



DSM Nutritional Products Canada Inc.

Standard Terms and Conditions of Sale

1. **CONTROLLING DOCUMENT**-The acceptance of Buyer's order is expressly made conditional on Buyer's assent to the terms and conditions set forth herein, and DSM Nutritional Products Canada Inc. ("DSM") agrees to furnish goods (the "Products") only upon these terms and conditions. This document constitutes the entire agreement between the parties. Differing terms and conditions shall require a separate written agreement. THE TERMS OF THIS AGREEMENT SHALL SUPERSEDE ANY CONFLICTING TERMS CONTAINED ON BUYER'S PURCHASE ORDER OR ANY DOCUMENT OR INSTRUMENT SUBMITTED BY BUYER. No course of prior or current dealings between the parties and no usage of trade shall be relevant to supplement or explain any term. Photocopies, electronic copies and facsimile transmissions of documents shall be effective as originals and shall be considered a "writing" between the parties. Acceptance of these Terms and Conditions by Buyer shall be confirmed upon shipment of Product.
2. **PRICE AND TAXES** – Buyer shall pay DSM the standard price for Products published by DSM on the date DSM ships Buyer's order or any price expressly quoted by DSM in writing to Buyer. Price lists from DSM are for general information and do not constitute a binding, open offer from DSM for the sale of goods. A quote deviating from the standard price list is valid only for an individual order and for the time period specified in the quote. Pricing includes DSM standard packaging, delivery and labels. Pricing does not include applicable federal, provincial, local, use, excise or other taxes; customs, duties or any fee imposed by a governmental agency; or special packaging, labeling or delivery as set forth below. If exception from such taxes is claimed, Buyer must provide a certificate of exception at the time of order. In the event DSM is required to prepay such taxes Buyer will reimburse DSM for this cost. DSM reserves the right to change the prices and specifications of its Products at any time unless otherwise agreed to in writing. Additional charges for non-self entered web based purchases may apply.
3. **SHIPMENT** – DSM is committed to meeting customer requirements for Product delivery. Any shipping or delivery dates indicated by Buyer or DSM are estimates only, and DSM shall have no liability to Buyer for failure to complete or deliver an order by the date indicated or for any of Buyer's incidental or consequential damages arising from a delay. **DSM shall ship Product to Buyer DDP, with packaging and carriers as designated by DSM** unless otherwise specified in writing between the parties. DSM will not consider any claim for non-conforming Product or shortages ("Non-Conformance") unless Buyer complies with the notice and authorization requirements set forth at Paragraph 6. Buyer may not return Product without DSM written authorization. If a return is authorized, Buyer shall return all Non-Conforming Product within ten (10) days after receipt of authorization, and shall ship the Product point of destination F.O.B. Returns of all conforming Product may be subject to a restocking charge of 10% computed at original invoice value. When retest is required Buyer may be charged an additional fee per Product lot. All Product sought to be returned must be within the lot expiry period and received not later than ninety (90) days after originally shipped by DSM. **All returns must be returned to the originating DSM location unless otherwise directed by DSM.** ALL UNAUTHORIZED RETURNS BECOME THE PROPERTY OF DSM AND NO CREDIT WILL BE ISSUED. Product for which delivery is suspended pending payment by Buyer as well as Product of which delivery is wrongfully rejected or not accepted by Buyer, shall be held and stored by DSM at risk and expense of Buyer. *Special delivery terms*; expedited delivery, deliveries of less than minimum order quantities, specially requested analyses and/or deliveries in DSM non-standard packages may be subject to additional charges. All shipment costs are to be paid by DSM subject to the special delivery charges set forth herein. In those areas where the "released value ratings" apply, DSM shall ship on this basis unless otherwise requested in writing. **Freight allowances for customer pick-ups will be based on rate schedules from the nearest DSM Distribution Center. DSM reserves the right to add or pass through a "fuel surcharge" to freight costs, where applicable, as market conditions warrant.**
4. **TERMS OF PAYMENT** - Payment for Product shall be due as of the payment date stated on the invoice. With regard to payment of price for the Product, time is of the essence. Any overdue payment may be subject to a late payment charge of 1.5% per month (18% per year) or the highest amount permitted by law. Unless otherwise indicated in writing, each shipment shall be considered an independent transaction and payment therefore shall be made accordingly. All orders are subject to approval of DSM credit department. If in the judgment of DSM, the financial condition of the Buyer at any time does not justify continuance of shipment on the terms of payment specified, DSM may require full or partial payment in advance. In the event of bankruptcy or insolvency of Buyer, or in the event of any proceeding brought by or against Buyer under insolvency laws, DSM shall be entitled to cancel any order of the Buyer then outstanding and shall receive reimbursement from Buyer for its costs to date of

cancellation. Buyer authorizes DSM to investigate Buyer's credit and financial standing, and at DSM request shall provide DSM with financial information and individual guaranties before, during or after fulfillment of any order. DSM shall maintain a security interest in the Product (and replacement) delivered hereunder and in the proceeds from the sale and disposition thereof, until Buyer has made payment in full for such Product. Buyer shall, upon DSM request, execute all documents necessary to perfect such security interest. DSM has the right, upon demand, to repossess goods delivered hereunder if Buyer fails to make timely payments. All payment shall be made without any deduction and free of any set-off or other counterclaim.

5. **INSPECTION** - Buyer shall be responsible for inspecting and examining all Products shipped hereunder prior to acceptance. Buyer shall give DSM written notice specifying the alleged Non-Conformance if rejection is intended within five (5) days following delivery to Buyer. Failure by Buyer to provide such written notice of rejection within five (5) days of delivery shall be deemed to be acceptance of the Product by Buyer as of the date of shipment. Any resale, commingling, alteration or incorporation of the Product by Buyer shall be deemed acceptance of the Product as of the date of shipment.

6. **WARRANTY** – There are no express warranties hereunder. The Products will meet their published specifications when used in accordance with their applicable instructions and stored correctly. The liability of DSM is limited, at DSM's option, solely to replace the Product, or apply an appropriate credit adjustment not to exceed the sales price to Buyer, provided that (a) DSM is promptly (within five (5) days of receipt of allegedly Non-Conforming Product) notified in writing by Buyer setting forth the alleged Non-Conformance, date of purchase, date of receipt, and invoice number, (b) Buyer shall set aside and hold such Product without further use or processing until DSM advises Buyer as to the proper disposition of the Product; and (c) the Non-Conforming Product is returned to or inspected by DSM, and DSM examines such Product to its satisfaction and determines that such Non-Conformance exists, and was not caused by negligence, misuse, improper storage, or accident. Buyer shall have no right to "cover" by procuring substitute goods at the cost of DSM. **DSM MAKES NO OTHER WARRANTY, EXPRESSED OR IMPLIED. DSM EXPRESSLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF DSM. DSM NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR DSM ANY OTHER LIABILITIES. UNDER NO CIRCUMSTANCES SHALL DSM BE LIABLE TO BUYER OR ANY OTHER PERSON FOR ANY KIND OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGE, LOSS, OR EXPENSE.** Buyer's remedies under this agreement shall be limited to replacement of the Product that failed to conform to the warranty. This warranty section sets forth the sole and exclusive remedy against DSM for the furnishing of Non-Conforming Product. No action may be taken against DSM for breach of this agreement more than one (1) year after the accrual of a cause of action.

7. **INDEMNIFICATION** – Buyer shall indemnify and hold DSM harmless from and against any and all damage, losses, costs (including attorney's fees), expenses, claims, demands and liabilities arising out of or in connection with the Products, Buyer's use thereof and/or Buyer's use or application of any information disclosed or provided on behalf of DSM.

8. **INTELLECTUAL PROPERTY** – All specifications, designs, data, information, methods, patterns, and ideas made, used, conceived, developed or acquired by DSM incident to its performance under this agreement and all patent, trade-secret, know how, copyright, trademark or other proprietary rights therein shall be the exclusive property of DSM and no part of the purchase price hereunder shall be deemed applicable to the foregoing unless otherwise agreed to in writing by DSM.

9. **FORCE MAJEURE** - DSM shall be relieved of the performance of its obligations for the duration and to the extent that it is prevented in the performance of its obligations by reasons of force majeure. For purposes of this clause, force majeure is defined as circumstances or events which have not been foreseen at the time of entering into this transaction, which are not the fault of DSM and which prevent the performance of all obligations hereunder and which are not capable of being remedied. Force majeure events include, but are not limited to, acts of God, acts of war, acts of Government, acts of Buyer, inability to obtain necessary labor, materials or manufacturing facilities, blockades, revolutions, industrial disputes and commercial impracticality.

10. **HUMAN RIGHTS** - DSM represents that it does not discriminate against any employee or applicant for employment on the grounds of race, color, religion, sex, sexual orientation or national origin. DSM takes affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation or national origin. **DSM complies with the Canadian Human Rights Act, and all applicable federal, provincial and local laws.**

11. **ASSIGNABILITY** - This contract is personal to the parties hereto and shall not be assigned to any third party by either the Buyer or DSM without the other party's written consent.

12. LAW AND JURISDICTION - This agreement shall be deemed to be made in Ontario, Canada and governed in all respects by the laws of Ontario, Canada. The parties to this agreement irrevocably consent to the jurisdiction of the Ontario Superior Court of Justice in the city of Toronto. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or related agreements.

13. QUEBEC – The parties hereto declare that they have requested that these present and all related documents be drafted in the English language.

Les parties ont exigé que les présents ainsi que les documents s'y rapportant rédigés dans la langue Anglaise.