, razen če se nismo dogovorili v pisni obliki, da ga oz. jo sprejmemo tudi od koga drugega.
- g) Lahko vas prosimo, da dobavo izvedete tudi kakšnemu drugemu podjetju, ki pripada skupini podjetij DS Smith, in da z njim poslujete kot bi to podjetje bilo DS Smith. "Družba v skupini" pomeni v odnosu z družbo to družbo, hčerinsko družbo ali krovno družbo in katero koli hčerinsko družbo te krovne družbe.

**2. PREKLIC IN SPREMEMBA**

- a) Naročilo za nakup lahko kadar koli pred dobavo prekličemo. Če to storimo in ste sprejeli naročilo, se strinjamo, da vam bomo poravnali razumne stroške, ki ste jih imeli v zvezi s tem naročilom, in stroške, ki ste si jih nakopali pred preklicom naročila in jih ne morete nadomestiti nikjer drugje, po tem do vas ne bomo imeli nadaljnjih obveznosti.
- b) Naročilo lahko začasno prekličemo kadar koli. Če to storimo zaradi razloga, ki ne pomeni vaše kršitve dogovora, se strinjamo, da vam bomo povrnili razumne dodatne stroške, ki ste jih imeli zaradi takšnega preklica naročila. Če zahtevamo, da naše naročilo spremenite in se z vami dogovorimo o ustreznih spremembi cene in časovnega okvira dobave, se strinjate, da boste izvršili dobavo v skladu s takšnimi spremembami.
- c) Z izjemo navedenega v podtočkah 2a) in b) mora vsako drugačno spremembo naročila odobriti DS Smith ali naš pooblaščen zastopnik v pisni obliki ali izdati dodatno naročilo.

**3. CENA IN PLAČILO**

- a) Cena je fiksna brez veljavnega DDV-ja in drugih davkov na dobavo. Če ni v Naročilnici drugače določeno, cena vključuje vse ostale stroške, vključno brez omejitev dajatve, pristojbine ali davke, stroške prevoza, embalaže, zavarovanja in dostave.
- b) Fakture ne smete izstaviti skupini DS Smith, preden ne dostavite blaga ali opravite storitev. Vaše pravilno predložene račune bomo poravnali v 95 dneh po koncu meseca, v katerem je bil račun predložen, razen če ni drugače dogovorjeno v pisni obliki ali če to ne zahteva zakon (v takšnem primeru bo veljalo spremenjeno obdobje ali obvezno zakonsko določilo), pod pogojem, da je račun: (i) poslan na naslov računovodstva DS Smith, ki je naveden v naročilnici; (ii) je navedena sklicna številka Naročilnice DS Smith; (iii) je naveden kraj, kamor je bilo blago dobavljeno, ali kraj, kjer so bile opravljene storitve in (iv) vsebuje popoln opis blaga ali storitev.
- c) Če kakšno plačilo zamuja, nam lahko zaračunate obresti po stopnji 2% nad osnovno občasno obrestno mero pri Royal Bank of Scotland za vsako zapadlo plačilo od datuma zapadlosti do datuma plačila.
- d) Plačilo ne posega v nobene druge pravice, ki jih DS Smith lahko ima do vas, in ne pomeni priznanja DS Smith, da izpolnjuje vaše obveznosti iz Pogodbe. Pridržujemo si pravico zadržati plačilo v primeru reklamacije ali v primeru, da niste priskrbeli zahtevanih informacij v skladu s točko 3(b).
- e) Imamo pravico odšteti od cene, ki jo je treba plačati Skupini DS Smith ali kateri koli družbi Skupine DS Smith (brez poseganja v kakršne koli druge pravice ali pravna sredstva DS Smith ali ustrezne družbe Skupine DS Smith).

**4. GARANCIJA IN NAPAKE**

- a) Skupini DS Smith jamčite, da bo:
  - dobavljeno blago v skladu z vsemi specifikacijami, določenimi v Naročilnici in/ali specifikacijami, ki ste jih poslali DS Smith, ali če jih ni, z vašo standardno specifikacijo;
  - blago dobrega dizajna, dobrih materialov in izdelave ter primerno za vse namene, ki ste jih namenili vi ali določili mi;
  - blago v skladu z vsemi veljavnimi zakoni in predpisi, z vsemi ustreznimi zdravstvenimi, varnostnimi in okoljskimi predpisi, evropskimi standardi ter z najboljšimi sprejetimi industrijskimi standardi ter
  - da bodo vse storitve, ki jih boste zagotovili, opravljene z razumno spretnostjo in skrbnostjo ter v skladu s specifikacijami, določenimi v Naročilnici.
- b) Jamčite, da ne boste storili ali opustili ničesar, kar bi lahko povzročilo, da DS Smith izgubi kakršno koli licenco, pooblastilo, soglasje ali dovoljenje, na katere se opira za namene poslovanja, in potrjujete, da se lahko zanašamo ali delujemo s storitvami, ki jih opravite vi.
- c) Če ugotovimo, da blago in/ali storitve ne izpolnjujejo katerega koli jamstva iz Pogodbe ("Jamstva dobavitelja"), lahko z obvestilom in po lastni presoji in brez poseganja v nobeno naših drugih pravic ali pravnih sredstev:
  - zavrnemo katero koli blago ali kateri koli njegov del (vključno s katerim koli ali vsem blagom, ki ni prizadeto s to neskladnostjo) in/ali zahtevamo takojšnje vračilo vseh že plačanih denarnih sredstev in/ali prekličemo naročilo;
  - zavrnemo kakršno koli nadaljnjo dobavo blaga ali nadaljnje zagotavljanje kakršnih koli storitev (tudi po drugem sporazumu med nami);
  - od vas zahtevamo (na vaše lastne stroške, vključno s stroški kakršne koli demontaže ali ponovne montaže), da blago popravite ali zamenjate ali ponovno opravite storitve na zadovoljstvo DS Smith (v obeh primerih v roku 48 ur, razen če se stranki dogovorita drugače) in/ali
  - sprejmemo blago ali opravljeno storitev, pod pogojem, da sprejmete razumno znižanje cene za obračun neskladnosti.
- d) Mi ali naši zastopniki imamo pravico do pregleda in testiranja blaga ter vpogleda v opravljanje storitev, vi pa nam v ta namen nepreklicno podelite pravico vstopa v vaše prostore (ali prostore vaših podizvajalcev). Če vas na podlagi takšnih pregledov ali preizkusov obvestimo, da nismo prepričani, da blago ali storitve ustrezajo Pogodbi, potem storite vse potrebne ukrepe za zagotovitev skladnosti. Noben inšpekcijski pregled ali preizkušanje ne pomeni naše odobritve.
- e) Vsa jamstva dobavitelja veljajo ali (i) dve (2) leti od datuma dobave blaga ali zaključka storitev, ali (ii) vaš standardni garancijski rok za blago ali storitve, kar je daljše.

**5. ČAS IN DOBAVA**

- a) Blago dostavite in/ali dokončate opravljanje storitev do datuma dobave ali dokončanja, navedenega v Naročilnici. Če datumi niso tako določeni, pa tako, da bo dobava blaga in/ali zaključek storitev potekala v roku, ki ga bomo pisno odobrili. Če dobava blaga in/ali storitev do tega datuma ne bo zaključena, lahko naložimo pogodbeno odškodnino v višini 0,5% cene na dan zamude, do največ 5% cene. Obe strani priznavata in se strinjata, da ta pogodbeno odškodnina predstavlja dejansko predhodno oceno škode, ki jo bo DS Smith verjetno utrpel, če blaga ne boste dostavili ali storitev opravili v skladu z dogovorjenimi časovnimi okviri.
- b) Če dobava blaga in/ali dokončanje opravljanja storitev zamujata več kot 5 dni, lahko to napako obravnavamo kot bistveno kršitev in Pogodbo nemudoma odpovemo brez odgovornosti. V tem primeru bi prenehale vse naše nadaljnje obveznosti do vas, vi pa bi morali skupini DS Smith nadomestiti škodo.
- c) Če v Naročilnici ni drugače določeno, se vse blago dostavi INCOTERMS 2020 DAP na lokacijo, ki je navedena v Naročilnici.
- d) Dobavitelj dostavi količino blaga, navedeno v Naročilnici. Kupec lahko po lastni presoji sprejme spremembo količine in sorazmerno plača dejansko dobavljeno količino.
- e) Zagotoviti morate, da bo blago med prevozom pravilno pakirano in shranjeno, tako da v nepoškodovanem stanju pride do svojega cilja. Vsi vsebniki in druga embalaža so vključeni v ceno in so nepovratni, razen če je v Naročilnici drugače dogovorjeno.
- f) Kadar je potrebno, morate na lastne stroške pridobiti in izpolniti vsa izvozna/uvozna licence, dovoljenja ali soglasja (vključno z delovnimi dovoljenji ali soglasji) za dobavo in dostavo blaga ali zagotavljanje storitev.

**6. PREHOD TVEGANJA IN LASTNIŠTVA**

- a) Lastninska pravica in tveganje na blagu preideta na DS Smith, ko je dostavljeno družbi DS Smith.
- b) Če imate v posesti predmete (vključno, brez omejitev, z

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blagom), ki pripadajo DS Smith, se obvezujete, da boste: (i) posedovali predmetne stvari kot fiduciarni agent DS Smith; (ii) jasno opredelili predmete kot našo last; (iii) hranili predmete ločeno od vaše lastnine ali lastnine drugih; (iv) hranili predmete pravilno shranjene in zavarovane in (v) ne boste izvajali, uveljavljali ali nameravali izvajati ali uveljavljati zasega kakršne koli narave v zvezi s temi predmeti.

c) Skupini DS Smith morate dovoliti dostop (na podlagi razumnega obvestila) do prostorov, v katerih se izdeluje ali hrani blago za DS Smith, če gre za razumen namen po tej Pogodbi.

d) Nobenega predmeta, ki ostaja v naši lasti, ne boste upravičeni zastaviti ali zaračunavati kot garancijo, če pa to storite ali nameravate storiti, imamo pravico do povrnitve lastnine v skladu s to klavzulo.

### 7. PRENEHANJE VELJAVNOSTI POGODBE

- a) Pogodbo lahko s pisno odpovedjo prekinemo takoj, če:
- ne izpolnite pogodbene obveznosti in
    - o je ne morete izpolniti ali
    - o je ne morete izpolniti v sedmih dneh od prejema obvestila s strani Skupine DS Smith, naj to storite ali
    - o če smo vas mi že kdaj prej vsaj dvakrat obvestili o neizpolnitvi enake obveznosti ali
  - če upravičeno menimo, da ne boste mogli ob zapadlosti plačati svojih dolgov ali izpolniti svojih obveznosti po tej Pogodbi.
- b) S prenehanjem veljavnosti pogodbe prenehajo tudi vse naše obveznosti po tej Pogodbi.
- c) Ob upoštevanju klavzule 7 (b) prenehanje veljavnosti sporazuma, ne glede kako je do njega prišlo, ne vpliva na nobeno od pravic, pravnih sredstev, dolžnosti in obveznosti pogodbenic, ki obstajajo ob odpovedi. Določila te pogodbe, ki se nanašajo na jamstva, omejitev odgovornosti, avtorske pravice, skladnost s predpisi, zaupnost in obveznosti, ostanejo v veljavi tudi po prekinitvi ali izteku veljavnosti te Pogodbe.

### 8. ODGOVORNOST IN ZAVAROVANJE

- a) Strinjate se, da boste Skupini DS Smith na njeno zahtevo plačali znesek, ki bo zadostoval za kritje vsake in vseh odgovornosti, reklamacij, zahtevkov, škode, stroškov, izgub, prispevkov in izdatkov (vključno in brez omejitev s sodnimi taksami in izdatki kot polno odškodnino), ki si jih je nakopala ali so bili povzročeni neposredno ali posredno podjetju DS Smith, ali so nastali kako drugače kot posledica:
- vaše neizpolnitve svojih obveznosti po tej Pogodbi;
  - kakršne koli trditve, da dobava blaga/storitev ali njihova uporaba/nadaljnja prodaja krši pravice katere koli druge osebe;
  - dejanja, opustitve dejanja, malomarnosti ali kršitve pogodbe z vaše strani ali s strani vaših zaposlenih in zastopnikov ali
  - prenehanja veljavnosti pogodbe v skladu s 7. členom.
- b) Obvezno morate ohranjati ustrežno zavarovalno kritje za vsa tveganja, ki bi nastala po tej Pogodbi, in na našo zahtevo predložiti dokaz o takšnem kritju.
- c) Nobena določba teh Pogojev ne izključuje ali omejuje odgovornosti katere koli strani za: (i) smrt ali telesno poškodbo, ki jo povzroči naša malomarnost; (ii) goljufijo ali lažno zavajanje ali (iii) kakršno koli drugo odgovornost, ki je ni mogoče izključiti z zakonom.
- d) Ob upoštevanju določbe 8(c) nobena stranka ne prevzame nobene odgovornosti (neposredno ali posredno), ne glede na to, ali po pogodbi, odškodninskem zahtevku (vključno z zahtevki zaradi malomarnosti ali kršitve predpisanih dolžnosti), napačni predstavitvi, vračilu ali če nastane kako drugače v zvezi z izvajanjem ali nameravanim izvajanjem te Pogodbe, za: (i) izgubo posla, prihodkov, priložnosti, pogodb ali dobrega imena; (ii) pričakovane prihranke, zapravljen izdatke, poškodovanje ali uničenje računalniških podatkov ali (iii) za kakršno koli posredno ali posledično izgubo.
- e) V skladu s členom 8(c) DS Smith ne nosi nikakršne odgovornosti za morebitno izgubo ali škodo, ki jo utrpite vi ali katere koli tretja oseba zaradi kršitve varnosti:
- programske opreme, omrežja in informacijskih sistemov, ki jih uporabljate; ter
  - fizičnih, tehničnih, upravnih in organizacijskih zaščitnih ukrepov, ki jih je vzpostavilo vaše podjetje ali bi jih moralo razumno vzpostaviti.
- f) Razen naše obveznosti plačila v skladu s klavzulo 3 (in ob upoštevanju klavzul 8 (c), 8 (d) in 8 (e)) je naša odgovornost v zvezi z vsemi drugimi pogodbenimi zahtevki, odškodninskimi zahtevki (vključno z zahtevki za malomarnost ali kršitev predpisanih dolžnosti), napačnim predstavljanjem, vračilom ali če nastane kako drugače v zvezi s to Pogodbo, v vseh okoliščinah omejena na maksimalno po zakonu dovoljeno višino in sicer za vsako neposredno izgubo ali škodo do 10 %

zneska cene, plačane za blago, ki je predmet zahtevka.

### 9. SKLADNOST S PREDPISI

- a) Poleg vaše obveznosti, da ravnate v skladu z veljavnimi zakoni in predpisi, morate ravnati in poskrbeti, da vaši vodstveni delavci in zaposleni ravnajo:
- v skladu z DS Smith Globalnim standardom nabave;
  - v skladu s protikorupcijsko zakonodajo, ki velja za vas ali DS Smith ("Protikorupcijska zakonodaja");
  - tako da ne neposredno ne posredno pri poslovanju v zasebnem ali javnem sektorju ne ponujajo, obljublajo ali dajejo (ali se strinjajo, da se to stori) finančne ali drugačne prednosti za katero koli zadevo, ki je predmet te pogodbe ali drugih pogodb med Skupino DS Smith in vami, oziroma pridobivajo kakršne koli druge ugodnosti za Skupino DS Smith, s katero bi kršili protikorupcijski zakon.
  - v skladu z delovnopravno zakonodajo ter zakonodajo in mednarodnimi dokumenti v zvezi s prepovedjo trgovine z ljudmi, ki veljajo za vas ali za DS Smith;
  - tako da zagotovite, da niti vi niti kateri koli vaš vodstveni delavec niste bili obsojeni za kaznivo dejanje, ki vključuje suženjstvo in trgovino z ljudmi, niti niste bili niti ste predmet preiskav, poizvedovanj ali izvršilnih postopkov s strani katerega koli vladnega, upravnega ali regulativnega organa v zvezi s kaznivim dejanjem ali domnevnim kaznivim dejanjem suženjstva ali trgovine z ljudmi ali v povezavi z njimi;
  - tako da, ko nastopate kot oseba, povezana z DS Smithom, ne sodelujete v nobenem dejanju ali opustitvi, ki bi pomenilo kaznivo dejanje omogočanja davčnih utaj doma ali v tujini, skladno z zakonodajo, in
  - tako da ne povzročate, omogočate ali prispevate k storitvi kaznivega dejanja, če ne preprečite omogočanja davčne utaje v skladu z zakonodajo.
- b) Če ugotovite, da gre za kršitev ali domnevno kršitev te 9. klavzule z vaše strani ali strani vaših podizvajalcev, morate o tem nemudoma obvestiti Skupino DS Smith in v tem primeru vam smemo mi nemudoma z obvestilom prekiniti izvajanje te pogodbe, za čas preverjanja, če gre dejansko za kršitev ali domnevno kršitev. Skupini DS Smith morate pomagati pri takšnem preverjanju in jim dovoliti dostop do vašega osebja, dokumentov in sistemov.
- c) Poleg naših pravic iz 7. klavzule imamo tudi pravico, da v primeru kršitve te 9. klavzule z vaše strani ali strani vaših podizvajalcev, po lastni presoji s pisnim obvestilom nemudoma: (i) prekinemo nekatere ali vse pogodbe med podjetjem DS Smith in vami in (ii) ustavimo izvajanje Pogodbe.
- d) V zvezi s kaznivimi dejanji utaje davkov se vprašanje, ali je oseba povezana z drugo osebo, določi v skladu z veljavno zakonodajo.

### 10. INTELEKTUALNA LASTNINA

- a) Obe pogodbenici ohranjata lastništvo lastne intelektualne lastnine na blagu ali storitvah, ki se zagotavljajo po tej Pogodbi, vključno s patenti, blagovnimi znamkami, načrti, avtorskimi pravicami, imeni domen, poslovnimi skrivnostmi, strokovnimi znanji in trgovskimi imeni, vendar ne omejeno nanje.
- b) Nič v sporazumu, razen če ni izrecno določeno drugače, se ne sme razlagati kot podelitev kakršnegakoli dovoljenja ali pravica po katerem koli predpisu ali uredbi, vključno brez omejitev, tistih, ki so povezani z avtorsko pravico ali drugimi pravicami intelektualne lastnine.
- c) Družbi DS Smith podelite osebno, neizključno in brezplačno pravico do uporabe in izkoriščanja takšnih pravic intelektualne lastnine v blagu ali storitvah izključno v obsegu, ki je potreben za uporabo in delovanje navedenega blaga ali storitev.
- d) Vsaka intelektualna lastnina, ki nastane ali jo pridobi ali razvije DS Smith (ali izvajalec v njihovem imenu) med ali v zvezi z uporabo in/ali delovanjem blaga ali storitev, ki jih zagotavljate Skupini DS Smith, je in bo ostala edina in izključna last DS Smith.
- e) Skupino DS Smith branite, odškodujete in ščitite pred vsemi zahtevki, ki izhajajo ali nastanejo v zvezi z dejansko ali domnevno kršitvijo pravic intelektualne lastnine v zvezi z blagom ali storitvami, dobavljenimi na podlagi te pogodbe.
- f) Če se proti Skupini DS Smith vložijo kakršenkoli zahtevki, da blago ali storitve kršijo kakršne koli pravice intelektualne lastnine katere koli tretje osebe, morate Skupini DS Smith povrniti vse terjatve, obveznosti, izgube, odškodnine, stroške in izdatke, ki nastanejo v povezavi s takšnim zahtevkom, in če takšen zahtevki Skupini DS Smith prepreči uporabo katerega koli blaga ali storitev, morate na svoje stroške čim prej:
- pridobiti pravico za DS Smith, da še naprej uporablja to blago ali storitve v skladu s to Pogodbo, ne da bi pri tem kršil pravice intelektualne lastnine katerekoli tretje strani ali
  - zagotoviti alternativno blago ali storitve ali druge izdelke z enakovredno ali povečano funkcionalnostjo in zmogljivostjo

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(kot to razumno določa DS Smith) za uporabo v skladu s to Pogodbo ali

- takoj zamenjati takšno blago ali storitve ali druge izdelke brez poslabšanja funkcionalnosti ali zmogljivosti, tako da njegova uporaba v skladu s tem sporazumom ne krši nobenih pravic intelektualne lastnine tretjih oseb.

### 11. SPLOŠNO

- a) Če je potrebno dovoljenje ali odobritev državnega ali drugega organa za dobavo, prevoz, hrambo ali uporabo blaga ali storitev, ki jih dobavite Skupini DS Smith, morate takšno dovoljenje ali odobritev priskrbeti na lastne stroške in predložiti Skupini DS Smith na njihovo zahtevo dokaz o tem.
- b) Ob dostavi blaga v naše prostore morate vi (in vaše osebje) spoštovati vsa naša zdravstvena in varnostna pravila in predpise, vse zahteve glede zaščite in druge operativne zahteve, ki veljajo v naših prostorih (ki so vam na voljo na podlagi vaše zahteve). Prav tako morate narediti vse, kar je v vaši moči, da zavarujete svoje zaposlene in naše zaposlene med opravljanjem storitev ali izročanjem blaga.
- c) Priskrbeti morate na lastne stroške vso opremo in materiale, potrebne za izvajanje storitev, če ni drugače dogovorjeno v pisni obliki.
- d) Nobeni tretji stranki ne sme biti podeljena nikakršna ugodnost po tej Pogodbi in oseba, ki ni stranka v tej Pogodbi, nima pravice uveljavljati katerega koli določila iz te pogodbe, razen družba Skupina DS Smith.
- e) Vsako obvestilo po tej Pogodbi mora biti narejeno v pisni obliki in vročeno osebno ali poslano s priporočenim pismom na uradni naslov Skupine DS Smith ali vaš uradni naslov (odvisno, kdo je prejemnik). Obvestilo se šteje kot prejeto:
  - če je vročeno osebno, v času vročitve in
  - če je poslano s priporočenim pismom, 48 ur od datuma oddaje na pošti,in sicer, če je obvestilo prejeto pred 9. uro na delovni dan, se takšno obvestilo šteje kot prejeto ob 9. uri istega dne, če pa je obvestilo prejeto po 17. uri delovnega dne ali na dan, ki ni delovni, se obvestilo šteje kot prejeto ob 9. uri naslednjega delovnega dne.
- f) Vsako določilo te Pogodbe je samostojno in ločeno od drugih določil. Če del Pogodbe je ali postane neveljaven ali neizvedljiv v skladu z nacionalno zakonodajo, to ne vpliva na ostali del Pogodbe in vsa druga določila Pogodbe ostanejo še naprej popolnoma veljavna. Če se ugotovi, da je neko določilo te Pogodbe neveljavno, nezakonito ali neizvedljivo, vendar bi postalo veljavno, zakonito in izvedljivo, če bi del tega določila črtali ali spremenili, takšno določilo velja z vsemi spremembami, ki so potrebne, da postane veljavno, zakonito in izvedljivo. Neveljavnost ali neizvedljivost določila v eni nacionalni zakonodaji ne vpliva na veljavnost ali izvedljivost tega določila v drugi nacionalni zakonodaji.
- g) Ta Pogodba in njen predmet sta zaupna in ju ni dovoljeno razkriti nobeni osebi brez našega dovoljenja.
- h) Ne smete prenoviti, dodeliti, oddati v podizvajanje ali kako drugače prenesti katere koli ali vseh svojih pravic, interesov ali obveznosti iz Pogodbe brez našega predhodnega pisnega soglasja (ki ga ne bomo neupravičeno zadržali).
- i) Nič v Pogodbi ni namenjeno ali se šteje, da bo vzpostavilo kakršno koli partnerstvo ali skupno podjetje med katero koli od pogodbenic, vzpostavilo katero koli stranko kot zastopnika druge stranke ali pooblastilo katero koli stranko, da prevzame kakršne koli obveznosti za ali v imenu katere koli druge stranke. Vsaka stranka potrdi, da deluje v svojem imenu in ne v korist katere koli druge stranke.
- h) Z izjemo klavzule 11(e) vsako sklicevanje v tej pogodbi na sporočila v pisni obliki vključuje elektronske oblike komuniciranja, kot je denimo elektronska pošta. Vsako elektronsko sporočilo začne veljati, ko zapusti poštni predal pošiljatelja.

### 12. PRISTOJNO PRAVO IN JURISDIKCIJA

- a) Ta Pogodba in vsi spori ali zahtevki, ki izhajajo iz te Pogodbe ali so povezani s to Pogodbo, njenim predmetom ali njeno sklenitvijo (vključno z ne pogodbenimi spori ali zahtevki), se bodo urejali in razlagali po slovenski zakonodaji,
- b) Stranke se nepreklicno strinjajo in priznavajo, da so sodišča v Sloveniji izključno pristojna za zaslisanje in odločanje o vsaki pravdi, tožbi ali postopku v zvezi s to pogodbo.

**Datum: november 2021**



## DS SMITH GROUP - STANDARD PURCHASE CONDITIONS

### 1. INTRODUCTION

- a) "DS Smith Slovenija d.o.o.", "we" or "our" are the member of the DS Smith Group Company referred to in the purchase order attached to these conditions; "you" or "your" are anyone from whom we are purchasing goods or services; and "us" means DS Smith and you.
- b) We have issued a purchase order ("Purchase Order") which incorporates these purchase conditions ("Conditions") (as may be specifically amended in the Purchase Order) and which shall set out:
  - a specification of what we have ordered;
  - the price we are to pay (the "Price"); and
  - the delivery or collection details.
- c) The Purchase Order and these Conditions (together, the "Agreement") constitute the whole of our agreement for this purchase and supersedes any previous agreement we may have had with you and all promises, assurances, warranties, representation, and undertakings between us, whether written or oral, relating to its subject matter. These Conditions shall apply to and govern any contract between us to the exclusion of all other terms and conditions.
- d) If there is any inconsistency between the parts of the Agreement, the terms of the Purchase Order shall take precedence over the Conditions.
- e) The Purchase Order constitutes an offer by DS Smith to purchase goods and/or services from you in accordance with these Conditions. The Purchase Order shall be deemed to be accepted on the earlier of:
  - you issuing a written acceptance of the Purchase Order; or
  - any act by you consistent with fulfilling the Order.
- f) You must supply the goods or services (the "supply") yourselves unless we have agreed in writing to accept them from someone else.
- g) We may ask you to make the supply to any other DS Smith Group Company and to deal with that company as if it were DS Smith. "Group Company" means, in relation to a company, that company, subsidiary or holding company of that company, and any subsidiary of a holding company of that company.

### 2. CANCELLATION AND VARIATION

- a) We may cancel the Purchase Order at any time before the supply is made. If we do and you have accepted the Purchase Order, we agree to pay you a reasonable charge for what you may have done under the Purchase Order, and for any reasonable costs which you properly incurred before the cancellation and which cannot be recouped elsewhere, following which, we shall have no further obligations to you.
- b) We may suspend the Purchase Order at any time. If we do, for reasons other than your default, we agree to pay any reasonable additional costs you incur as a result. If we ask you to vary our order and agree with you an appropriate variation to the Price and to the time scale for delivery, you agree to make the supply in accordance with those variations.
- c) Save in respect of sub-clauses 2a) and b), any other variations to the purchase order must be agreed by DS Smith in writing by our authorised representative or by the issue of a further official purchase order by DS Smith.

### 3. PRICE AND PAYMENT

- a) The Price is fixed apart from applicable VAT and any other tax imposed on the supply. Unless otherwise agreed in the Purchase Order, the Price is inclusive of all other costs, including without limitation, duties, fees or taxes, cost of carriage, packaging, insurance and delivery.
- b) You may not invoice DS Smith until the goods have been delivered to DS Smith or the supply of services has been made. We shall pay your correctly submitted invoices within 95 days after the end of the month in which the invoice is submitted unless otherwise agreed in writing or required by mandatory law (in which case such amended period or mandatory provision of law shall apply), provided that the invoice is: (i) sent to DS Smith's accounts office address stated on the Purchase Order; (ii) shows DS Smith's order number reference; (iii) states the place to which the goods have been delivered or place at which the services were supplied; and (iv) sets out a full description of goods or services provided.
- c) If any payment is late you may charge us interest at the rate of 2% above the base rate from time to time of the Royal Bank of Scotland on any overdue payment from the due date for payment until the date payment is made.
- d) Payment shall be without prejudice to any other rights which

DS Smith may have against you and shall not constitute any admission by DS Smith as to satisfaction of your obligations under the Agreement. We reserve the right to withhold payment in the event of a dispute, if we have a claim against you or you have failed to provide the information required in accordance with clause 3(b).

- e) We shall be entitled to set off against the Price any sums that are payable to DS Smith or any DS Smith Group Company (without prejudice to any other rights or remedies of DS Smith or the relevant DS Smith Group Company).

### 4. WARRANTY AND DEFECTS

- a) You warrant to DS Smith that:
  - the goods as delivered shall comply with all specifications set out in the Purchase Order and/or specifications supplied by you to DS Smith or, if none, with your standard specification;
  - the goods shall be of satisfactory quality, sound design, materials and workmanship and fit for any purpose held out by you or specified by us;
  - the goods shall comply with all applicable laws and regulations, with all relevant health and safety and environmental regulations, European Standards and with best accepted industry standards; and
  - any services supplied by you will be supplied with reasonable skill and care and in accordance with the specification set out in the Purchase Order.
- b) You warrant that you shall not do or omit to do anything which may cause DS Smith to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and you acknowledge that we may rely or act on the services supplied by you.
- c) If we find that the goods and/or the services fail to comply with any of the warranties set out in the Agreement (the "Supplier Warranties"), we may, by giving you notice and at our sole discretion, and without prejudice to any of our other rights or remedies:
  - reject any of the goods or any part thereof (including any or all of the goods not affected by such failure to comply), and/or require the immediate refund of any monies already paid and/or cancel the Purchase Order;
  - refuse any further delivery of any goods or the further provision of any services (including under another agreement between us);
  - require you (at your sole cost, including the cost of any disassembly or reassembly) to make good or replace the goods or re-perform the services to DS Smith's satisfaction (in either case within 48 hours, unless agreed otherwise between the parties); and/or
  - accept the goods or performance of the services, subject to receiving a reasonable reduction in Price to account for the non-compliance.
- d) We or our representatives shall have the right to inspect and test the goods and inspect the provision of the services, and you irrevocably grant to us the right to enter your premises (or those of your subcontractors) for these purposes. If as a result of such inspection or testing we inform you that we are not satisfied that the goods or the services comply with the Agreement, then you shall take all necessary steps to ensure compliance. No inspection or testing shall imply our acceptance.
- e) All Supplier Warranties shall be in force for either (i) two (2) years from the date of delivery of the goods or completion of the services, or (ii) your standard warranty period for the goods or services, whichever is longer.

### 5. TIME AND DELIVERY

- a) You shall deliver the goods and/or complete the provision of the services by the delivery or completion date(s) stated on the Purchase Order. If no dates are so specified, delivery of the goods and/or completion of the services will be within such date as may be agreed by us in writing. If the supply of the goods and/or services is not completed by that date, we may impose liquidated damages of 0.5% of the Price per day of delay, up to maximum of 5% of the Price. Both parties acknowledge and agree that these liquidated damages represent a genuine pre-estimate of the damages likely to be suffered by DS Smith if you fail to deliver the goods or provide the services in accordance with the agreed timescales.
- b) If delivery of the goods and/or completion of the provision of the services is delayed by more than 5 days, we may treat that failure as a material breach and terminate the Agreement forthwith without liability. In that event we would





## DS SMITH GROUP - STANDARD PURCHASE CONDITIONS

have no further obligations to you but you would be liable to make good any loss to DS Smith.

- c) Unless stated otherwise in the Purchase Order, all goods shall be delivered INCOTERMS 2020 DAP at the location stated in the Purchase Order.
- d) The Supplier shall deliver the quantity of goods stated on the Purchase Order. The Buyer may at its discretion accept a quantity variation and pay pro-rata for the actual quantity delivered.
- e) You shall ensure that the goods shall be properly packed and stored during transit so as to reach their destination in an undamaged condition. All containers and other packaging shall be included in the Price and are non-returnable unless otherwise agreed on the Purchase Order.
- f) Where necessary, you shall, at your own cost, obtain and comply with any export/import licences, permits or consents (including work permits or consents) for the supply and delivery of the goods or provision of the services.

### 6. PASSING OF RISK AND TITLE

- a) Title and risk in the goods shall pass to DS Smith when they have been delivered to DS Smith.
- b) If items (including without limitation the goods) that belong to DS Smith are in your possession you undertake that you shall: (i) hold the relevant items as the fiduciary agent of DS Smith; (ii) clearly identify the items as our property; (iii) keep the items separate from your property or property belonging to others; (iv) keep the items properly stored and insured; and (v) not exercise, assert or purport to exercise or assert any lien of whatever nature in connection with such items.
- c) You shall give DS Smith access (on reasonable notice) to any premises where goods are being manufactured or stored for DS Smith for any reasonable purpose under this Agreement.
- d) You shall not be entitled to pledge or charge by way of security any of the items which remain our property, but if you do so or purport to do so, we shall have the right to recover our property in accordance with this clause.

### 7. TERMINATION

- a) We may terminate the Agreement immediately on written notice if:
  - you are in breach of an obligation and
    - you cannot put it right; or
    - you do not put it right within seven days of receiving notice from DS Smith to do so; or
    - we have given you notice of a breach of the same obligation at least twice before; or
  - we reasonably believe that you will not be able to pay your debts as they fall due or that you will be unable to fulfil your obligations under the Agreement.
- b) On termination we have no further liabilities under the Agreement.
- c) Subject to clause 7(b), termination of the Agreement, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that exist as at termination. Provisions relating to warranties, limitation of liability, intellectual property, compliance, confidentiality and obligations on termination survive termination or expiration of the Agreement.

### 8. LIABILITY AND INSURANCE

- a) You agree to pay DS Smith on demand an amount sufficient to cover any and all liabilities, claims, demands, damages, costs, losses, fees and expenses (including, without limitation legal fees and expenses on a full indemnity basis) which are incurred by or brought against DS Smith or which may otherwise arise, directly or indirectly, as a result of:
  - any breach by you of your obligations under the Agreement;
  - any claim that the supply of goods/services infringe, or their use/resale infringes the rights of any other person;
  - your act, omission, neglect or default or that of your employees, sub-contractors or agents; or
  - the termination of the Agreement under clause 7.
- b) You must maintain adequate insurance cover against risks you incur under this Agreement and provide evidence of that cover at our request.
- c) Nothing in these Conditions shall exclude or restrict either party's liability for: (i) death or personal injury caused by our negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability that cannot be excluded by law.
- d) Subject to clause 8(c), neither party shall have any liability whatsoever (directly or indirectly) whether in contract, tort (including claims for negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in

connection with the performance or contemplated performance of the Agreement for any: (i) loss of business, revenue, opportunity, contracts or goodwill; (ii) anticipated savings, wasted expenditure, corruption or destruction of computer data; or (iii) for any indirect or consequential loss.

- e) Subject to clause 8(c), DS Smith shall not have any liability whatsoever for any loss or damage suffered by you or any third party as a result of any breach of the security of:
  - software, network and information systems you use; and
  - your business' physical, technical, administrative and organizational safeguards put in place, or that should have reasonably have been put in place.
- f) Save in respect of our obligation to pay in accordance with clause 3 (and subject to clauses 8(c), 8(d) and 8(e), our liability in respect of any other claims in contract, tort (including claims for negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with this Agreement shall in all circumstances be limited, to the maximum extent permitted by law, to any direct loss or damage up to 10% of the amount of the Price paid for the goods giving rise to the claim.

### 9. COMPLIANCE

- a) In addition to your obligations to comply with applicable laws and regulations, you shall and shall procure that your officers and employees shall:
  - comply with the DS Smith Global Supplier Standard;
  - comply with the anti - corruption legislation applicable to you or DS Smith ("Anti - corruption legislation");
  - not, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, promise or give (or agree to offer, promise or give) any financial or other advantage with respect to any matters which are the subject of this or any other agreement between DS Smith and you and/or to obtain any benefit for DS Smith which would violate the Anti-corruption Laws.
  - comply with labor Laws and legislation and international documents relating to the prohibition of trafficking in human beings applicable to you or DS Smith;
  - ensure that neither you nor any of your senior officers have been convicted of any offence involving slavery and human trafficking, nor have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking;
  - not, when acting in the capacity of a person associated with DS Smith, engage in any act or omission which would constitute a tax evasion facilitation offence at home or abroad, in accordance with the legislation; and
  - not cause, facilitate or contribute to the commission of an offence of failing to prevent the facilitation of tax evasion in accordance with the applicable legislation.
- b) If you become aware of any breach or suspected breach of this clause 9 by you or your subcontractors, you shall promptly notify DS Smith and we may immediately suspend operation of the Agreement by giving written notice to you, pending an investigation into the breach or suspected breach. You shall assist DS Smith in any such investigation, including by providing DS Smith with reasonable access to your personnel, documents and systems.
- c) In addition to our rights in clause 7, if, in our reasonable opinion, you or your subcontractors have breached this clause 9, we may, in our sole discretion, on written notice, immediately: (i) terminate any or all agreements between DS Smith and you; and (ii) suspend operation of the Agreement by giving written notice to you.
- d) In relation to tax evasion offences, the question of whether a person is associated with another person shall be determined in accordance with section 44 of the Criminal Finances Act 2017 (and any guidance issued under section 47 of that Act)

### 10. INTELLECTUAL PROPERTY

- a) Both parties retain ownership of their own intellectual property rights on the goods or services supplied under this agreement, including but not limited to, patents, trademarks, designs, copyright, domain names, trade secrets, know-how and tradenames.
- b) Nothing contained in the Agreement, unless expressly provided otherwise, shall be construed as conferring any licence or right, under any rule or regulation including, without limitation those related to copyright or other intellectual property rights.



## DS SMITH GROUP - STANDARD PURCHASE CONDITIONS

- c) You grant DS Smith a personal, non-exclusive and royalty free right to use and exploit such intellectual property rights in the goods or services solely to the extent necessary for the use and operation of said goods or services.
- d) Any intellectual property that arises or is obtained or developed by DS Smith (or by a contractor on their behalf) in the course of or in connection with the use and/or operation of the goods or services provided by you to DS Smith, is and will remain the sole and exclusive property of DS Smith.
- e) You shall defend, indemnify, and hold DS Smith harmless against all claims resulting from or arising in connection with any actual or claimed infringement of any intellectual property rights with respect to the goods or services supplied under this agreement.
- f) If any claim is made against DS Smith that the goods or services infringe any intellectual property rights of any third party, you shall indemnify DS Smith against all claims, liabilities, losses, damages, costs and expenses arising in connection with such claim and, in the event of such claim preventing DS Smith from using any of the goods or services you shall, at your sole cost and expense, as soon as reasonably possible:
- obtain the right for DS Smith to continue to use such goods or services in accordance with this Agreement without the infringement of any third party Intellectual Property Rights; or
  - provide alternative non-infringing goods or services or other items of equivalent or increased functionality and performance (as reasonably determined by DS Smith), for use in accordance with this Agreement; or
  - promptly replace such goods or services or other items without any degradation in functionality or performance, so that its use, in accordance with this Agreement, does not infringe any third party intellectual property rights.
- g) This Agreement and its subject matter are confidential and must not be disclosed to any person without our permission.
- h) You must not novate, assign, subcontract or otherwise transfer any or all of your rights, interests or obligations under the Agreement without our prior written consent (which will not be unreasonably withheld).
- i) Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other party.
- h) Save in respect of clause 11(e), any reference to communications being written or in writing includes electronic forms of communication such as e-mail. Any electronic communication will be effective from when it leaves the sender's mailbox.

### 12. 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 Slovenia.
- b) The parties irrevocably agree and acknowledge that the courts of Slovenia have exclusive jurisdiction for the purpose of hearing and determining any suit, action or proceedings.

**Date: november 2021**

### 11. GENERAL

- a) If any licence or consent of any government or other authority is required for the supply, carriage, storage or use of the goods or services supplied by you to DS Smith, you shall obtain the same at your own expense and if requested by DS Smith, produce evidence of the same to DS Smith.
- b) In providing the supply at our premises, you shall (and shall procure that your personnel shall) comply with all health and safety rules and regulations and security and other site operational requirements that apply at our premises (which are available upon your request). You shall also take all reasonable precautions to protect your employees and our employees while performing the services or delivering the goods.
- c) You shall, at your own expense, provide all equipment and materials to 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, other than by a DS Smith Group Company.
- e) Any notice given under the Agreement shall be in writing and served by delivering it personally or sending it by registered post to the registered address of DS Smith or you (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 registered post 48 hours from the date of posting,
- provided that if deemed receipt occurs before 9am, on a business day the notice shall 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 shall 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 times becomes to any extent invalid or unenforceable under national legislation that does not affect the remainder and all other provisions of the 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 national legislation does not affect validity or enforceability in another national legislation.