



**CAPITAL EQUIPMENT SUPPLEMENT**

DSM and Vendor agree that the following terms and conditions are supplemental to and become part of the Standard Terms and Conditions.

Any capitalized terms detailed in this supplement shall have the meaning as defined in DSM Standard Terms and Conditions

**1. ACCEPTANCE TESTING FOR EQUIPMENT**

Unless otherwise agreed to, Vendor shall inspect and test the Equipment at its factory to ensure that the Equipment conforms to the requirements of the Contract. Unless an alternative acceptance process, acceptance criteria and acceptance tests are included and described hereto;

In respect of the Equipment:

- a) the Equipment, or any portion thereof as the case may be, will be jointly tested by Vendor and by individuals selected by DSM in accordance with test plans and test scripts developed, for such period of times as is mutually agreed to by the Parties;
- b) the Vendor will, in writing, notify DSM when the Equipment, or any portion thereof as the case may be, is ready for acceptance testing in accordance with the developed test plans and test scripts;
- c) DSM will have a minimum of ten (10) Business Days following the acceptance testing period mutually agreed to by the Parties to notify the Vendor, of any deficiencies in respect of that Equipment, or component thereof, (as the case may be);
- d) the Vendor will, within fifteen (15) Business Days (unless otherwise extended in writing by mutual agreement of DSM and the Vendor), remedy all such deficiencies and resubmit that Equipment or Equipment component (as the case may be) for re-testing by DSM. DSM will then have a reasonable period of time to re-test the Equipment and to notify the Vendor whether the resubmitted Equipment is accepted.
- e) if, following the retesting of the Equipment or Equipment component (as the case may be) identified deficiencies are not corrected or new deficiencies are identified, DSM may at its option, request the testing be repeated.
- f) Final Acceptance will occur if and when the acceptance testing has been successfully completed, meaning that:
  - i. the Equipment, or portion thereof as the case may be, meets all of the Equipment Requirements for the operation, functioning and performance of the Equipment; and
  - ii. all tests and criteria set forth in the test plans and tests scripts developed for that testing have been Successfully Passed.
- g) Final Acceptance of the Equipment or a portion thereof, as the case may be, will not be unreasonably withheld for deficiencies that may exist in the Equipment, provided such deficiencies do not in any way affect the functionality; or
- h) accept the Equipment, or portion thereof as the case may be, that is deficient on an "as is" basis upon negotiating terms satisfactory to DSM and the Vendor, which terms will, at a

- i) minimum, include a reduction in the total amount payable by DSM to the Vendors for that portion or
  - j) reject that portion of the Equipment, as the case may be, and either
    - i. require that the Vendor, at its own cost, promptly replace or have a Third Party replace the deficiency with a product, whether that is a Vendor developed product, or a product developed by an the Vendor Affiliate or a Third Party, that meets or exceeds the Equipment Requirements.
- If the Vendor is unwilling or unable to replace the deficiency as aforesaid within a reasonable period of time, DSM will be entitled, at the Vendor's own cost to the value under the Contract, to promptly replace or have a Third Party replace the deficiency with another product that meets or exceeds the Equipment Requirements.
- or
- ii. declare the Vendor to be in breach of this Agreement, in which case, in addition to any other rights and remedies that DSM may have under this Agreement, DSM has the right to reject the whole of the Equipment, including any part or parts of the Equipment previously tested and accepted, and the Vendor shall refund all monies paid by DSM and the Vendor shall have the right to remove, at its sole expense, the portions of the Equipment provided by the Vendor.

If the equipment provided under this Agreement fails the Final Acceptance Plan in the sole opinion of DSM, the Contractor agrees that damage will be sustained by DSM and the sum set forth as liquidated damages is an estimate of the cost to DSM for, inspection, supervision, administration, continuing maintenance, loss/delays, that will accrue after the specified time limit. It is agreed by the parties that a sum calculated at the rate of .5% of the Purchase Price for each week between the Delivery Date and the actual date of delivery up to maximum of 5% of the Purchase Price shall be paid as liquidated and ascertained damages.

The exercise of one (1) or more of the options set above does not preclude DSM from exercising such other options, rights or remedies provided for under this Agreement or at law or in equity.

**2. WARRANTY PERIOD**

- a. Vendor's (including third party Vendors) Warranties. The warranty shall be for a minimum period of twelve (12) months from Final Acceptance Testing of the Equipment or for the period set forth in DSM's specification, whichever is longer.
- b. Remedy for Breach of Warranty. DSM shall provide notice of any defect covered by the warranty. Promptly after receipt of such notice, Vendor shall either: repair or replace any portion of the Equipment affected by a defect covered by the warranty at no



cost to DSM. Vendor shall be responsible for all costs incurred as a result of reinstallation of any repaired or replaced Equipment. Should the Vendor repair the Equipment, all costs incurred by DSM related to Equipment downtime shall be the responsibility of the Vendor. If Vendor fails to proceed with reasonable promptness to accomplish repair of any defect, DSM may accomplish such repair, and Vendor shall reimburse DSM for the cost of the repair by, at DSM's election, a direct payment or a reduction in any amount otherwise payable under the Contract.

- c. Any device which fails in excess of five (5) times in the first year can be returned for a full refund or exchange at no charge. Vendor will be responsible for all additional costs incurred by DSM as a result of the exchange or replacement. Any item received in such an exchange shall have a warranty that begins when it passes incoming inspection by DSM. Equipment failures resulting from user negligence or unfamiliarity do not constitute failures in this regard.

### 3. MILESTONE PAYMENTS

If DSM makes or agrees to make any milestone payments under the Contract in advance of final acceptance of the Equipment, the following provisions shall apply:

- a. All-Risk Insurance. Vendor shall insure the Equipment against fire and other perils under a suitable all-risk policy in a form and with insurers satisfactory to DSM, shall cause such insurers to name DSM as a loss payee on such policy, and shall cause such insurers to provide to DSM a certificate of insurance evidencing such coverage and indicating that such insurance will not be canceled or materially altered without thirty (30) days prior written notice being provided to DSM, and otherwise holding DSM harmless from any claims for premiums in connection with such policy. Vendor hereby represents that it has not granted, and hereby covenants that it will not grant, to any third party directly or indirectly a security interest i.e. in the form of a lien, whether or not subordinate to the interest hereby granted to DSM in the Equipment.
- b. Title and Risk of Loss. Risk of loss of the Equipment shall remain with Vendor until delivery to DSM's facilities, at which point DSM shall assume risk of loss. The parties explicitly agree that title to Deliverables (or portions thereof) shall pass to DSM upon either (i) successful completion of Final Acceptance Testing or (ii) successful inspection upon delivery. Warranty Period shall commence upon completion of above.
- c. Segregation. Any Equipment located at Vendor's premises shall be conspicuously marked and tagged indicating ownership by DSM; and, except as required for performance, be (i) segregated from any non-Equipment or items owned by Vendor or any third parties and maintained in a separate area and (ii) restricted to access only by DSM employees and authorized employees of Vendor or its subcontractors that are specifically assigned to work in that area. Vendor's failing to comply in all particulars with the foregoing requirements shall not in any way impair or invalidate DSM's ownership interest in the Equipment that are the subject of Vendor's breach.
- d. Ordinary Course. Vendor represents that it is in the business of supplying the Equipment being purchased by DSM and the materials or parts therefor. Further, Vendor represents that the Equipment, including the materials or parts therefor and the work in progress, are being sold in the ordinary course of the Vendor's business and that the Vendor's secured creditor, if any, authorizes sales in the ordinary course of business.

### 4. VENDOR'S RESPONSIBILITIES

- a. Provision of the Equipment will be in a consultative manner with DSM and to the full satisfaction of DSM;
- b. The Vendor will be fully responsible to ensure that integration and compatibility of all components of the Equipment meets the requirements of the Agreement;
- c. If modifications are required, the Vendor will supply and install as necessary to meet the requirements;
- d. Deliver, install and connect the Equipment on or prior to the date specified in the Agreement;
- e. Provide the documentation related to the Equipment which will include all amendments, revisions and adjustments;