**ARTICLE 1 - PURPOSE - DEFINITIONS**

**1.1 - Scope**

These General Terms and Conditions of Purchase (hereafter GTCP) shall apply to any Supply purchased by the Buyer from the Seller. The GTCP cannot be modified without the express written agreement of the Seller and the Buyer.

**1.2 - Definitions**

“Buyer”: Danone or any subsidiary of Danone, with "Danone Subsidiary" means any company in which Danone owns, directly or indirectly, at least 50% of the capital or voting rights.

“Contract”: the contractual arrangement entered into between the Buyer and the Seller with respect to the purchase of the Supply, as described in Article 2 below. “GTCP”: These General Terms and Conditions of Purchase

“Crisis”: situation characterized by a severe, often unexpected, break in business continuity; a high degree of uncertainty concerning the course of events; and the risk that media and/or authorities will be involved. It represents a threat to people (consumers, the local community, company employees, third parties); and/or the business (financial situation, key activities, reputation of the company, a part of the company or a brand); and/or to the environment.

“Incident”: unexpected event that (1) requires immediate attention/action, (2) interrupts normal procedure but with limited or no impact on people and/or the business and/or the environment,and (3) that can be managed and brought back under control with normal day to day operation

“Intellectual Property Rights” (“IPR”): all immaterial rights such as know-how, copyrights and all rights in the nature of copyright, database rights, design rights, model rights, patents, trade marks and domain names rights related to the Supply.

“Order”: a document signed between the Seller and the Buyer whereby the Buyer purchases the Supply from the Seller and the Seller agrees to deliver the Supply to the Buyer in accordance with the Contract.

“Seller” : the person, firm, company or other legal entity selected by the Buyer to perform the Order.

“Specifications”: all specifications and/or desciptions of the Supply as set out in the Order.

“Start-Up”: the start-up of the Supply, as defined in the Specifications or in the Order.

“Supply” : any turnkey project, equipment, material and/or part thereof or service, including the associated documents and services referred to in the Order or otherwise associated therewith, to be supplied by the Seller to the Buyer.

**ARTICLE 2 – CONTRACTUAL DOCUMENTS**

The Contract shall include the following documents in order of importance:

1. The Order;

2. The GTCP, including the Sustainability Principles set out in Appendix;

3. The Specifications; and

4. Any other agreed document.

In case of discrepancy or inconsistency, the Order shall prevail over the GTCP, the GTCP shall prevail over the Specifications, and the Specifications shall prevail over any other agreed document (unless otherwise agreed in writing by the Parties).

The Seller acknowledges that its general terms of sale or services or any similar document shall not apply to any purchase of Supply throughout the commercial relationship between the Seller and the Buyer.

**ARTICLE 3 – EXTENT OF THE SELLER’S OBLIGATIONS**

The Seller, as an expert, has an obligation to advise the Buyer and shall use its professional knowledge and techniques to reach the results and expectations stipulated in the Contract.

The Seller shall supply the Buyer with detailed blueprints, drawings, instructions, descriptions and calculations, control certificates, certificates of conformity and any other relevant documents relating to the Supply.

The Supply to be delivered by the Seller shall comply with the Specifications. The Seller shall perform the Order in accordance with the agreed schedule. The parties may agree under the Order that the Seller will provide a bank guarantee for the benefit of the Buyer.

**ARTICLE 4 – ASSIGNMENT - SUBCONTRACTING**

The Seller may not assign all or part of its rights and obligations under the Contract, nor subcontract all or part of its performance (except where stated in the Order), without the prior written agreement of the Buyer. Should the Contract be assigned or subcontracted by the Seller in breach of the above provision, the Buyer may apply the provisions of Article 16 below.

The Seller shall remain responsible to the Buyer for the performance by its assignees and subcontractors of all its obligations under the Contract.

**ARTICLE 5 – INTELLECTUAL PROPERTY RIGHTS**

**5.1 - Licence of IPR**

The Seller hereby grants to the Buyer a license to use all IPR pertaining to the Supply or otherwise needed by the Buyer (or its sub-contractors) to use, operate, maintain, adjust, modify or repair the Supply. Such license shall be an irrevocable, worldwide, non-exclusive license, free of royalty or any other payment and without limit in time. In addition:

Should the Seller fail to perform its obligations under the Contract, the Buyer shall have, free of charge, (i) the right to use all IPR necessary for the Buyer (or its sub-contractors) to complete the manufacture and/or installation of the Supply and (ii) after the expiration of the guarantees described in Article 12 below, the right to use all IPR necessary for the maintenance and/or the replacement, the repair, the modifications and the adjustment of the Supply;

Any and all IPR resulting from any work carried out by the Seller (or its subcontractors) in order to adapt the Supply to the Buyer’s needs or at the specific request of the Buyer shall belong to the Seller and the Seller shall grant to the Buyer an irrevocable, worldwide non-exclusive license, free of royalty or any other payment, without time limit and for all purposes with the right to modify (or have modified) and the right to grant sub-licenses on such IPR; and

Any IPR resulting from a joint development between the Buyer and the Seller shall be dealt with in accordance with the terms of the Order or as agreed in writing by the Seller and the Buyer.

**5.2 – Infringement of IPR**

The Seller fully guarantees the Buyer against all claims and lawsuits from third parties resulting from the design of, or means of, manufacturing the Supply and the use of the Supply, that are based on unfair competition, patents, trademarks, designs, models or any other IPR owned by third parties. The Buyer shall have the right to control the defence of any such claims and lawsuits.

The Seller shall not use the Intellectual Property Rights of the Buyer, in particular but without limitation, the name of the Buyer, of its affiliates and of its products, in any external publication or advertisement, without the prior written consent of the Buyer.

**ARTICLE 6 - CONFIDENTIALITY**

All plans, documents and information of whatever nature supplied by the Buyer to the Seller, including without limitation the Contract, shall remain the property of the Buyer. They may be used by the Seller only for the purpose of performing the Contract and may be disclosed to third parties subject to (i) the Buyer’s prior written consent and (ii) such third parties having agreed to a confidentiality undertaking in respect of the information disclosed to them. Upon completion of the Contract, the Seller shall promptly return to the Buyer the documentation supplied to it.

**ARTICLE 7 – PUBLIC ANNOUCEMENTS**

The Seller shall not make any public statement, communication or press release relating to the Contract or its relationship with the Buyer without the prior express written agreement of the Buyer.

In particular, in case of "crisis" or "incident" as defined below in this Article:

- The Supplier shall not make any public statement, communication or press release, without the Buyer’s prior written consent; and

- Any public statement or communication or press release relating to the "crisis" or "incident" or generally the relationship with the Buyer, must be approved in writing by the Buyer before it is made public.

- The Parties shall implement the agreed crisis management procedure defined in the Contract.

An incident that cannot be solved quickly often develops into a crisis. As a potential crisis, an incident must therefore be handled by the crisis management structure, using crisis management tools, with a strong sense of urgency

**ARTICLE 8 – TIME FRAME - PENALTIES**

Unless otherwise stated in the Order, in the event that the Seller does not comply with the agreed time frame for Start-Up or provisional acceptance of the Supply, the Seller shall automatically pay penalties to the Buyer at a rate of 0.3% of the total amount of the Order, per calendar day beyond the stipulated date, limited to 10% of the total amount of the Order.

In addition, the Buyer shall have the right to claim damages from the Seller, when permitted by law, in case of total or partial failure of the Seller to perform the Order in accordance with its terms.

The Seller shall inform the Buyer of any probable delay in the performance of the Contract, as soon as the Seller has knowledge thereof.

Unless otherwise stated in the Order, the Buyer has a right to impose on Seller contractual penalties in the event when the Buyer terminates the Contract or withdraws from the Contract for reasons attributable to the Seller or the Seller terminates the Contract or withdraws from the Contract for reasons not attributable to the Buyer in the amount of 20% of the total amount of the Contract .

The Buyer, apart from the possibility of imposing contractual penalties, reserves the right to seek from the Seller an additional compensation on terms and conditions resulting from the provisions of Polish law.

**ARTICLE 9 – PRICE - INVOICING - PAYMENTS**

The price of the Supply, invoicing instructions and payment terms are stated in the Order.

Unless otherwise specified in the Contract, the price of the Supply includes all the costs, particularly the transfer of the IPR to the Buyer, and is firm and non-revisable.

Unless otherwise agreed, invoices shall be paid by transfer within 60 calendar days of the date of invoice. Invoices shall include the purchase order number and all related references.

**ARTICLE 10 - RISKS - RESPONSIBILITIES**

**10.1 - Transport - Packing - Delivery**

Unless otherwise indicated in the Order, the Seller shall bear all risks with respect to the Supply until delivery to the destination indicated in the Order. Concerning international Contracts, delivery shall be made on a DDP basis - destination of the delivery indicated in the Order (Incoterms ICC 2010).

The Seller shall be responsible for the consequences of any defective packaging of the Supply. In case of loss or damage during transport, the Seller shall take immediate actions to replace or repair the Supply, at its own costs.

**10.2 – On-site services**

On-site services to be performed by the Seller are specified in the Order. They may include, without limitation, the unloading, installation, commissioning, start-up and acceptance of the Supply.

When the Seller is responsible under the Contract for the installation, testing and commissioning of the Supply, the risks shall, as an exception to the first paragraph of Article 10.1, be transferred to the Buyer on the provisional acceptance date stated in the Order.

While on-site services are being performed, the Seller shall be responsible for any damage caused by its personnel or the personnel of its subcontractors or by its material or the Supply, to the Supply or to the Buyer or to any third party present on the site.

**ARTICLE 11 - ACCEPTATION**

**11.1 – Provisional acceptance or on-site acceptance**

Provisional acceptance of the Supply requires compliance with the performance level for such provisional acceptance as required under the Contract. A provisional acceptance report shall be signed by the parties, which may contain reservations, and shall be in force on the provisional acceptance date.

**11.2 – Final acceptance**

Final acceptance of the Supply requires compliance with the performance level for such final acceptance as required under the Contract or express discharge by theBuyer of the Seller’s obligations in respect of the final acceptance tests stated in the Contract.

Except as otherwise stated in the Contract, if the Supply fails a final acceptance test (on one or more occasions), the Seller shall exercise all reasonable efforts to make good the Supply and new tests shall be conducted and concluded within a period of three (3) months after the successful provisional acceptance, but no later than six (6) months from the provisional acceptance date as stated in the Contract.

If at the end of such period the Supply still fails the final acceptance tests for reasons attributable to the Seller, the Seller shall pay penalties to the Buyer in an amount equal to a percentage of the Order price corresponding to the difference between the efficiency performance percentage stated in the Contract and the efficiency performance percentage reached in the final acceptance tests, limited to 10% of the Contract price. Payment by the Seller of such penalties shall be without prejudice to the Buyer’s rights under Article 16, where the maximum amount of penalties is reached.

**ARTICLE 12 - GUARANTEES**

In addition to any other guarantees under applicable laws, the Seller represents and warrants to the Buyer that the Supply (including any part or component of the Supply and subcontracted parts and components), shall be fit for the purpose set forth in the Contract and shall comply with the Specifications.

In case of defects resulting in material underperformance of the Supply, the Seller shall take immediate action to remedy such defects.

The Seller guarantees the Buyer against all defects in the design, manufacture, materials and workmanship of the Supply (except fair wear and tear of the Supply) for a minimum period of 24 months from the provisional acceptance date or 30 months from delivery – whichever is longer, provided that (i) the Supply is installed, used and maintained in accordance with the Seller’s instructions; and (ii) the Supply is used for processing products that are consistent with the feed characteristics outlined in the Order.

Premature wear or repetitive fatigue breakages shall be considered as defects in the design or manufacture. Defects also include wearable parts which do not reach the expected service life defined in the Specifications.

During the guarantee period, the Seller shall, upon the Buyer’s request, replace any defective Supply (including any part or component incorporating subcontracted parts or components) or carry out any modification or adjustment that may be necessary for the Supply to comply with the Contract. The Seller shall bear all costs of repair or replacement and all associated labour costs (including diagnostic costs when repair or replacement is due) and travel costs.

Parts or components of the Supply (including any part or component incorporating subcontracted parts or components) that are repaired or replaced shall be guaranteed for a further minimum period of 24 months, except for wearable parts which shall be guaranteed for the expected service life.

The Seller guarantees that spare parts will be available during a period of ten (10) years after the Start-Up and that the Seller will be able to deliver such spare parts to the Buyer during that period. During the guarantee period, the Seller must also reimburse to the Buyer the spare parts in stock which have become obsolete.

**ARTICLE 13 - TRANSFER OF OWNERSHIP**

Unless otherwise stated in the Contract, the ownership of the Supply shall be transferred at the time of delivery at the location indicated in the Contract. Any retention of ownership clause shall be without effect. If for any reason, the Seller (including the Seller’s subcontractors or third parties for which the Seller is responsible) fails to perform its obligations, particularly if the Order is not performed in accordance with the time frame, and without prejudice of the penalties provided for in Article 8, the Buyer shall have the right to obtain immediate delivery of the unitary components of the Supply still in the Seller's or its subcontractors’ hands.

**ARTICLE 14 - LIABILITY - INSURANCE**

**14.1 - Liability**

The Seller shall be liable for any damage of any kind which the Buyer or any third party may incur to the extent caused by the Seller and for any damage resulting from the use of the Supply after delivery and more particularly for loss of products.

Notwithstanding any provision to the contrary, the Seller shall always be liable for any damage caused by gross negligence or willful misconduct or injury to persons.

The Seller shall be liable in case its subcontractors and/or partners of any kind involved in the performance of the Contract fail to fulfill any of the contractual obligations and for any damages resulting thereof.

The Seller acknowledges and agrees that any breach of Article 12 and/or Article 5.2 and/or Article 6 and/or Article 7 by the Seller or its Affiliates would cause significant damage to the Buyer (and/or Affiliates of Buyer) and could harm its reputation and image.

Accordingly, if the Seller breaches Article 5.2 and/or Article 6 and/or Article 7, a penalty per breach amounting to the greater of (i) 10% of the global annual turnover between the Seller and the Buyer (corresponding to the gross selling price of the Supply sold by the Seller to the Buyer); or (ii) EUR 100,000, shall immediately be due by the Seller to the Buyer, without prejudice to any other rights or remedies available to the Buyer under the Contract or at law. Neither an attributable breach nor any demand for payment or default notice shall be required for the Seller to be liable for the penalty referred to in this Article.

**14.2 -Insurance**

The Seller shall contract an insurance policy with a first-ranking insurance company concerning its third-party and professional liability.

The Seller’s insurance policy for third party liability covering, inter alia, bodily injury and tangible property damage, must be contracted for the amount stipulated in the Order. If no such amount is stipulated, the insurance policy must be contracted for a minimum amount of (i) one million (1,000,000) Euros (or the equivalent in local currency) or (ii) twice the Order amount, whichever amount is the greatest – per occurrence and per year.

The Seller’s professional liability policy shall be in the amount of one million (1,000,000) Euros (or the equivalent in local currency) – per occurrence and per year.

The Seller must be at all times in a position to provide the Buyer with an insurance certificate. This insurance coverage must be valid throughout the guarantee period as required under applicable laws and the provisions of Article 12 above.

The Seller will ensure that its sub-contractors conform to the provisions of this Article.

The liability of the Seller is not limited by the conditions defined in its insurance policies.

**ARTICLE 15 - FORCE MAJEURE**

Neither party shall be responsible for a failure to perform its contractual obligations if such failure is due to a force majeure defined as an event which is unforeseeable, beyond the control of the parties and which cannot be avoided. Force Majeure events do not include difficulties in obtaining raw materials, labour, fuel & energy, parts or machinery.

Should a Force Majeure event continue for more than one (1) month or if it is likely that it will last more than one (1) month, the Buyer is entitled to terminate the Contract by registered letter with acknowledgement of receipt.

**ARTICLE 16 - BREACH - TERMINATION**

Should the Seller fail to comply with its contractual obligations, including during the guarantee period, the Buyer shall notify the Seller of such non-compliance. An action plan shall be validated between the Parties within eight (8) working days from the notice. If an agreement cannot be reached or if the action plan is not implemented in accordance with the agreed timing, the Buyer may:

- Cause a third party of its choice to carry out the Seller’s obligations, at the Seller’s costs, even if such costs exceed the foreseen amount, and without prejudice to the Buyer’s right to receive penalty payments as provided for in Article 8 above;

- Terminate the Contract by registered mail with acknowledgment of receipt and/or claim damages and penalties for breach.

or

- Withdraw from the Contract by registered mail with acknowledgment of receipt and/or claim damages and penalties for breach. The Buyer in the cases of Seller`s breach of the Contract specified in Article 16 GTCP reserves the right to withdraw from the Contract within 90 days of the occurrence of circumstances authorizing the Buyer to withdraw from the Contract. Notwithstanding the above, the Buyer also reserves the right to withdraw from the Contract on the terms and conditions resulting from the provisions of the Polish Law.

Subject to applicable legislation in force, the Buyer may terminate the Contract by registered mail with acknowledgment of receipt in case of insolvency or bankruptcy of the Seller, if permitted by law, or in case of a change in the Seller’s majority capital sharing out to a competitor of the Buyer or which may adversely affect the Buyer’s interests.

**ARTICLE 17 – COMPLIANCE WITH LAWS AND STANDARDS**

The Seller shall comply with all laws and regulations that are relevant to its contractual obligations, including without limitation, the manufacture, assembly, handling, transport, storage, packaging and delivery of the Supply, as well as laws and regulations relating to health, safety and environment.

In the event that the Seller performs services in the premises of the Buyer, the Seller shall be responsible for compliance, by its personnel and its subcontractors’ personnel, of all hygiene and safety rules in force within the plant and the offices concerned, which must be communicated by the Buyer to the Seller. In any event, if the Seller is not aware of such rules, the Seller must request them from the Buyer prior to performing on-site services. Any breach of these rules will be notified to the Seller which will be solely entitled to take the sanctions that it deems appropriate against the members of its personnel concerned.

Upon request of the Buyer, the Seller shall communicate to the Buyer all relevant information that will enable the Buyer to identify the origin, place and date of manufacture of the Supply, in addition to the serial or batch numbers.

The Buyer or its authorised representatives may at any time inspect the Seller’s premises and the Supply without it resulting in material disruptions for the Seller’s activities. Such inspections shall not imply any acceptance of the Supply by the Buyer.

**ARTICLE 18 – SUSTAINABILITY PRINCIPLES**

The Seller shall respect and comply with Danone’s “Sustainability Principles” set out in Appendix that include:

* The Fundamental Social Principles (Appendix 1) ;
* The Fundamental Environmental Principles (Appendix 2) ;
* The Business Ethics Principles (Apendix 3).

To this end, the Seller guarantees that the principles set out in the Fundamental Social Principles and the Business Ethics Principles are already in place in its own organization and undertakes to, and shall ensure that its employees, agents, suppliers and sub-contractors respect the said principles, throughout all stages of production, during the commercial relationship. The Seller shall also strive to continuously work on the implementation of the Fundamental Environmental Principles.

To let the Seller better follow up the implementation of the Sustainability Principles within its organization and to let Danone have updated relevant information about this implementation, the Seller shall register all of its production sites supplying to Danone on a specialized internet platform recommended by Danone.

The parties agree that Buyer or its authorized external body shall have the right at any time to monitor the permanent adherence and implementation by the Seller of the Sustainability Principles. For this, Buyer shall have free access to audit at any time the manufacturing and/or warehousing sites of the Seller, including without limitation, the premises, the plants, the company records, and the complete process of production.

If any commitment is found to be breached, the parties shall meet at Buyer’s request and discuss the reasons leading to the breach. The Seller and Buyer shall then envisage and set up corrective actions with an appropriate time schedule to cure the breach of the commitment.

If the corrective actions are not implemented to Buyer’s satisfaction in accordance with the agreed time schedule or if the breach by the Seller of any of the Sustainability Principles recurs, Buyer shall be entitled to cancel the Orders in force and/or to terminate the Contract in accordance with the terms of Article 16 above.

**ARTICLE 19 – APPLICABLE LAW - JURISDICTION**

Disputes shall be settled exclusively by the court having jurisdiction over the Buyer’s place of business and the law of such country shall apply. The Vienna Convention on the International Sale of Goods shall not apply.

**ARTICLE 20 - MISCELLANEOUS**

If any provision of the GTCP is in conflict with any applicable legal requirement, that provision shall not be applied and the parties shall endeavour to agree on a new provision in line with their initial intention.

Nothing in the Contract shall create a partnership, joint-venture or establish the relationship of principal and agent or any employment contract between the parties.

The parties to the Contract are independent contractors and neither party is granted the right or authority to assume or create any obligation on behalf or in the name of the other party.

The Contract supersedes all previous or other agreements between the parties with regard to the subject matter, including without limitation, any and all terms and conditions which may appear on the Seller’s estimates, invoices, shipping forms or other documentation, unless otherwise agreed in writing between the parties.

**APPENDIX 1 – Fundamental Social Principles**

**1 Child Labour**

The company does not employ children aged under 15.

If the law sets a higher minimum working age or compulsory schooling is to a higher age, it is this limit that applies.

Educational programs and training are not included in this limitation

2 Forced Labour

The company does not use forced or compulsory labour, meaning any work or service performed under threat or that is not consented to by the person concerned.

3 Discrimination

With due regard for applicable law, the company refuses to engage in any

discriminatory practices.

Discrimination means any distinction, exclusion or preference limiting equality of opportunity or treatment.

It may be based on race, colour, sex, sexual orientation, religion, political opinion, age, nationality, family obligations or other considerations.

4 Freedom of association and right to collective bargaining

The company recognizes and respects employees’ freedom of association and their right to freely choose their representatives.

The company also recognizes employees’ right to collective bargaining. The company ensures that employee representatives do not suffer any discrimination.

5 Health care and Safety at work

The company ensures that the workplace and its environment do not endanger the physical integrity or health of employees.

Action to reduce the causes of accidents and improve working conditions is the object of ongoing programs.

Sanitary equipment, canteens and housing provided to employees are built and maintained in accordance with applicable legal requirements.

As a minimum, the company must provide employees with drinking water, clean toilets in adequate number, adequate ventilation, emergency exits, proper lighting and access to medical care.

6 Working Hours

The company must ensure that national applicable legal restrictions on working hours, including overtime, are complied with.

Employees have at least one day off each week, apart from exceptional circumstances and for a limited period.

7 Pay

The company ensures that:

* No wage is lower than the applicable legal miniumum;
* All employees receive a pay slip;
* Employees reveive a decent wage, as compared to standard pay practices in their country;
* Wage rates for overtime are in all cases higher than for normal hours.

**APPENDIX 2 – FUNDAMENTAL ENVIRONMENTAL PRINCIPLES**

**1 Preservation of ressources**

**Production**

The company shall work on minimising the consumption of energy coming from all the sources.

It will develop the use of renewable energy.

**Packaging**

The company shall work on minimising product’s packaging for optimising the product service (Eco-conception). To do so, the company shall privilege the recycled raw materials, contribute to developing recycling and recycling fields.

**Logistics**

The company shall optimise transportation to reduce fuel consumption.

**Water**

The company shall minimise the water consumption.

**2 Chemicals**

The company shall reduce the use of chemicals and fertilisers and exclude the use of chemicals and fertilisers which are hazardous to the health of consumers.

**3 Climate Change & Greenhouse Gases Emissions**

The company shall work at measuring direct and indirect greenhouse gases emissions of its different activities.

The company shall work at minimising its overall greenhouse gases missions.

**4 Environmental Management**

The company shall work at measuring and controlling its environmental risks.

The company shall work at measuring its transported, imported and hazardous wastes according to the Basel Convention.

The company shall aim to put in place the environmental management system recognised by national/international authorities.

**5 Animal Testing**

Suppliers who provide either milk or meat to Danone should incorporate measures to protect the welfare of their livestock. Animal testing should not be performed if another scientifically satisfactory method of obtaining the result sought, not entailing the use of an animal, is reasonably and practically available.

**APPENDIX 3 – BUsiness Ethics Principles**

The highest standards of ethical, moral and lawful conduct are expected from our suppliers. In particular, we expect our suppliers, their agents and their contractors, to be familiar with and comply with all legal and contractual obligations relating to their business activities, and we will not accept any conduct (including by omission) that is unlawful or that violates such obligations.

Further, we prohibit the offer or receipt of gifts, hospitality or expenses whenever such arrangements could affect the outcome of business transactions and are not reasonable.

Company:

Date:

Signature: