

GENERAL CONDITIONS OF SALE
(Version 02 – October 2016)

- 1. Scope. 1.1.** These general conditions of sale (“Conditions”) shall apply to and be deemed as integral part of all and any contracts stipulated exclusively for the sale/supply of paper, cardboard boxes/packaging and or sheets of paper (“Products”) to the client (“Purchaser”) by DS Smith Packaging Italia S.p.a. (VAT no. IT12614920150), DS Smith Paper Italia S.p.a. (Vat no. IT08459230960), DS Smith Recycling Division Italia - Italmaceri S.r.l. (VAT no. IT03067430011), Scatolificio Gabo S.r.l. (VAT no. IT00142960350), Toscana Ondulati (VAT no. IT00250350469), each defined as either “DS Smith” or “Seller” and jointly the “Companies”, from the Italian head-quarters and production sites and/or from “affiliate” companies, whose contact and corporate details appear on the respective letterheads and corporate internet websites. The Purchaser and the Seller are jointly referred to as the “Parties”. **1.2.** The Companies are all somehow connected to DS Smith Plc, a company set up under English law, with registered office in London, 350 Euston Road (NW1 3AX). **1.3.** Each offer, purchase order confirmation and delivery by the Seller shall be deemed to be governed by these Conditions, with the express exclusion of the applicability of any other general conditions or clauses or conditions conflicting with these Conditions, which may, for instance, be found in offers, catalogues, price lists, orders, or any other document. **1.4.** The supply contract of Products (“Contract”) shall prevail on any other agreement and shall be deemed to be governed by (i) these Conditions, (ii) special conditions applicable to the specific division ruled by the Contract, such as paper, cardboard packaging and boxes and sheets of paper (“Special Conditions”), (iii) the specifications contained in each purchase order sent by the Purchaser (“Order”) if and when accepted (“Acceptance”) or confirmed (“Order Confirmation”) by the Seller or contained in the Seller’s offer (“Offer”). In case of conflict among the Conditions, the Special Conditions and the Order Confirmation, the latter shall prevail. **1.5.** Any amendment to these Conditions and to the Contract must be in writing and signed or expressly approved in writing by a duly empowered person of the Seller. **1.6.** Any Offer and/or Acceptance and/or Order Confirmation by the Seller, to which these Conditions apply (unless expressly derogated), states: (i) the specifications of the supply (in the absence of which, standard specifications or general commercial practice between the Parties shall apply); (ii) the price (in the absence of which the applicable price in the price list of the Seller shall apply, or the price already agreed to by the Parties in their relationship); (iii) the provisions regarding delivery or collection. **1.7.** Samples, descriptions, illustrations, forecasts, specifications, brochures or descriptive and/or promotional material delivered by the Seller must be considered merely indicative for orientation purposes evidencing only the general features of the Products: the Seller may not be deemed liable for their accuracy nor the said material be considered reliable.
- 2. Contract Stipulation. 2.1.** Even if the Contract was stipulated in reason of the involvement of an agent of the Seller, each Contract is deemed to have been stipulated: (i) when the Purchaser becomes aware of the Order Confirmation, if compliant with the Order, or (ii) 24 hours after Acceptance – in the absence of the Purchaser’s objection/withdrawal – when said Acceptance differs from the Order in a non material way, including a variation of quantity and/or a reasonable increase in price, or (iii) when the Seller has started carrying out the performance of the Order, also in the absence of express Acceptance.
- 3. Variations. 3.1.** Following the stipulation of the Contract, the Seller is entitled to minor variations in the Products, such as the usual industrial quantity variations of +/-10%, with the consequent change in price, with no obligation to notify the Purchaser.
- 4. Delivery Time. 4.1.** DS Smith shall use reasonable endeavours to deliver within the agreed time, which however must be considered merely indicative and not mandatory, it therefore being understood that the Purchaser is entitled to refuse late delivery only and exclusively if a binding deadline for delivery has been agreed to in writing. **4.2.** When the Contract does not provide a specific delivery date, the Products must be delivered within the business practice term used by the Parties and, in any case, within a reasonable time from the Acceptance or the Order Confirmation, in any case not more than sixty days from the Order.
- 5. Delivery terms. 5.1.** Unless otherwise agreed in writing, delivery of supplies:

 - a.** if it is agreed “Franco stabilimento” or “Franco destino” (“Carriage paid to”) at the Purchaser’s premises indicated in the Order or to any other indicated destination, delivery is to be deemed as DAP (“delivered at place”) – ICC Incoterms 2010 at the Purchaser’s premises;
 - b.** if it is agreed “Franco fabbrica” (Ex Works), at the location indicated in the Order Confirmation, it must be deemed as EXW (“Ex Works”) – ICC Incoterms 2010. In case of Ex Works delivery, the

Seller undertakes to timely notify the Purchaser of the date on which the supply is made available to it ("Date"). The Seller or its agent shall limit their action to loading the Products on the means of transport sent by the Purchaser, under the direction and according to the instructions of the Purchaser's carrier and, in any case, at the cost, risk and burden of the Purchaser. Anchoring, fastening and securing operations are at the Purchaser's sole cost, risk and liability. Except for reasonable and documented reasons, to be previously notified, the Purchaser undertakes to: (i) collect the Products on the Date and in any case not later than three days after the same ("Final Term"); (ii) instruct the carrier to carefully inspect the appearance and state of the Products at delivery, accepting in the name and on behalf of the Purchaser only the Products which seem in good condition.

- 6. Failure to collect the Products.** **6.1.** When the Purchaser has to proactively collect the Products at an agreed location, in case of failure to collect the products within the Final Term, the Seller shall issue – if not yet issued - an invoice for the supply, and shall be entitled to demand payment of the entire price of the Contract. **6.2.** Safe as provided for in the Special Conditions, in any case, if the Purchaser has failed to collect the Products ten days after the Final Term with no legitimate reason, after having sent formal notice to collect the Products within a term to be set for not less than five working days, the Seller shall be entitled to destroy/have the Products pulped, under the Purchaser's sole responsibility and at its cost.
- 7. Notices.** **7.1.** Notices and communications by the Seller to the Purchaser's contact details (also by email), are to be deemed as received by the Purchaser. For that purpose, the Purchaser undertakes to timely communicate any variation of such contact details. **7.2.** The Purchaser waives any claim aimed at challenging the validity and effectiveness of authorisations and/or consents and/or acceptance of Products, granted to the Seller orally and/or in writing by the Purchaser's agents and/or representatives and/or employees and/or collaborators.
- 8. Prices.** **8.1.** If not otherwise agreed in writing, the prices in the price-list existing at the time of receipt of the Order shall apply to each Contract; the price of Products not shown in the price-list shall be determined from time to time by the Seller. **8.2.** If a late delivery is ascribable to the Purchaser, the latter shall bear exclusively the price increase occurred following the Order Confirmation. **8.3.** Except if otherwise agreed, prices shall not include: any tax, levy, fee, expense and/or burden applicable in any way, directly and/or indirectly, to the sale, supply, shipment, delivery and use of the Products including but not limited to VAT (or other similar tax) and customs import or export duty.
- 9. Payment. Rights and powers of the Seller.** **9.1.** Payment of Products must be made at the terms agreed to in writing. The agreed payment term must be considered reasonable and fair, notwithstanding any other provision of Legislative Decree 231/2002, considering, among other elements, the nature of the Product, the sector and the industry the Parties operate in. **9.2.** In no case may the Purchaser put on hold or delay payment of the Products, including when the Purchaser raises a claim of any kind regarding the Products. **9.3.** The Seller's lenience regarding late payments shall not bar the Seller from enforcing its rights under this article. **9.4.** In case of late payment, the Seller shall be entitled to a lump sum amount of 40.00 euros as liquidated damages plus late payment interest, in the amount provided in Legislative Decree 231/2002, without prejudice to claiming any further damage. In any case, the Seller shall be entitled (without prejudice):

 - a. to terminate the Contract as regards the Products not yet delivered and/or to condition the performance of the underway Order to full payment of pending amounts due;
 - b. to put on hold performance of other Orders received from the same Purchaser;
 - c. to declare that the Purchaser has forfeited the deadline under article 1186 of the Civil Code.
- 10. Set off.** **10.1.** The Seller is entitled to offset its credit owed by the Purchaser (also referable to different supplies) with any debts towards the latter.
- 11. Warranty.** **11.1.** The Seller warrants that its Products comply with applicable laws and regulations of the Italian legal system and comply with the Contract and relevant commercial practice, at the time of the Order Confirmation or, in any case, at the time of the stipulation of the Contract (the "Warranty"). Particular uses of the Products must be agreed in advance with the Seller. **11.2.** The Warranty shall not apply to defects and/or flaws and/or non compliances which may have occurred during transport (if borne by the Purchaser), for improper use or inappropriate or careless, imprudent or incompetent preservation with reference to the nature and characteristics of the Products. **11.3.** Without prejudice to the above, the sole liability of the Seller and the sole remedy for the Purchaser under the Warranty shall be the replacement of Products or reimbursement of the paid up price, at Seller's discretion. **11.4.** The Seller

reserves the right to examine the Products alleged to be defective and/or non compliant, in order to evaluate the existence of such defects, flaws and/or non compliances claimed by the Purchaser and to verify if they are covered by the Warranty. Upon lodging the claim for the application of the Warranty, the Purchaser will have to supply any information and document which may be useful for the said evaluation, identifying the relevant Product batch, also through the bill of lading number and by sending the Seller, as a way of example, photographic evidence and, if possible, a representative sample of the Products, which shall have to be made available to the Seller and/or Seller's representatives for any suitable evaluation. In any case, the return of any Products must be accepted in advance by the Seller. **11.5.** Any form of warranty, express or implied, including but not limited to statutory warranties, is to be deemed to be excluded and substituted by these Conditions and by the provisions in the Special Conditions. **11.6.** The Seller warrants that, upon delivery, the Products will not infringe any third party intellectual property right in Italy; any creative work potentially subject to intellectual property rights provided by the Purchaser or by third parties on behalf of the Purchaser is expressly excluded by this warranty, including, but not limited to products, specifications, designs, logos, prints, graphic works, instructions.

12. Claims and complaints. **12.1.** The Purchaser must point out on the bill of lading and lodge a complaint with the Seller for any apparent defect and/or non compliance of the Products within three working days from receipt. Failure to meet the said deadline shall result in forfeiture of the right. **12.2.** Any complaint concerning the mechanic and/or chemical and/or physical features of the Products, detected through laboratory analyses, must be lodged by the Purchaser to the Seller, within five working days from delivery, and failure to meet such deadline shall result in forfeiture of the right. Any further hidden defects which may become apparent by using the Products shall have to be claimed by the Purchaser to the Seller mandatorily within and not beyond three working days from detection, failure to meet the said deadline resulting in forfeiture, and in any case not more than one month from delivery of the Products by the Seller. **12.3.** Any complaint must be made by the Purchaser to the Seller in writing by sending a certified mail (PEC) to the certified email address of the plant of the Seller, if possible, or by fax to the plant of the Seller. **12.4.** In the absence of complaints made as above detailed and within the above deadlines, the Products shall be deemed as unconditionally accepted.

13. Passage of risk and retention of title. **13.1.** Passage of the risk (including but not limited to destruction and/or deterioration) occurs upon delivery of the Products, according to the agreed delivery terms, without prejudice to the costs and liabilities that are at Purchaser's charge according to the Conditions and the Special Conditions. **13.2.** Unless otherwise agreed in writing, title to the Products passes to the Purchaser only after full payment of the price to the Seller, plus any burden or expense. Until then:

- a. the Purchaser is held to be in custody of the Products which must be stored separately from products of the Purchaser or of third parties, duly put and stocked in accordance with their nature and features, labeled as owned by DS Smith and insured for their value;
- b. in case of failure to pay the Products or failure to pay any other amount due, with no need for formalities, including formal notice, the Seller shall be able to access the premises of the Purchaser at any time – and the Purchaser, with these Conditions, fully empowers DS Smith to access any of its premises where the Products are – and to repossess any Products on which the retention of title lies wherever they may be, reserving its right to any further remedy for suffered damages with no need to terminate the Contract.

14. Exclusion and limitation of liability. Indemnification. **14.1.** In no case shall the Seller be deemed liable, directly or indirectly, for accidental, consequential or indirect damages of any kind or for any detriment and/or burden to the Purchaser regarding performance of the Contract, such as but not limited to: (i) loss of profit, expenses, data, business, opportunity, contracts, goodwill, (ii) loss of profit and production downtime, (iii) damage to image and reputation. **14.2.** The Purchaser expressly states its acceptance of the fact that Seller's cumulative liability towards the Purchaser, deriving from and/or related to each and every Contract for the supply of Products, both in contract and in tort, may not exceed (i) 10% (ten percent) of the turnover of the Purchaser's orders to Seller in the solar year previous to the supply regarding which the Purchaser's claim arose or, (ii) in the first solar year of supplies, the value of the single supply for which the claim is made. **14.3.** The Seller shall be liable (i) for death or personal injury and (ii) for crime ascribable to the Seller. **14.4.** The Purchaser undertakes to hold the Seller harmless and indemnified from all and any liability, loss, prejudice, cost, burden, expense (including but not limited to legal expenses in full), legal claims, procedures, claims and requests made against the Seller which (i) stem out, directly or indirectly, or in any way connected to any breach of the Purchaser's obligations provided for by any Contract or to fraudulent or negligent violations committed by the Purchaser, its

employees, collaborators of any kind and/or agents, with reference to the Products; (ii) are the consequence of any conduct of the Seller reasonably compliant with the Purchaser's instructions (including but not limited to any claim by third parties regarding the violation of intellectual property rights while performing the Contract).

- 15. Force Majeure 15.1.** The Seller shall not be liable towards the Purchaser for failure to perform the Contract, including failure to deliver, which is a consequence of force majeure, such as but not limited to, late delivery or failure to deliver by its suppliers, strikes, terrorism acts, power supply suspension, acts of war (also not declared), embargos, turmoil or riot, fire, sabotage, acts of God, acts of the government (such as international sanctions), lockouts. **15.2.** In these cases, the Parties shall negotiate in good faith and with cooperative spirit in order to evaluate the terms and conditions to continue their relationship and the performance of the Contract.
- 16. Early termination and change in the conditions of the Purchaser. 16.1.** Both Parties are entitled to terminate the Contract forthwith, by sending written notice via PEC, if possible, or registered mail with return receipt, if the other party materially breaches its obligations under the Contract and cannot remedy such breach or, notwithstanding the possibility to remedy the breach, it does not do so within fifteen days from receipt of the formal notice under article 1454 of the Italian Civil Code. In case of early termination: (i) save as otherwise agreed in writing, both Parties' claims against the other party remain valid; (ii) the acceleration clause shall apply to Purchaser according to article 1186 of the Italian Civil Code and all dues, though not yet payable and also if due to another Seller, become immediately payable, including any amount relevant to ready supplies which have not yet been shipped. **16.2.** Without prejudice to claiming damages, the Seller is entitled to suspend and/or terminate the supply Contract/s with the Purchaser and/or to revoke or modify the terms and conditions of any credit line granted to the Purchaser, by sending notice by certified mail (PEC), if possible, or by registered mail with return receipt, if (i) the Purchaser is wound up or is subject to any insolvency procedure (without prejudice, in such case, to the claims by the procedure); (ii) there are justified reasons to deem that the Purchaser's financial standing may prejudice its capability to perform its contractual obligations or the Purchaser, or its representative shareholders carry out corporate actions which may, even only potentially, prejudice the Companies, reduce the guarantees in their favour and/or modify the productive capacity and the business requirements. **16.3.** The effectiveness of provisions regarding the Warranty, limitation of liability, intellectual property, confidentiality and obligations upon termination shall survive the expiry or early termination of the Contract.
- 17. Seller's Ethic Code. 17.1.** The Purchaser expressly acknowledges and undertakes to comply with, as integral and essential part of the Contract, the Sellers' undertaking to constantly pursue, in its corporate actions, the ethical values and behavioural rules contained in its Ethic Code – published on DS Smith's website – with particular reference to respect of human life, product safety, protection of health and safety on the job, protection of the environment, compliance with all rules against public and private corruption and money laundering, with the laws on privacy, industrial intellectual property and copyright, as well as with the provisions and rules aimed at preventing the crimes detailed in Legislative Decree 231/2001.
- 18. Privacy and confidentiality. 18.1.** By signing the Conditions, the Purchaser states its acceptance of its personal data being handled as provided in the Seller's information note. **18.2.** The Contract and its contents are private and confidential and may not be disclosed to third parties without the Seller's prior consent, during the contractual relationship and thereafter for two years following performance of the last Order.
- 19. Applicable Law. Conciliation. Jurisdiction. 19.1.** Italian law shall apply to the Conditions, the Special Conditions and to the Contract, with express exclusion of the Convention on Contracts for the International Sale of Goods signed in Vienna in 1980. **19.2.** Should a dispute regarding the interpretation and validity of the Conditions and the performance of the Contract arise, a preliminary mediation attempt aimed at conciliation shall be carried out at the relevant Conciliation Service facilities of the Chamber of Commerce of the area where the production site of the Seller involved in the dispute is situated. **19.3.** Failing such mediation attempt, the Court of Milan, Italy, shall have exclusive jurisdiction, without prejudice to the Seller's right to sue the Purchaser before the court where the Purchaser has its registered office.

20. Miscellaneous. 20.1. The invalidity or ineffectiveness of one or more clauses of the Contract shall not prejudice the validity and effectiveness of the Contract as a whole. When an invalid or ineffective clause of the Contract would result valid and effective following the elimination and/or amendment of some provisions, those provisions shall apply with the elimination/amendment/s necessary so that the clause results valid and effective. **20.2.** Acquiescence by the Seller of any breach and/or failure by the Purchaser shall not bar the Seller from enforcing any of its rights provided for in the Conditions.

Date and place

Purchaser _____
(legal representative, signature and seal)

The Purchaser hereby declares that it is aware of the provisions contained in the above General Conditions of Sale and that, pursuant to Article 1341 of the Civil Code, it expressly accepts the following clauses:

Article 9.2. – No suspension or delay in payment;

Article 10.1. – Set-off;

Article 11 - Warranty;

Article 12 – Claims and Complaints;

Article 13.2. – Retention of Title;

Article 14 – Exclusion and limitation of liability. Indemnification;

Article 19 – Applicable Law. Conciliation and jurisdiction.

The Purchaser _____
(legal representative, signature and seal)