GENERAL TERMS AND CONDITIONS OF SALE OF DSM NUTRITIONAL PRODUCTS, LLC

1. GENERAL

1.1 These General Terms and Conditions of Sale (“Conditions”) apply to the delivery of all goods and/or services (hereinafter jointly referred to as the “Product(s)”) from or on behalf of DSM Nutritional Products, LLC, with a principal place of business at 1800 Warrenton Road, Suite 200, Warrenton, VA 20187, USA ("DSM"), offering and/or selling the Products to customer (“Customer”) and apply to all transactions which DSM concludes with the Customer. DSM affirms by this means any correlation or other entity which is directly or indirectly controlled by Koninklijke DSM N.V. An entity shall be deemed to “control” another entity if it has direct or indirect ownership or control of the management or policies of the other entity whether through ownership of voting securities or otherwise.

2. QUOTATIONS, ORDERS AND CONFIRMATION

2.1 Unless stated otherwise, quotations made by DSM in writing (“Quotations”) do not constitute a firm offer to sell any Products and any failure to deliver shall have no consequences on the validity of the Quotations. DSM will execute an Order only if the Customer completes and returns DSM’s confirmation form (“Confirmed Order”). The Confirmed Order shall not be effective unless it is received by DSM within thirty (30) days following the date of DSM’s invoice. If and to the extent possible, DSM and the Customer shall agree upon the delivery date of the Products and DSM shall invoice separately.

3. PRICES

3.1 Prices and currencies of DSM’s Products are as set out in the Confirmed Order. Unless otherwise agreed in writing, prices stated in the Confirmed Order do not include Value Added Tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction in relation to the Products or the delivery thereof (“Taxes”). The amount of any Taxes levied in connection with the sale of Products to Customer shall be Customer’s account and shall either be invoiced and paid directly by DSM to Customer or be deducted from any payment otherwise invoiced by DSM to Customer. If DSM grants a discount, this discount only relates to the delivery of Products and it shall not apply to any other delivery.

3.2 Unless the prices have been indicated as firm in the Confirmed Order, DSM is entitled to increase the price of the Products still to be delivered if the cost price determined in accordance with Article 7 increases. These factors include but are not limited to: (a) raw and auxiliary materials, energy, products obtained by DSM from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. DSM shall notify Customer of such increase.

4. PAYMENT AND CUSTOMER’S CREDIT

4.1 Unless stated otherwise in the Confirmed Order, payment of the price due to DSM for delivery of the Products is due thirty (30) days following the date of DSM’s invoice. All payments shall be made without any deduction on account of any Taxes and free of any cost, charge or other counterclaims. DSM is entitled not to deliver or invoice the Products if the Customer is not able to pay the price due to DSM. In no event shall DSM be liable for any damages and/or costs due to delay in delivery of the Products or invoice related to the price.

4.2 Failure to pay for the Products, time of its essence. DSM may, without prejudice to any other rights of DSM, charge interest on any overdue payment at a rate of eighteen (18%) percent per annum from the due date computed on a daily basis until all outstanding amounts are paid in full. All costs and expenses incurred by DSM with respect to the collection of any payments (including, without limitation, reasonable attorney’s fees, expert fees, court costs and other expenses of litigation) shall be for Customer’s account.

4.3 Every payment made by Customer shall first serve to pay the judicial and extra-judicial costs and the accrued interest and shall afterwards be deducted from the oldest outstanding claim regardless of any advice to the contrary from Customer.

4.4 Any complaint with respect to the invoice must be notified to DSM in writing within twenty (20) days after the earlier of: (i) the due date; or (ii) the date on which any other claim shall have been received by DSM. Customer shall be deemed to have approved the invoice.

5. DELIVERY AND ACCEPTANCE

5.1 Unless stated otherwise in the Confirmed Order, all deliveries of Products shall be CIP (Carriage and Insurance Paid) to place of destination. The term CIP shall have the meaning ascribed to the last version of INCOTERMS published by the International Chamber of Commerce in Paris, France at the time of the Confirmed Order.

5.2 Unless stated otherwise in the Confirmed Order, any times or dates for delivery by DSM are estimates and shall not be of the essence. DSM is entitled to deliver the Products as stated in the Confirmed Order in parts and to invoice separately. In no event shall DSM be liable for any damages and/or costs due to delay in delivery. Delay in delivery of any Products shall not relieve Customer of its obligation to accept delivery thereof, unless Customer cannot reasonably be expected to accept such late delivery. Customer shall be obliged to accept delivery of the Products to the extent specified in the Confirmed Order for the quantity of Products delivered by DSM.

6. CANCELLATION

Customer’s wrongful non-acceptance or rejection of Products or cancellation of the Confirmed Order shall entitle DSM to (i) recover from Customer, in addition to the amounts due to DSM under the Confirmed Order, damages equal to fifty percent (50%) of the price for the Products as quoted in the Confirmed Order as liquidated damages.

7. EXAMINATION AND CONFORMITY TO SPECIFICATIONS

7.1 On delivery during the handling, use, commingling, alteration, incorporation, processing, transportation, storage, importation and (re)sale of the Products (the “Use”), Customer shall examine the Products and, if the Use of the Products are not consistent with the agreed specifications for the Products as stated in the Confirmed Order or, in the absence of agreement herein, with the specifications used by DSM at the time of delivery of the Products (the “Specifications”). DSM does not guarantee that the Specifications will be met.

7.2 Complaints about the Products shall be submitted to DSM in writing ("Complaint") to DSM’s address or Fax Number within seven (7) seven days from the date of delivery in respect of any defect, default or shortage which would be apparent on reasonable inspection. If not submitted within these periods, the Products may not be returned, and Customer shall be deemed to have accepted the Products.

8. TRANSFER OF RISK AND PROPERTY

8.1 Risk of the Products shall pass to Customer in accordance with the applicable Incoterms (see Article 5.1) in the case of any physical delivery of the Products or in the case of any other transfer of risk.

8.2 Title to the Products shall not pass to Customer and full legal and beneficial ownership of the Products shall remain with DSM until DSM has received payment in full for the full legal and beneficial ownership of the Products. If Customer shall default in the payment, DSM shall have the right to resell all such goods referred to in this clause. Customer’s failure to perform its obligations has no effect on the ownership of the Products by DSM, such failure constituting a default under this clause, which shall serve as sole proof for the content and the time of the delivery.

9. LIABILITY

9.1 DSM shall, subject to the limitations of this clause, be liable to the extent the Products are in breach with such warranty, as determined in accordance with Article 7, DSM may at its discretion, within a reasonable time, either (i) make good any deficiency in the Products by repairing or replacing the Products; or (ii) at Customer’s expense refund the purchase price of the Products, for which it may invoke a retainer of title.

9.2 Until payment for the Products has been completed, Customer is entitled to use the Products solely to the extent required in the ordinary course of business, and to the extent possible, shall:

(i) keep the Products separate and in a clearly identifiable manner.

(ii) notify DSM immediately of any claims by third parties which may affect the Products; and

(iii) adequately insure the Products.

9.3 LIMITED WARRANTY

9.1 DSM solely warrants that on the date of delivery the Products shall be free from any defect, default or shortage which would be apparent on reasonable inspection. The extent of the Products are in breach with such warranty, as determined in accordance with Article 7, DSM may at its discretion, within a reasonable time, either (i) make good any deficiency in the Products by repairing or replacing the Products; or (ii) at Customer’s expense refund the purchase price of the Products, for which it may invoke a retainer of title.

9.2 DSM’s obligation to repair, replace, or credit shall be conditional upon Customer’s return to DSM of the Products free of charge. DSM shall have the right, at Customer’s expense, to require Customer to issue a credit for any such Products in the amount of the original invoice price. Accordingly, DSM’s obligation shall be limited to the repair, replacement or refund of the Products or credit for the Products.

9.3 DSM’s obligation to repair, replace, or credit shall be conditional upon Customer’s return to DSM of the Products free of charge. DSM shall have the right, at Customer’s expense, to require Customer to issue a credit for any such Products in the amount of the original invoice price. Accordingly, DSM’s obligation shall be limited to the repair, replacement or refund of the Products or credit for the Products.
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infringement of any claim in any intellectual property right covering the Products.

10. LIMITED LIABILITY

DSM’s LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, WHETHER SUSTAINED BY CUSTOMER OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, CLAIMS FOR PERSONAL INJURY, DEATH, OR DAMAGE TO REAL PROPERTY OR PERSONAL PROPERTY, AND WHETHER OR NOT ARISING UNDER ANY CIRCUMSTANCES SHALL DSM BE LIABLE TO ANY OTHER PERSON FOR ANY KIND OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGE OR COST OR EXPENSE, INCLUDING WITHOUT LIMITATION, DAMAGE BASED UPON LOST GOODWILL, ANY FORM OF INFRINGEMENT OR LOSS, STOPPAGE, PRODUCTION FAILURE, IMPAIRMENT OF OTHER GOODS OR OTHERWISE, AND WHETHER ARISING OUT OF OR IN CONNECTION WITH BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE OR OTHERWISE.

11. FORCE MAJEURE

11.1 Neither party shall be liable in any way for any damage, loss, cost or expense arising out of or in connection with any delay, restriction, interference or force in performing any obligation hereunder by the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, war, terrorism, riot, sabotage, accident, epidemic, pandemic, strike, lockout, breakdown of or essential machinery, emergency repair or maintenance, breakdown or shortage of utilities, delay in delivery or defects in goods supplied by suppliers or subcontractors (“Force Majeure”).

11.2 Upon occurrence of any event of Force Majeure, the party suffering thereby shall promptly inform the other party by written notice thereof specifying the cause of the event and how it will affect the performance of its obligations under the Confirmed Order. In the event of any delay, the obligation to deliver shall be suspended for a period equal to the time lost by reason of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period extending to more than sixty (60) days after the agreed delivery date, either Party is entitled to cancel the affected part of the Confirmed Order without any liability to the other Party.

12. MODIFICATIONS AND INFORMATION; INDEMNITY

12.1 Unless the Specifications have been agreed to be firm for the Products, DSM reserves the right to change or modify the Specifications and/or manufacture of Products and to substitute materials used in the production and/or manufacture of Products. Customer has come to time without notice. Customer acknowledges that data in DSM’s catalogues, product data sheets and other descriptive publications distributed or published on its websites may accordingly be varied from time to time without notice. Any statement, representation, recommendation, advice, sample or other information provided by DSM with respect to the Specifications, the Products and the Use thereof shall be furnished for the accommodation of Customer only. Customer must not rely on its own expertise, know-how and judgment in relation to the Products and Customer’s Use thereof as well as in Customer’s application of any information obtained from DSM for the Manufacture and Use of Products. Customer shall provide by DSM shall not give rise to any additional obligations. Details and information provided with regard to the use and sale of the Products shall not be binding and DSM does not assume any liability based on such consultations. Customer shall indemnify and hold DSM harmless from and against any and all claims, damages, expenses, claims, demands and liabilities (including without limitation product liabilities) arising out of or in connection with the Product, Customer’s Use thereof or application of any information disclosed or provided by or on behalf of DSM.

13. COMPLIANCE WITH LAWS AND STANDARDS

13.1 Customer acknowledges that the Use of the Products may be subject to requirements or limitations under any law, statute ordinance, rule, code or standard, including, but not limited to, all applicable regulations relating to (i) anti-bribery and anti-corruption laws; (ii) national, provincial, state or local laws relating to pricing, including, but not limited to, embargos, import and export control and sanctioned party lists (“Laws and Standards”).

13.2 Customer expressly warrants that employees, agents and subcontractors, whether owned by Customer or otherwise, either directly or indirectly (i) accept, promise, offer or provide any improper advantage to or (ii) enter into an agreement (a) with any employee, agent or subcontractor of a government or a government-controlled entity; or (b) relating to a product, which would constitute an offence or infringement of applicable Laws and Standards.

13.3 Customer shall be exclusively responsible for (i) ensuring compliance with all Laws and Standards associated with its intended Use of the Products; and (ii) obtaining all necessary approvals, permits or clearances for such Use.

14. INDEPENDENT CONTRACTORS

DSM and Customer are independent parties, and the relationship created hereby shall not be deemed to be that of principal and agent. No sale to or obligation of either party towards a third party shall in any way bind the other party.

15. NON-ASSIGNMENT AND CHANGE OF CONTROL

15.1 Neither party may assign any of the rights or obligations under the Confirmed Order without the prior written consent of the other party, except that DSM may assign such rights and obligations to any Affiliate of Koninklijke DSM N.V. or to a third party acquiring all or a substantial part of its assets or business, without the other party’s consent.

15.2 DSM shall have the right to terminate the Confirmed Order with immediate effect if at any time during the term of the Confirmed Order a person or group of persons, who are unrelated to the persons controlling Customer as of the date of the Confirmed Order, acquires control, through ownership of voting securities or otherwise, over Customer. Customer must notify DSM of such acquisition within ten (10) days thereof. DSM may exercise its right to terminate the Confirmed Order with immediate effect by giving to Customer written notice within ten (10) days after the date of receipt of such notice.

16. SUSPENSION AND TERMINATION

16.1 If (i) Customer is in default of performance of its obligations towards DSM and fails to provide adequate assurance of Customer’s performance before the date of scheduled delivery; or (ii) if DSM has reasonable doubts with respect to Customer’s performance of its obligations and Customer fails to provide DSM adequate assurance of its performance before the date of scheduled delivery and in any case within thirty (30) days of DSM’s demand for such assurance, DSM shall be entitled to be unable to pay its debts as they mature, or goes into liquidation (other than for the purpose of a reconstruction or amalgamation) or any bankruptcy proceedings are commenced against Customer; or if a trustee or receiver or administrator is appointed for any or a substantial part of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors; or (iv) in case of non-compliance of Customer with Laws and Standards, then DSM may by notice in writing, without prejudice to any of its other rights:

(i) demand return and take repossession of any delivered Product and all costs relating to the recovery of the Products shall be for the account of Customer; and/or

(ii) suspend its performance or terminate the Confirmed Order for pending delivery of Products unless Customer makes such payment for Products on a cash in advance basis or provides adequate assurance of such payment for Products to DSM.

16.2 In any such event of Article 16.1, all outstanding claims of DSM shall become due and payable immediately with respect to the Products delivered to Customer and not repossed by DSM.

17. WAIVER

Failure, delay or omission by DSM to enforce at any time any provision of the Conditions shall not be construed as a waiver of DSM’s right to act or to enforce any such provision. No waiver by DSM of any breach of Customer’s obligations shall constitute a waiver of any other prior or subsequent breach.

18. SEVERABILITY AND CONVERSION

In the event that any provision of the Conditions shall be held to violate any law or regulation, the remaining provisions of the Conditions shall not be affected in any respect whatsoever, the validity and enforceability of the remaining provisions between the parties and shall be saved. The foregoing provisions held to be invalid or unenforceable shall be reformed to meet the legal and economic intent of the original provisions to the maximum extent permitted by law.

19. LIMITATION OF ACTION

Unless otherwise stated hereunder, no action by Customer shall be brought except if Customer first provides written notice to DSM of any claim alleged to exist against DSM within thirty (30) days after the event complained of first becomes known to Customer and an action is commenced by Customer within twelve (12) months after such notice.

20. GOVERNING LAW AND VENUE

These Conditions shall be construed and interpreted pursuant to the laws of the State of New Jersey. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

21. SURVIVAL OF RIGHTS

The parties’ rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The parties shall ensure that their employees, agents and legal representatives comply with these Conditions. Termination of one or more of the parties’ rights and obligations, for whatever reason, shall not affect those provisions of the Conditions which are intended to remain in effect after such termination.

22. HEADINGS

The headings contained in the Conditions are for mere convenience of reference and shall not affect the latter’s construction or interpretation.

23. INTELLECTUAL PROPERTY & CONFIDENTIALITY

23.1 All intellectual property rights arising out of or in connection with the Products shall be the exclusive property of DSM.

23.2 DSM has not verified the possible existence of third-party intellectual property rights which might be infringed as a consequence of the sale and/or delivery of the Products and DSM shall not be held liable for any loss or damage in that respect.

23.3 The sale of Products shall not, by implication or otherwise, convey any license under any intellectual property right relating to the compositions and/or applications of the Products, and Customer explicitly assumes all risks of any intellectual property infringement by reason of its importation and/or the Use of the Products, whether singly or in combination with other materials or in any processing operation.

23.4 Any and all information provided by or on behalf of DSM shall be treated as confidential and shall only be used by Customer for the purpose of all transactions. Disclosing information is only allowed to any of its employees or a third party on a strict need-to-know basis, except in case Customer is required to disclose the information by virtue of a court order or statutory duty, provided that the Customer shall immediately inform DSM and cooperate with DSM should it seek to obtain a protective order. Customer shall upon demand promptly return to DSM all such information. Customer shall not retain a copy thereof. Customer hereby consents to the Agreement as confidential. Customer’s or its employees will sign a confidentiality agreement upon request.

24. LANGUAGE

Only the English version of these Conditions shall be authentic and shall prevail, in case of inconsistency, over any translation of these Conditions in another language.