1. GENERAL

1.1 These General Terms and Conditions of Sale ("Conditions") shall apply to all goods and/or services (hereinafter jointly referred to as the "Product(s)") from or on behalf of DSM Nutritional Products Australia Pty Ltd, a company registered in Australia ("DSM"), to customer ("Customer") and apply to all transactions between DSM and Customer.

1.2 In the absence of an agreement, Customer agrees to the applicability thereof in respect of all future dealings, even if this is not expressly stated.

1.3 DSM explicitly rejects the applicability of any general terms and conditions of Customer. Furthermore, the Conditions supersede any and all terms and conditions, written or oral, that Customer submits or represents, communications, agreements and understandings of the parties in respect of the sale and delivery of the Products and shall apply in preference to and supersedes any other documents or agreements to the extent that any such documents or agreements make any offer, representation or warranty that is inconsistent with the Conditions.

2. QUOTATIONS, ORDERS AND CONFIRMATION

2.1 Unless stated otherwise by DSM, quotations and pricing schedules published or issued by DSM in whatever form are indicative only and not binding to DSM and merely constitute an invitation to Customer to place an order. All quotations issued by DSM are revocable and subject to change without notice. DSM will notify Customer of any such amendments by sending the amended Conditions to Customer, posting them on the aforementioned internet site or otherwise sending an amended Confirmation which will take effect on the date of notification of these amendments. The amended Conditions shall apply to all transactions concluded between Customer and DSM after the date of such notification.

2.2 Any electronic communication between DSM and Customer shall be effective as originals and shall be considered to be binding upon the parties and will serve as sole proof for the content and the time of receipt and proof of such electronic communications.

3. PRICES

3.1 Prices and currencies of DSM’s Products are as set out in the Confirmed Order. Unless otherwise agreed, DSM’s prices include standard packaging but do not include Value Added Tax or any other similar applicable taxes. Unless otherwise stated in the jurisdiction levied 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 for Customer’s account and shall either be added to each invoice or separately invoiced by DSM to Customer. If DSM grants a discount, this discount only relates to the delivery specifically mentioned in the Confirmed Order.

4. PAYMENT AND CUSTOMER’S CREDIT

4.1 Unless stated otherwise in the Confirmed Order, payment shall be made on the basis of net cash, to be received by DSM within thirty (30) days following the date of DSM’s invoice. All payments shall be made free of any deduction on account of any Taxes and free of set-off or other counterclaims except for set-offs with uncontested and/or enforceable cross-claims. All bank charges for remittances are to be borne by Customer.

4.2 With regard to payment for the Products, time is of the essence. DSM may, without prejudice to any other rights, claims or remedies, charge interest on any overdue payment at twelve (12) percent per annum from the due date computed on a daily basis until all outstanding paid invoices are settled.

4.3 DSM is entitled to require immediate payment for any Products delivered by DSM for which it may invoke a retention of title. Furthermore, the Conditions supersede any and all general terms and conditions of Customer.

4.4 Any complaint with respect to the invoice must be notified to DSM in writing within twenty (20) days after the date of invoice. Unless otherwise notified by Customer, DSM 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 title shall pass to Customer in accordance with the applicable Incoterm (see Article 4.1).

5.2 Unless stated otherwise in the Confirmed Order, any times or dates for delivery by DSM are estimates and no delivery of any Products shall relieve Customer from its obligation to accept delivery thereof, unless Customer cannot reasonably be expected to accept the Products in the amount of the original invoice price. Accordingly, DSM’s obligation shall be limited solely to repair or replacement of the defective Products, at the sole option of DSM for which it may invoke a retention of title.

6. CANCELLATION

6.1 Customer’s wrongful non-acceptance or rejection of Products or cancellation of the Confirmed Order shall not be accepted in respect of any Product delivered or to be delivered by DSM to Customer, in addition to any other damages caused by such action:

(i) in the case of Products which reasonably cannot be resold by DSM to a third party, the price of such Products as quoted in the Confirmed Order;

(ii) in the case of Products which can be resold by DSM, damages equal to fifty (50) percent of the price for the Products as quoted in the Confirmed Order as liquidated damages, unless Customer can prove that the actual damages incurred by DSM are lower than fifty (50) percent of the price or were not suffered at all.

7. EXAMINATION AND CONFORMITY TO SPECIFICATIONS

7.1 On delivery and 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 satisfy itself that the Products delivered meet the agreed specifications for the Products and shall immediately give DSM written notice of defects or, in the absence of agreed specifications, to the most recent specifications used by DSM at the time of delivery of the Products.

7.2 Complaints about the Products shall be made in writing and must reach DSM not later than seven (7) days from the date of delivery in respect of any defects that shall not have been discovered from a reasonable inspection on delivery, and seven (7) days from the date on which any other claim (e.g. hidden defaults) was or ought to have been brought, but no later than six (6) months from the date of delivery of the Products or (ii) the expiry of the Products’ shelf-life whichever is the sooner. The Use of the Products shall be deemed to be an unconditional acceptance of the Products as of the date of delivery and a waiver of all claims in respect of the Products.

7.3 Products conform to the Specifications shall be done solely by DSM analysing the samples or records retained by DSM and taken from the batches or production runs in which the Products were produced in accordance with the methods of analysis used by DSM. In case of a disagree between the parties concerning the quality of the Product or production run of Products supplied by DSM to Customer, DSM will submit representative samples of the Product or production run in question to a laboratory reasonably acceptable to Customer to have determined whether or not the batch or run in question is conclusively unfit for the Use of the Products. The cost of such analysis shall be binding upon the parties and the party unable to uphold its position shall bear the related costs of the laboratory.

7.4 In all other cases the Products do not entitle Customer to reject the entire delivery of the Products, unless Customer cannot reasonably be expected to accept the delivery of the defective parts of the Products. Complaints, if any, do not affect Customer’s obligation to pay as defined in Article 4.

8. TRANSFER OF RISK AND PROPERTY

8.1 The risk of the Products shall pass to Customer according to the applicable Incoterm (see Article 5.1).

8.2 The title to the Products shall not pass to Customer and full legal and beneficial ownership of the Products shall remain with DSM and shall not be transferred to Customer until DSM has received payment in full for the Products, including costs such as interest, charges, expenses and costs of insurance.

9. LIMITED LIABILITY

9.1 DSM solely warrants that on the date of delivery the Products shall conform to the Specifications. If and to the extent Products are in breach with such warranty, as determined in accordance with Article 7, DSM may at its own option and within a reasonable time either repair or replace the Products at no charge to Customer, or issue a credit for any such Products in the amount of the original invoice price. Accordingly, DSM’s obligation shall be limited solely to repair or replacement of the defective Products for which it may invoke a retention of title.

9.2 DSM’s obligation to repair, replace, or credit shall be contingent upon receipt by DSM of notice of any alleged non-conformance of Products in accordance with Article 7 and, if applicable, the return of the Products.

9.3 To the maximum extent permitted by law, the foregoing warranty is exclusive and all other warranties, representations, conditions or other terms, express, implied, statutory, contractually or otherwise, are expressly excluded.

10. LIMITED LIABILITY

10.1 DSM’s liability for any and all claims arising out of or in connection with the Products shall be limited to the specific remedies provided to Customer. In no event shall DSM be liable for any indirect, incidental or consequential damage or loss of Customer and shall under no circumstances exceed the sales value of the defective batch of the relevant Product supplied to Customer.

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10.2 DSM shall under no circumstances be liable to Customer or any other person for any kind of specific or incidental, consequential, punitive, or indirect losses or damage or cost, or expense, including without limitation, damage based upon lost goodwill on the part of the Customer, inability to manufacture or deliver the Products, delay, stoppage, production failure, impairment of other goods or business based on any other cause, 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 failure to perform any obligation towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, laws and regulations, administrative measures, decrees, decrees of any court, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, strike, lockout, slowdown, labor disturbances, difficulty in obtaining necessary labour or raw materials, lack of or failure of transportation, breakdown of plant 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 In the event of any Force Majeure, the party suffering thereby shall promptly inform the other party by written notice thereof specifying the circumstances and how they would affect its 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 of delay by reason of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period exceeding six months from the date of 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 a certain period of time or quantity of Products, DSM reserves the right to change or modify the Specifications and/or manufacture of Products to substitute materials used in the production and/or manufacture of Products from time to time without notice. Customer acknowledges that data in DSM’s catalogues, product data sheets and other descriptive publications distributed or published on its website exists and may accordingly be varied from time to time without notice.

12.2 Customer must utilise and solely rely on its own expertise and judgment in relation to the Products and Customer’s Use thereof. Consultation provided by DSM shall not give rise to any additional obligations. Customer shall indemnify and hold DSM harmless from and against any and all damages, losses, costs, expenses, claims, demands and liabilities (including without limitation product liabilities) arising out of or in connection with the Products and Customer’s Use thereof.

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 regulation to which the Products are subject or are intended to relate to the Products and Customer’s Use thereof. Consultation provided by DSM shall not give rise to any additional obligations. Customer shall indemnify and hold DSM harmless from and against any and all damages, losses, costs, expenses, claims, demands and liabilities (including without limitation product liabilities) arising out of or in connection with the Products and Customer’s Use thereof.

14. INDEPENDENT CONTRACTORS
DSM and Customer are independent contractors, and the relationship created hereby shall not be deemed to be that of principal and agent.

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 either party may assign or subcontract any of its rights and obligations to any of its affiliates or to a third party acquiring all or a substantial part of its assets or business relating to the Products.

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 DSM 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 by giving Customer written notice of such exercise within ten (10) days after the date of receipt of such notice.

16. SUSPENSION AND TERMINATION
16.1 If Customer is in default of performance of its obligations towards DSM and fails to provide to DSM adequate assurance of Customer’s performance before the date of scheduled delivery; or if Customer becomes insolvent or unable to pay its debts as they come due; or (iii) relating to a product which would cause or otherwise.

16.2 In the event of any delay, the obligation to deliver shall be suspended for a period equal to the time of delay by reason of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period exceeding six months from the date of the agreed delivery date, either Party is entitled to cancel the affected part of the Confirmed Order without any liability to the other Party.

17. WAIVER
Failure 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 term or condition and DSM’s rights shall not be affected by any delay, failure or omission 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
In the event that any provision of the Conditions shall be held invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity and enforceability of the remaining provisions between the parties and shall be severed therefrom. The pertaining 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 unless Customer first provides written notice to DSM of any claim alleged to exist against DSM. In 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
The parties’ rights and obligations arising out of or in connection with the Confirmed Order and/or the Conditions shall be governed, construed, interpreted and enforced according to the laws of New South Wales, Australia, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall not apply. The parties agree that any suits, actions or proceedings that may be instituted by any party shall be initiated exclusively before the competent courts of New South Wales, Australia, without restricting any rights of appeal and without prejudice to DSM’s right to submit the matter to any other competent court.

21. ENTIRE AGREEMENT
The parties agree that the Conditions, and the documents referred to therein, constitute the entire agreement between the parties and that no other representations have been relied upon in accepting these Conditions and no other documents or terms are binding.

22. SURVIVAL OF RIGHTS
The parties’ rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, directors, officers, employees, agents and legal representatives. 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.

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

24. INTELLECTUAL PROPERTY
24.1 All intellectual property rights arising out of or in connection with the Products shall be the exclusive property of DSM.

24.2 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.

25. LANGUAGE
The original version of the Conditions is made in the English language. In the event of any inconsistency or contradiction between the English version and any translation thereof, the English version shall prevail.