

## ASM Terms and Conditions for the Purchase of Goods and Services

### 1. INTERPRETATION

#### 1.1 Definitions:

**Affiliate:** means any corporation or other entity that controls, is controlled by, or is under common control with a party. A corporation or other entity shall be deemed to control another corporation or entity if it directly or indirectly owns or controls more than fifty percent (50%) of the voting stock or other ownership interest of that corporation or entity or otherwise has the ability to direct the management of such entity or corporation.

**ASM Network:** means SAP Ariba's cloud-based hosted service that enables suppliers and buyers to form relationships and conduct transactions over the internet.

**ASM Portal:** means the ASM section of the ASM Network through which ASM may issue Purchase Orders and conduct planning, quality, sourcing, performance, business information maintenance and other activities related to its supply chain engagement and management.

**ASM Terms of Use:** means the agreement between the Customer and the Supplier that governs the Supplier's access and use of the ASM Portal.

**Business Day:** means a day, other than a Saturday, Sunday or public holiday in the jurisdiction of the Customer.

**Conditions:** means the terms and conditions set out in this document as amended from time to time in accordance with Clause 15.3 and 15.7.

**Contract:** means the contract between the Customer and the Supplier for the sale and purchase of the Goods and/or Services as set out in the Purchase Order in accordance with these Conditions.

**Customer:** means the purchasing Affiliate of ASM International N.V., identified in the Purchase Order and where applicable, includes other Affiliates of ASM International NV or ASM International N.V.

**Flexibility Model:** means a matrix that defines the percentage of change that the Customer can apply to the on-order or future order quantity of Goods based on the number of weeks from the time the Supplier first receives the requirement for such Goods, without any liability for the Customer.

**Goods:** means the good(s) or any part of them (including but not limited to the Customer's part numbers) as set out in the Purchase Order.

**Mandatory Policies:** means the Customer's business policies and codes communicated through email or/and the Supplier Portal or/and the Customer's website

**Personal Data:** means any and all information relating to an identified or identifiable individual, including but not limited to the Customer, (former) employees, employee family members, business partners or contractors;

**Purchase Order:** means the Customer's order for the Goods or Services to which these Conditions apply.

**Responsible Minerals Policy Statement:** means a Mandatory Policy found in [the Supplier Portal](#).

**Services:** means the services (or any part thereof) set out in the Purchase Order.

**Specification and Quality Requirements:** means any specification or requirement for the Goods and/or Services, including any related plans, processes and drawings that are furnished by the Customer, or the Supplier and agreed to by the Customer.

**Supplier:** the company, person or firm from whom the Customer purchases the Goods and/or Services and is identified as such in the Purchase Order.

**Supplier Code of Conduct:** means a Mandatory Policy found in the Supplier Portal.

**Supplier Portal:** means the Supplier information website at <https://www.asm.com/service-and-support/supplier-information>.

#### 1.2 Interpretation:

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative (not limitative) and shall not limit the sense of the words preceding those terms; and

(c) a reference to **writing** or **written** includes emails and any electronic notification on the ASM Portal.

### 2. BASIS OF CONTRACT

**2.1** These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.2** The Purchase Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions.

**2.3** The Purchase Order shall be deemed to be accepted on the earlier of:

(a) the Supplier issuing a written acceptance or acknowledgement of or accepting the Purchase Order on the ASM Portal; or

(b) the Supplier doing any act consistent with fulfilling the Purchase Order, at which point the Contract shall come into existence. The Customer expressly rejects any proposed amendment or addition to the Purchase Order, by the Supplier, unless expressly accepted in writing by the Customer; or

(c) the Supplier not expressly rejecting the Purchase Order in writing to the Customer within three (3) Business Days of the date of the Purchase Order.

**2.4** These Conditions apply to all Purchase Orders and any additional, contrary, or inconsistent terms or conditions of sale by the Supplier (including but not limited to the Supplier's general terms and conditions of sale) are expressly rejected. The Supplier's acceptance of a Purchase Order will irrevocably manifest the Supplier's assent to the Conditions. The Customer's failure to object to provisions contained in any communications from the Supplier shall not be deemed a waiver of objection of such provisions.

### 3. THE GOODS

#### 3.1 Hardware warranty

The Supplier warrants that all Goods, including spares, are new, good quality, free from defects in design, materials, construction and workmanship, conform to the Specifications and Quality Requirements, if any, and are fit for any purpose held out by the Supplier, for a period of **twenty-four (24)** months from the date of delivery ("Warranty Period"). Without prejudice to any other right or remedy available under law or these Conditions, in case of defects during the Warranty Period, the Supplier shall - at the discretion of the Customer - (i) repay to the Customer the full purchase price paid for the Goods within ten (10) calendar days after the Customer has informed the Supplier, or (ii) repair or replace the defective Goods to the satisfaction of the Customer within a reasonable timeframe. The Supplier shall bear all direct and indirect costs and expenses for such repair, replacement or both, in addition to any damages the Customer may have incurred or will still incur. Also, the Supplier warrants that the Goods are delivered with all required licenses, free from liens and encumbrances, and are designed and manufactured and delivered in compliance with all applicable laws.

### 3.2 Service repair warranty

The Supplier warrants to the Customer that Services will be performed by appropriately qualified and trained personnel, with due care and diligence, and to such high standard of quality as it is reasonable for the Customer to expect in the circumstances, and in a timely and workmanlike manner in accordance with the relevant laws. Any Services shall be subject to a warranty period of **twelve (12)** months from the date of repair, replacement or both of Goods or the (re-)performed Services.

### 3.3 Replacement and repair

Any replacement or repair required, in accordance with Clauses 3.1 and 3.2 above, shall be done entirely at the expense of the Supplier, at the location(s) of the Goods as specified by the Customer and in the event that the Goods are required to be transported to an authorized local repair facility or any other location, all costs incurred in the transportation of the Goods (including any levies and taxes), shall be payable by the Supplier to the Customer.

### 3.4 Compliance with statutory and regulatory requirements

The Supplier warrants to the Customer that all Suppliers' Goods, including spares, shall at all times comply with all applicable statutory and regulatory requirements including but not limited to the manufacture, labelling, packaging, storage, handling and delivery of the Goods. The Supplier shall ensure that at all times it has and maintains all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Contract. Any Services performed shall comply with all laws and regulations.

### 3.5 Inspection and testing

**3.5.1** The Customer may inspect and test the Goods at any time before delivery and after delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract. The Supplier shall assure that the inspection on its premises then it shall provide reasonable facilities.

The Supplier shall have on file at its facilities, subject to audit by the Customer, adequate data showing the presence in each article, including all components and raw materials incorporated therein, of the physical and chemical properties required by the applicable specifications; the Supplier shall also impose the same requirement on all subcontractors.

**3.5.2** If following such inspection or testing the Customer determines that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clauses 3.1, 3.2 and 3.4 above,

the Customer shall inform the Supplier.

Inspection shall not release the Supplier from the obligation under the Contract. And in case of a result of sampling inspection, any portion of a lot or shipment of like and similar items is found to be defective or non-conforming, then the Customer may reject and return the entire shipment or lot without further inspection and charge the Supplier for any costs incurred.

### 3.6 Changes

**3.6.1** The Customer alone shall have the right to make changes in (1) the specifications, drawings and samples, if any; (2) the method of shipment or packaging; (3) the place and time of performance/delivery; and (4) the Goods and materials and/or Services, including the quantity thereof, to be furnished by the Supplier. If any such change causes an increase or decrease in the cost of, or the time required for, performance of the Purchase Order, an equitable adjustment shall be made in the contract price or performance schedule, or both by mutual agreement. Any claim by the Supplier for adjustment under this clause must be asserted within five (5) Business Days from the date of receipt by the Supplier of the notification change and agreed to by the Customer prior to delivery of the Goods. No change under this clause will be allowed unless it is set forth in a written amendment of the Purchase Order by ASM Global Purchasing Department.

**3.6.2** Without prior written approval from the Customer, the Supplier shall not make any modifications, revisions, or engineering changes that affect the form, fit or function of the Goods, including, but not limited to: size, shape, color, function, electrical requirements, cooling, maintainability, compatibility, interchangeability, reliability, or safety agency approvals.

**3.6.3** Without prior written approval from the Customer, the Supplier shall not make any modifications, revisions, or changes to the processes, methods, or manufacturing/production.

### 3.7 Compliance

If Goods or any Services provided hereunder include or relate to materials which are or contain dangerous goods, chemicals, contaminants, substances, pollutants, or any other materials that are defined as hazardous by relevant local, state, national, or international law, regulations, and standards ("Hazardous Materials"), the Supplier represents and warrants that the Supplier and its personnel providing services to the Customer understand the nature of and hazards associated with the design and/or service of such Goods including handling, transportation, and use of such Hazardous Materials, as applicable to the Supplier. Prior to causing Hazardous Materials to be on the Customer's property, the Supplier shall obtain written approval from the Customer's site Environmental/Health/Safety organization. The Supplier will be fully responsible for and shall indemnify the Customer and/or its contractors or customers from any liability resulting from the Supplier's actions in connection with: (i) providing such Hazardous Materials to the Customer; and/or (ii) the use of such Hazardous Materials in providing services to the Customer. The Supplier further agrees to comply with the Customer's Environmental, Health, and Safety policies and all other Mandatory Policies at the Supplier Portal or otherwise, as may be updated from time-to-time.

## 4. DELIVERY

**4.1** The Customer may change its demand within the Flexibility Model without accruing any liability and the Supplier agrees to comply with the Flexibility Model for unplanned increase or decrease in demand above or below the Customer's forecast or actual orders, provided always that the Customer will provide at least ten (10) calendar days prior written notice to the Supplier. Unless otherwise agreed to by the Parties, this Flexibility Model shall apply to all Goods and/or Services at the committed lead-time as follows:

Lead-time (weeks)	0-4	5-8	9-12	13+
Flexibility	25%	50%	100%	Unlimited

The Customer can thus, with ten (10) days' notice, require the Supplier to adjust the delivery of forecasted Goods within the indicated percentage range depending on the lead-time of the Goods.

**4.2** Time is of the essence in all deliveries and dates and times specified. The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered in instalments, the outstanding balance of Goods remaining to be delivered.

**4.3** The Supplier shall deliver the Goods:

- (a) on the delivery date specified in the Purchase Order or as otherwise specified by the Customer in writing;
- (b) at the delivery location as specified on the Purchase Order, and
- (c) during the Customer's normal business hours, or as instructed by the Customer.

Goods shipped to the Customer in advance of schedule may be returned to the Supplier or stored by the Customer at the Supplier's expense.

**4.4** The Supplier shall notify the Customer within three (3) Business Days of the date of the Purchase Order if the Supplier is unable to make any scheduled delivery date and state the reasons thereof. The absence of such notice constitutes acceptance of the Purchase Order and commitment to the delivery terms. Performance shall be strictly in accordance with the performance schedule set out or referred to in the Purchase Order. If the Supplier's deliveries fail to meet such schedule, the Supplier, at its expense, will (in addition to any other right of the Customer) use an expedited method of shipment specified by the Customer if requested so to do by the Customer until past deficiencies are corrected and deliveries are on schedule. On shipments subject to released value ratings, shipper shall declare value consistent with the lowest rating when shipment is made.

**4.5** The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered in instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment shall entitle the Customer to the remedies set out in Clause 6.

**4.6** The Supplier must consolidate all shipments against this or other Purchase Orders to be forwarded on the same day via the same mode to one delivery address of one bill of lading express receipt or air bill.

**4.7** All Purchase Orders are governed by the Incoterms 2020. The Incoterm is "DDP, destination facility" unless otherwise indicated by the Customer on the Purchase Order. Notwithstanding the DDP Incoterm, the Supplier shall bear all risk of loss or damage to Goods until unloading of the Goods at the delivery location. Delivery of the Goods will be completed, and the title pass to the Customer, when the Goods are unloaded by the Supplier at the delivery location designated by the Customer.

Irrespective of the Incoterm that is agreed on in the Purchase Order, the Supplier shall obtain any and all required licenses (in particular export control licenses), permits and certificates for the strategic goods/dual use items from the relevant authorities

including but not limited to the United States government prior to export. The Supplier shall provide the export control license/permit number to the Customer freight forwarder or courier so the latter can declare it on the export customs clearance, when applicable.

**4.8** In the event the Customer requests the Supplier to transfer, export, re-export or move the Goods to a third destination, whether domestic or international, risk and title shall pass to the Customer in accordance with the DDP Incoterm 2020 save that title will pass to the Customer after Goods are unloaded by the Supplier at the named final destination.

## 5. PACKING

**5.1** For all delivered Goods, the Supplier shall ensure adequate packaging for safe arrival at destination and for storage to protect against weather and to comply with transportation carrier regulations. The Supplier shall further ensure that all Goods shall be packed and packaged in accordance with instructions or specifications provided by the Customer. In the absence of any such instructions or specifications on packing and packaging, the Supplier shall at all times comply with the Supplier Packaging Requirements and Specifications as per the Supplier Code of Conduct.

**5.2** A complete packing slip must accompany each shipment and all packing lists must clearly state the vendor code; the Supplier Number; Purchase Order number; quantity; item number; description; ASM part number and its revision; Document Information Record ("DIR") version; harmonized commodity description and coding system code (HS code) and country of origin.

## 6. REMEDIES

**6.1** If the Goods or Services are not delivered on the delivery date as specified in Clause 4.3(a), or do not comply with the warranties or undertakings as set out herein (including Clause 3), then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, Services or both, the Customer may exercise any one or more of the following remedies:

- (a) to terminate the Contract;
- (b) to reject the Services or Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to refuse to accept any subsequent Services which the Supplier attempts to perform;
- (f) to require the Supplier to perform the rejected Services or to provide a full refund of the price of the rejected Services (if paid);
- (g) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods or services from a third party.

In addition, the Supplier is liable for all damages, costs, loss and/or expenses incurred by the Customer (and any of its Affiliates) which are – at the sole discretion of the Customer – in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

**6.2** All of the Conditions shall also apply to any repaired or replacement Goods supplied or Services performed by the Supplier.

**6.3** The Customer's rights and remedies under these Conditions are cumulative and thus also in addition to its rights and remedies

implied by statute and applicable law.

## 7. PRICE AND PAYMENT

**7.1** The Goods shipped or Services performed against any Purchase Order must not be invoiced at a higher price than shown on the Purchase Order without written consent. Any license fees shall be included in the price.

**7.2** No charge will be allowed for packing, crating, freight, express or cartage unless shown on the Purchase Order. Invoice must itemize transportation charges, taxes (including without limitation sales/use taxes, transaction privilege taxes, gross receipts taxes), and other charges such as duties, customs, tariffs, imposts, or government-imposed surcharges as separate items. The Supplier shall remit all such taxes to the appropriate tax authority unless the Customer provides sufficient proof of tax exemption.

**7.3** If the price is omitted on the Purchase Order, it is agreed that the Supplier's price will be the lowest prevailing market price.

**7.4** Cash discounts will be calculated from the date acceptable invoices are received by the Customer or from the date of the receipt of the Goods shipped pursuant to a Purchase Order, whichever is later.

**7.5** Except as otherwise provided in a Purchase Order, the price includes all applicable federal, state and local taxes in effect on the date hereof.

**7.6** In the event that the Customer is prohibited by law from making payments to the Supplier unless the Customer deducts or withholds taxes therefrom and remits such taxes to the local taxing jurisdiction, then the Customer shall duly withhold such taxes and shall pay to the Supplier the remaining net amount after the taxes have been withheld. The Customer shall not reimburse the Supplier for the amount of such taxes withheld. When Goods or Services are provided, or the benefit of Goods or Services occurs within jurisdictions in which the Supplier collection and law requires remittance of taxes, the Supplier shall have sole responsibility for payment of said taxes to the appropriate tax authorities. In the event the Supplier does not collect tax from the Customer, and is subsequently audited by any tax authority, liability of the Customer will be limited to the tax assessment, with no reimbursement for penalty or interest charges. Each of the Customer and the Supplier is responsible for its own respective income taxes or taxes based upon gross revenues, including but not limited to business and occupation taxes.

**7.7** The Customer shall pay correctly rendered invoices within **sixty (60)** days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

**7.8** The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer (and its Affiliates) to the Supplier. Furthermore, if the Supplier fails to fulfill any of its obligations then the Customer may suspend payment to the Supplier upon notice to the Supplier.

## 8. OWNERSHIP AND CUSTOMER MATERIALS

**8.1** Any materials, tools, equipment or facilities furnished by the Customer (and its Affiliates) will be deemed consigned to the Supplier and title thereto shall at all times remain in the Customer and the Supplier shall not furnish this to any third party. The Customer shall keep all such materials, tools, facilities and equipment, insured against risk of loss or damage for their value at the Supplier's expense during such time as they remain in the Supplier's possession. Such property, and wherever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by the Supplier as property of the Customer and shall be safely stored separate and apart from the Supplier's

property. The Supplier shall not substitute any property for the Customer property and shall not use such property in filling the Customer Purchase Orders.

**8.2** All intellectual property rights, including but not limited to inventions, patents, patent applications, improvements, modifications, assembly procedures, copyright, trade secret or trade mark (collectively "IP"), embodied in designs, tools, patterns, drawings, information, operational methods sheets and equipment supplied by the Customer to the Supplier whether under any Purchase Order or otherwise ("Customer IP"), belongs to the Customer and the exclusive rights for use and reproduction thereof are reserved by the Customer alone. The Supplier shall not (1) use any Customer IP except if the Supplier is licensed to use the Customer IP solely in the execution and performance of the Purchase Order if necessary and the Supplier shall not in any way by implication or otherwise claim any right or title to such Customer IP, and/or (2) reproduce and/or share any Customer IP to any third party, and/or (3) infringe or violate any of the Customer's intellectual property rights in respect of the Customer IP.

**8.3** The Supplier represents and warrants to the Customer that the Goods and Services do not and shall not, alone or in any combination, infringe or violate any third party intellectual property rights.

**8.4** The purchase of the Goods and/or Services shall confer on the Customer (and its Affiliates) an irrevocable, world-wide, royalty-free and fully paid up, non-exclusive and perpetual license under all intellectual property rights owned or controlled, directly or indirectly, by the Supplier to use, make, have made, build-in, have built-in, market, sell, lease, license, distribute and/or otherwise dispose of the Goods and/or Services.

**8.5** Any IP and all rights therein originating out of the performance of a Purchase Order, whether through the Supplier's individual or collaborative efforts with the Customer, shall be deemed "work for hire" and are hereby assigned exclusively to the Customer. In this regard, the Supplier agrees to execute, and have its employees and agents execute, all documents necessary to assign or confirm such rights to the Customer, and the Supplier (including the Supplier's employees or agents) agree to cooperate in securing IP rights originating out of the performance of a Purchase Order.

## 9. INDEMNITY

**9.1** The Supplier shall defend, indemnify, and hold harmless the Customer, all its Affiliates, and their employees and officers and anyone using the Goods and/or having the benefit of Services from and against all damages, actions, demands, judgments, claims, liabilities, and expenses, suits, and proceedings (including attorneys fees) whether arising before or after the delivery of the Goods or performance of the Services covered by the Contract, in any manner caused or claimed to be caused by the acts, omissions, faults, breach of express or implied warranty, breach of any of the provisions herein, or negligence of the Supplier, in connection with Goods, Services or any information furnished by the Supplier to the Customer hereunder. This indemnity shall be in addition to the warranty obligations and the indemnity obligations of the Supplier under any other clauses of this Contract.

**9.2** Neither party excludes or limits its liability for death or personal injury arising from its own negligence, fraud, or for any liability that cannot by law be excluded or limited.

**9.3** The Supplier agrees to indemnify and hold the Customer and its Affiliates and their officers and employees harmless against any and all claims, judgments, demands, liabilities, damages, losses, decrees, costs and expenses and attorney's fees incident to any infringement or to any claimed infringement of any intellectual property rights (including but not limited to patent, copyright, trade secret, or trademark) arising out of or in connection with any third party claim that any of the Goods or Services alone or in any combination or their use infringes any third party's intellectual

property rights (including but not limited to patent, copyright, trade secret, or trademark). The Supplier agrees that it will at the discretion of the Customer defend or assist in the defense of any action which may be brought against the Customer, its Affiliates, their employees or officers or its customers for such infringement or claimed infringement and The Supplier agrees to bear any and all costs and expenses in the defense of any Action under this Section 9.3 brought against the Customer or the Supplier, including all legal fees, expenses, and related costs. The Customer agrees to notify the Supplier promptly upon receipt of notice of infringement of such a suit having been filed, however any delay in notice shall not relieve the Supplier of its obligations hereunder. If a third party claims that the use by the Customer of the Goods of Services or any part thereof infringes any intellectual property rights, of – at the discretion of the Customer - if an injunction is issued as a result of any such claim or action, the Supplier agrees, at its expense and the Customer's option, to either: (i) procure for the Customer, its Affiliates and the Customer's customers, the right to continue using the Goods or benefit of the Services; (ii) replace the Goods with non-infringing goods or Services with non-infringing services; or (iii) modify the Goods or Services so they become non-infringing.

**9.4 SUBJECT TO CLAUSE 9.2, IN NO EVENT SHALL THE CUSTOMER (OR ANY OF ITS AFFILIATES) BE LIABLE UNDER ANY THEORY OF LIABILITY, FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHICH INCLUDES WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR REVENUES, LOST BUSINESS OPPORTUNITIES, LOSS OF IMAGE OR LOST DATA, EVEN IF THE CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND IN NO EVENT SHALL THE CUSTOMER (OR ANY OF ITS AFFILIATES) BE LIABLE TO THE SUPPLIER, ITS SUCCESSORS OR ASSIGNS FOR DAMAGES IN EXCESS OF THIRTY PERCENT (30%) OF THE AMOUNT DUE TO THE SUPPLIER FOR COMPLETE PERFORMANCE UNDER THE CONTRACT, LESS ANY AMOUNTS ALREADY PAID TO THE SUPPLIER BY THE CUSTOMER.**

This Clause 9 shall survive termination of the Contract.

## **10. CONFIDENTIALITY**

During the course of the Contract, the Customer may provide access to confidential information and materials. Provided such are marked in a manner reasonably intended to make the Supplier aware, or the Supplier is sent written notice that the information or materials are "Confidential", or if the information is reasonably understood to be Confidential; The Supplier agrees to maintain such information confidential and shall only use the confidential information for the execution of the Purchase Order. In the event there is a valid non-disclosure agreement (NDA) or restricted use non-disclosure agreement (RUNDA) between the Customer and the Supplier then such NDA or RUNDA will supersede this Clause 10. In the absence of an NDA or other written agreement, at a minimum the Supplier agrees to maintain such information in confidence and limit disclosure on a need to know basis to its employees for the performance of the Purchase Order, to take all reasonable precautions to prevent unauthorized disclosure, and to treat such information as it treats its own information of a similar nature, until the information becomes rightfully available to the public through no fault of the Supplier.

This Clause 10 shall survive the termination of the Contract.

## **11. COMPLIANCE WITH RELEVANT LAWS AND POLICIES**

**11.1** The Goods furnished and Services performed hereunder by the Supplier shall comply with all applicable international, state, federal, and local laws, ordinances, rules and regulations and other requirements of all governmental units or agencies, and the Supplier will indemnify the Customer against liability on account of any non-compliance. The Supplier further agrees to comply with the following *inter alia*; applicable import/export/re-import regulations, the Supplier Code of Conduct, the Responsible

Minerals policy statement, responsible business alliance (RBA) code of conduct, hazardous identification regulations such as the Global Harmonization Standard (GHS), and all other Mandatory Policies available at [the Supplier Portal](#) or otherwise, as may be updated or communicated from time-to-time. Any breach of the compliance with law provisions as set out above, shall constitute a material breach and may result in the immediate termination of the Contract, without any liability for the Customer.

**11.2** The Supplier shall promptly obtain and provide the Customer with any and all necessary licenses (in particular export control licenses), permits, certificates, approvals and information required to comply with all applicable export or import regulations, if any, irrespective of the Incoterm agreed on the Purchase Order. The Supplier shall also provide the Customer with all necessary supporting documents including but not limited to manufacturer's affidavit and manufacturer's safety data sheet.

**11.3** Use, release, transfer, export, re-export or import of technology, software, Goods, and Services may require an approved government license, permit, or other authorization from the applicable government(s). The parties shall individually be responsible for all applicable import and export laws, restrictions, and regulations of the local government, the United States and all other applicable foreign governments, except insofar as these laws conflict with the United States laws in accordance with the respective obligation under Clause 11.1 herein. Diversion contrary to United States law is prohibited. The Customer and the Supplier are to comply with applicable United States and international trade laws and regulations. This includes compliance with applicable United States trade laws that generally apply globally, as well as applicable international trade laws and regulations, relating to:

(1) Export controls, which regulate the use, release, transfer, export or re-export of technology, software, Goods, and Services to certain countries, entities, and persons, and for certain end uses. Technology, software, Goods, and Services may require government authorization in order to release, transfer, export or re-export. The United States, the European Union and other countries have substantial export controls and economic sanctions against certain countries, such as Cuba, Iran, North Korea, Sudan, Syria and Russia. This list of countries is not exhaustive and subject to change.

(2) Economic sanctions, which otherwise restrict the Customer and the Supplier from doing business with certain restricted countries, and entities or persons in such countries, or other restricted people.

(3) Anti-boycott: United States anti-boycott laws apply globally and prohibit the Customer and the Supplier from participating in restrictive trade practices not sanctioned by the United States, such as refusals to do business with certain countries or companies blacklisted by other governments.

**11.4** The Supplier hereby acknowledges that it will not use, release, transfer, export or re-export any Goods, Services, technology, software, related documentation, or technical data without first obtaining the required export licenses or the local export control license for the strategic items/dual use regardless of the exporting country. The Supplier hereby agrees to comply with the requirements of the U.S. Foreign Corrupt Practices Act and any other relevant and applicable anti-corruption legislation of other countries or regions ("Anti-corruption Laws") and shall refrain from making any payments to third parties that would cause the Supplier or the Customer (or any of its Affiliates) to violate the Anti-corruption Laws. In any case, the Customer and all of its Affiliates shall be held harmless and indemnified by the Supplier from any claim or liability arising in connection with the Supplier's violation of this clause.

**11.5** To the extent that the Supplier allows a (sub)contractor to perform any obligation under this Contract, the Supplier shall ensure that it binds such (sub)contractor to obligations which provide not

less than a similar level of obligation(s) as required of the Supplier in these Conditions.

**11.6** The Customer may from time-to-time require the Supplier's and/or the Supplier's relevant subcontractor's conformance to relevant laws, regulations, policies (including but not limited to Mandatory Policies) to be verified by means of periodic assessment and/or audit whether carried out by the Customer or its authorized third part(ies), and the Supplier shall co-operate fully to enable and facilitate any such assessment(s) or audit(s) in good time. Notwithstanding the previous sentence the Customer or the Customer's auditors may raise reasonable questions which the Supplier agrees it will provide answers to in a timely manner.

**11.7** Where the Supplier in the performance of the Contract processes Personal Data, then the Supplier agrees and warrants that the Supplier shall: (a) comply with all privacy and data protection law and regulations applicable to its Services; (b) process Personal Data only (i) on behalf of and for the benefit of the Customer, (ii) in accordance with the Customer's instructions, and (iii) for the purposes authorized by this Contract or separately by the Customer, and (iv) insofar necessary for the Services and as allowed or required by law; (c) maintain the security, confidentiality, integrity and availability of the Personal Data; (d) implement and maintain appropriate technical, physical, organizational and administrative security measures, procedures, practices and other safeguards to protect the Personal Data against (i) anticipatable threats or hazards to its security and integrity; and (ii) loss, unauthorized access to, or acquisition or use of or unlawful processing; and (e) promptly inform the Customer of any actual or suspected security incident involving the Personal Data.

The Supplier shall, upon the termination of the Contract, securely delete or destroy all records or documents containing the Personal Data unless differently provided for by the applicable law. The Supplier accepts and confirms that it is solely liable for any unauthorized or illegal processing or loss of the Personal Data, if the Supplier fails to delete or destroy the Personal Data upon termination of the Contract.

**11.8** The Supplier shall indemnify and hold harmless the Customer and its Affiliates and its and their officers, agents and personnel from any damages, fines, losses and claims arising out of a breach of this clause.

Any breach (or foreseen breach) of the compliance with law provisions as set out above, shall constitute a material breach and allows the Customer the right to immediately terminate the Contract, without any liability.

## 12. INSURANCE

During the term of the Contract, the Supplier will obtain and maintain at its sole expense, with financially reputable insurers licensed to do business in all jurisdictions relevant to the supply under this Contract, and without prejudice to Clause 11 herein in respect of the Supplier's obligation to comply with relevant laws and policies, (1) any and all policies and coverage required by applicable laws and regulations whether local or otherwise and (2) the policies and limits as may be required by the Customer and agreed to by the Supplier in writing (including but not limited to worker's compensation insurance, general liability insurance, business auto insurance, professional liability insurance and/or business interruption insurance). The Supplier will pay the premiums therefore and deliver to the Customer, upon request, proof of such insurance. Said insurance coverage may only be modified or terminated upon thirty (30) days' notice to the Customer.

## 13. TERMINATION

The Customer shall have the right to terminate this Contract, in whole or in part, for any reason other than the default of the

Supplier, by giving the Supplier a ten (10) day written notice.

Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier in the event of default of any Condition by the Contractor or in the event of insolvency of the Supplier or in the event that a termination right is triggered under the ASM Terms of Use. Such termination shall become effective upon receipt of such notice by the Supplier, and the Supplier shall stop work immediately on the terminated portion of a Purchase Order, notify subcontractors to stop work, and protect property in the Supplier's possession in which the Customer has or may acquire an interest in the event of such termination. In the event of termination for convenience by the Customer, the Customer agrees to pay the Supplier, in addition to the stipulated price for all Goods and Services which have been delivered to and accepted by the Customer, pursuant to the terms of the Purchase Order and not previously paid for, all costs necessarily incurred by the Supplier in the performance of the Purchase Order which are properly allocable under recognized commercial accounting practices to the cancelled portion of the Purchase Order. Any claim for payment of such additional costs incurred by the Supplier must be submitted in writing to the Customer within thirty (30) days of receipt of written notice of termination, and thoroughly documented by invoices or other applicable documents. The Customer shall have the right to audit all elements of any termination claim, and the Supplier shall make available to the Customer on request all books, records, and papers relating thereto. The provisions of this paragraph are without prejudice to the rights of the Customer in the event of any failure on the part of the Supplier to comply with the performance schedule or other provisions of a Purchase Order. There shall be no charges for termination of Purchase Orders for standard Goods which the Supplier can resell.

## 14. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its control. If the period of delay or non-performance continues for two (2) weeks, the party not affected, may terminate the Contract by giving seven (7) days written notice to the affected party.

## 15. GENERAL

### 15.1 Assignment and Subcontracting

The Supplier may not assign, transfer, mortgage, charge, subcontract, pledge, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

**15.2 Entire agreement.** Excluding the NDA and RUNDA (if applicable) referred to above, the Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**15.3 Variation, Waiver and Severance.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer. Failure or delay on the part of the Customer to exercise any right, power or privilege hereunder shall not operate as a waiver thereof. No waiver of any breach hereof shall be held to be a waiver of any other or subsequent breach. If any provision of the Purchase Order is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect the validity of the remaining provisions. The Customer's rights and remedies herein

are in addition to any other rights and remedies provided by law or in equity.

**15.4 Notices.**

Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first class post, commercial courier or email to the Customer's legal department and also to [contracts@asm.com](mailto:contracts@asm.com).

**15.5 Software**

Unless the inclusion of Open Source Software is specifically authorized in writing by duly authorized officers of the Customer and unless otherwise stated in the Contract, the Supplier represents and warrants that the Goods do not include any portion of any Open Source Software. "Open Source Software" shall mean (1) any software that requires as a condition of use, modification and/or distribution of such software, that such software: (i) be disclosed or distributed in source code form; (ii) be licensed for the purpose of making derivative works; (iii) may only be redistributed free from enforceable intellectual property rights; and/or (2) any software that contains, is derived from, or statically or dynamically links to, any software specified under (1).

**15.6 Governing law and Jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of country of incorporation of the Customer and each of the Supplier and the Customer irrevocably agrees that the courts of the country whose laws apply shall have the exclusive jurisdiction. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. To the extent permitted by the law, any translation of the Contract into any other language shall be for convenience of reference only and shall have no legal effect, and the English language text shall prevail.

**15.7 Amendment.** These Conditions may be amended or supplemented by the Customer at any moment in time to the extent permitted by law, which amendment or supplement shall apply vis-à-vis the Supplier from the date of notification by the Customer for any new delivery by the Supplier of Goods or Services. In case the Supplier rejects the amendment or supplement, the Customer shall be entitled to terminate the Contract.

