

ASM Terms and Conditions for the Purchase of Goods and Services

1. INTERPRETATION

1.1 Definitions:

Affiliate: shall mean 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 Ariba 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 Supplier that governs the Supplier's access and use of the ASM Portal.

Business Day: a day, other than a Saturday, Sunday or public holiday.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with Clause 14.3.

Contract: 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: Customer shall mean the purchasing Affiliate of ASM International NV, identified in the Purchase Order and where applicable, includes other Affiliates of ASM International NV.

Goods: the goods (or any part of them) as set out in the Purchase Order.

Mandatory Policies: the Customer's business policies and codes communicated through email or through Customer's website, as amended by notification to the Supplier from time to time.

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

Purchase Order: the Customer's order for the Goods or Services.

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

Specification and Quality Requirements: 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.

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 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. Customer expressly rejects any proposed amendment or addition by Supplier.

2.4 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier, including but not limited to the Supplier general terms and conditions of sale, that is in addition to or inconsistent with these Conditions. Customer hereby expressly rejects Supplier's general terms and conditions of sale.

3. THE GOODS

3.1 Hardware Warranty

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"). Supplier shall either repair the defective Good to the satisfaction of the Customer, or shall replace the defective Goods and the Supplier shall also bear all direct and indirect costs and expenses for such repair and/or replacement. Also 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

Supplier warrants to Customer that the 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 Customer to expect in the circumstances. Any Services of repair, replace or re-perform, shall be subject to further warranty

period of **twelve (12)** months from the date of repair or replace of Goods or the re-performed Services.

3.3 Any replacement or repair required, in accordance with Clause 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 Customer and in the event that the Goods are required to be transported to an authorized local repair facilities or any other location, all costs incurred in the transportation of the Goods, shall be payable by Supplier to Customer.

3.4 Compliance with statutory and regulatory requirements

Supplier warrants to 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 licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.5 The Customer may inspect and test the Goods at any time before 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 have on file at its facilities, subject to audit by 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; Supplier also shall impose the same requirement on all subcontractors.

3.6 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 Clause 3.1, 3.2 and 3.4 above, the Customer shall inform the Supplier.

3.7 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 Supplier for adjustment under this clause must be asserted within five (5) working days from the date of receipt by the Supplier of the notification change and agreed to by 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 Procurement Department.

3.8 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), Supplier represents and warrants that Supplier and its personnel providing services to 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 Supplier. Prior to causing Hazardous Materials to be on Customer's property, Supplier shall

obtain written approval from Customer's Site Environmental/Health/Safety organization. Supplier will be fully responsible for and shall indemnify Customer and/or its contractors or customers from any liability resulting from Supplier's actions in connection with: (i) providing such Hazardous Materials to Customer; and/or (ii) the use of such Hazardous Materials in providing services to Customer. Supplier further agrees to comply with Customer's Environmental, Health, and Safety policies and all other Mandatory Policies at www.asm.com/about/supplier-management, as may be updated from time-to-time.

3.9 Without prior written approval from the Customer, 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.

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

4. DELIVERY

4.1 Time is of the essence. 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 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.

4.2 The Supplier shall deliver the Goods:

(a) on the delivery date specified in the Purchase Order or as otherwise specified by 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 Customer in advance of schedule may be returned to Supplier or stored by Customer at Supplier's expense.

4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the delivery location.

4.4 Supplier shall notify Customer within three (3) Business Days of receipt of the Purchase Order if 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 Supplier's deliveries fail to meet such schedule, Supplier, at its expense, will (in addition to any other right of Customer) use an expedited method of shipment specified by Customer if requested so to do by 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 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 2010. The Incoterm is "DDP, destination facility" unless otherwise agreed on the Purchase Order. Supplier shall bear all risk of loss or damage to Goods until delivery, and the title shall also not pass to Customer until delivery of the Goods is made to the delivery location or other place designated by Customer.

In the event that Ex Works is the selected term in the Purchase Order, the Supplier shall ensure that the export control licenses/permits for the strategic goods/ Dual Use items are in place prior to exporting. The Supplier shall provide the export control license/permit number to Customer freight forwarder or courier so the latter can declare it on the export customs clearance, when applicable.

4.8 In the event Customer requests Supplier to transfer, export, re-export or move the goods to a third destination, whether domestic or international, risk and title shall pass to Customer once goods are delivered to the named final destination.

5. PACKING

5.1 For all delivered Goods, Supplier shall ensure adequate packaging for safe arrival at destination and for storage to protect against weather and to comply with transportation carrier regulations. 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, Supplier shall at all times comply with the Customer Supplier Packaging Requirements and Specifications (Document No. 1149-179-01).

5.2 A complete packing slip must accompany each shipment and all packing lists must clearly state the vendor code; Customer Supplier Number; Purchase Order number; quantity; item number; description; material ASM part number and its revision; DIR version; HS Code and Country of Origin.

6. REMEDIES

6.1 If the Goods are not delivered on the delivery date as specified in Clause 4.2(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, the Customer may exercise any one or more of the following remedies:

- (a) to terminate the Contract;
- (b) to reject the 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 recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party.

In addition, 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 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 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 common 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, duties, customs, tariffs, imposts, or government imposed surcharges as separate items.

7.3 If the price is omitted on the Purchase Order, it is agreed that 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 Customer or from the date of the receipt of the Goods shipped pursuant to this Purchase Order, whichever is later.

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

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

7.7 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 Supplier fails to fulfill any of its obligations then Customer may suspend payment to Supplier upon notice to Supplier.

8. OWNERSHIP AND CUSTOMER MATERIALS

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

Customer that the Goods and Services do not and shall not, alone or in any combination, infringe or violate any third party (including Supplier's employees and subcontractors) IPRs. The purchase of the Goods and/or Services shall confer on Customer (and its Affiliates) an irrevocable, world-wide, royalty-free and fully paid up, non-exclusive and perpetual license under all IPRs owned or controlled, directly or indirectly, by 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. All rights in and titles to a work product shall become Customer's property.

9. INDEMNITY

9.1 Supplier shall defend, indemnify, and hold Customer, all its Affiliates, and employees and anyone using the Goods harmless against all damages, claims, liabilities, and expenses, suits, and proceedings (including attorney's fees) arising out of or resulting in any way from any defect in the Goods or performance of the Services purchased, or from any act or omission of the Supplier, its Affiliates, agents, employees, or subcontractors. 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 By acceptance of the Purchase Order, Supplier agrees to indemnify Customer and its Affiliates against all claims judgments; decrees, costs and expenses and attorney's fees incident to any infringement or to any claimed infringement of any patent, copyright, trade secret, or trademark arising out of the use or sale by Customer or its customers of Goods, articles or materials covered by the Purchase Order or the use thereof by Customer (or any of its Affiliates) in the manufacture and sale of Goods, and Supplier agrees that it will, upon request of Customer and at Supplier's own expense, defend or assist in the defense of any action which may be brought against Customer, its Affiliates or its customers for such infringement or claimed infringement. Customer agrees to notify Supplier promptly upon receipt of notice of infringement of such a suit having been filed. If an injunction issued as a result of any such claim or action, Supplier agrees, at its expense and Customer's option, to either: (i) procure for Customer, its Affiliates and Customer's customers, the right to continue using the Goods; (ii) replace the Goods with non-infringing goods; or (iii) modify the Goods so they become non-infringing.

9.4 Subject to Clause 9.2, IN NO EVENT SHALL 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 CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES and in no event shall Customer (or any of its Affiliates) be liable to Supplier, its successors or assigns for damages in excess of the amount due to Supplier for complete performance under the Contract, less any amounts already paid to Supplier by Customer.

This clause 9 shall survive termination of the Contract.

10. CONFIDENTIALITY

During the course of the Contract, 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 in accordance with the terms of this Purchase Order or any applicable separate non-disclosure agreement (NDA) between Customer and Supplier. 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 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. Furthermore, patent rights embodied in designs, tools, patterns, drawings, information and equipment supplied by Customer under any Purchase Order and exclusive rights for the use and reproduction thereof are reserved by Customer. The separate NDA will supersede this Section 10.

This 10 shall survive termination of the Contract.

11. COMPLIANCE WITH RELEVANT LAWS AND POLICIES

11.1 The Goods furnished and work performed hereunder by the Supplier shall comply both as to Goods and manufacture with all applicable international, state, federal, and local laws, rules and regulations and the Supplier will indemnify Customer against liability on account of any non-compliance. Supplier further agrees to comply with the following *inter alia*; applicable import/export/re-import regulations, Customer's Ethics policy, the Responsible Business Alliance (RBA) Code of Conduct 6.0, Customer's Environmental, Health, and Safety policies, hazardous identification regulations such as the Global Harmonization Standard (GHS), Customer's Intellectual Property policies, Customer's Global Employment Standards, and all other Mandatory Policies available at www.asm.com/about/supplier-management, as may be updated or communicated from time-to-time. Supplier undertakes to comply with the Customer's policies relating to Conflict Minerals including without the limitation the compliance of Dodd-Frank Section 1502 and any relevant SEC's rulings, to make the required due diligence and disclosure of whether the use of any Conflict Materials originated from the Covered Countries. Supplier further agrees to support the Customer to make timely reporting of the required disclosure in either the Form SD and/or in the Conflict Minerals Report. The Parties agree to carry out the said due diligence based on either nationally or internationally recognized due diligence framework (e.g. 3rd Edition of the OECD Due Diligence Guidance for Responsible Mineral Supply Chain (2016)). 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.

For the avoidance of doubt, the "Conflict Materials" and "Covered Countries" shall have the following meanings:

"Conflict Materials" means cassiterite, columbite-tantalite, gold, and wolframite; their derivatives including the 3Ts (tantalum, tin, and tungsten); and, any other mineral derivative, or ore that the Organisation for Economic Co-operation and Development (OECD), United States Securities and Exchange Commission (SEC), United States government, or United States Secretary of State considers to be directly or indirectly financing conflict in the Covered Countries.

"Covered Countries" means the Democratic Republic of Congo (DRC) and any adjoining country that shares an internationally recognized border with the DRC.

11.1 Supplier shall promptly notify and provide Customer with

necessary or applicable supporting documents, export controls licenses, permits, approvals or information required to comply with export or import regulations, if any, in accordance with the agreed Incoterms, including but not limited to manufacturer's affidavit, manufacturer's safety data sheet.

11.2 Transfer, export, re-export or import of Goods, software, or technology may require an approved government license, permit, or other authorization from the applicable government(s). The parties shall be responsible for all applicable import and export laws, restrictions, and regulations of 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 the agreed Incoterms. Diversion contrary to United States law is prohibited. Customer and Supplier to comply with applicable U.S. and international trade laws and regulations. This includes compliance with applicable U.S. trade laws that generally apply globally, as well as applicable international trade laws and regulations, relating to:

(1) Export controls, which regulate the transfer/export of technology, Goods, and services to certain countries, entities, and persons, and for certain end uses. In many cases, technology, Goods, and services require government authorization in order to export. The U.S. has substantial export controls and economic sanctions against certain countries, such as Cuba, Iran, North Korea, Sudan, and Syria. Such restricted countries and end users change from time-to-time.

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

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

(4) Customer and Supplier to comply with the local import and export regulations.

11.3 Supplier hereby acknowledges that it will not export any Goods, related documentation, or technical data without first obtaining the required U.S. Government export licenses or the local export control license for the strategic items/dual use regardless of the exporting country. Supplier hereby agrees to comply with the requirements of the U.S. Foreign Corrupt Practices Act and any other relevant corruptions legislation ("Law") and shall refrain from making any payments to third parties that would cause Supplier or Customer (or any of its Affiliates) to violate the law. In any case the Customer (and all of its Affiliates) shall be held harmless and indemnified by Supplier from any claim or liability arising in connection with Supplier's violation of this section.

11.4 The Supplier agrees to comply with all laws, ordinances, rules, regulations, and other requirements of all governmental units or agencies, including – but not limited to - obtaining all import/export and other permits, certificates, and licenses required by foreign jurisdictions. To the extent that Supplier allows a (sub)contractor to perform any obligation under this Contract, Supplier shall ensure that it binds such (sub)contractor to obligations which provide a similar level of protection as this Section, but not less restrictive.

11.5 Where Supplier in the performance of the Contract processes Personal Data, then Supplier agrees and warrants that 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 Customer, (ii) in accordance with Customer's instructions, and (iii) for the purposes authorized by this Contract or separately by 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 Customer of any actual or suspected security incident involving the Personal Data.

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

11.6 Supplier shall indemnify and hold harmless Customer, their officers, agents and personnel from any damages, fines, losses and claims arising out of a breach of this section.

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

12. TERMINATION

Customer shall have the right to terminate this Contract, in whole or in part, for any reason other than the default of Supplier, by giving Supplier a 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 bankruptcy 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 Supplier, and Supplier shall stop work immediately on the terminated portion of this Purchase Order, notify subcontractors to stop work, and protect property in Supplier's possession in which Customer has or may acquire an interest in the event of such termination. In the event of termination for convenience by Customer, Customer agrees to pay Supplier, in addition to the stipulated price for all Goods and Services which have been delivered to and accepted by Customer, pursuant to the terms of the Purchase Order and not previously paid for, all costs necessarily incurred by 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 Supplier must be submitted in writing to Customer within thirty (30) days of receipt of written notice of termination, and thoroughly documented by invoices or other applicable documents. Customer shall have the right to audit all elements of any termination claim, and Supplier shall make available to Customer on request all books, records, and papers relating thereto. The provisions of this paragraph are without prejudice to the rights of Customer in the event of any failure on the part of Supplier to comply with the performance schedule or other provisions of this Purchase Order. There shall be no charges for termination of Purchase Orders for standard Goods which Supplier can resell.

13. 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 reasonable control. If the period of delay or non-performance continues for 2 weeks, the party not affected, may terminate the Contract by giving 7 days written notice to the affected party.

14. GENERAL

14.1 Assignment and Subcontracting

The Supplier may not assign, transfer, mortgage, charge, subcontract, 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.

14.2 Entire agreement. Excluding the NDA 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.

14.3 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 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 this 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. Customer's rights and remedies herein are in addition to any other rights and remedies provided by law or in equity.

15. Notices.

Any notice or other communication 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 ASM Global Procurement Department as also to contracts@asm.com.

16. Software

Unless the inclusion of Open Source Software is specifically authorized in writing by duly authorized officers of Customer and unless otherwise stated in the Contract, 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).

17. 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 Party irrevocably agrees that the courts of the country who's 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.