GENERAL TERMS AND CONDITIONS OF SALE OF DSM NUTRITIONAL PRODUCTS INDIA PVT. LTD.

1. GENERAL

1.1 These General Terms and Conditions of Sale (“Conditions”) govern the offering, sale and delivery of all goods and/or services (hereinafter jointly referred to as "the Products") on or on behalf of DSM Nutritional Products India Private Limited, at B-502, Delphi Building, Orchard Avenue, Hiranandani Business Park, Powai, Mumbai-400134, India ("DSM"), to customer (“Customer”) and apply to all transactions between DSM and Customer.

1.2 By contracting on the basis of the Conditions, Customer consents to the applicability of all future dealings, even if this is not explicitly stated.

1.3 DSM explicitly rejects the applicability of any general terms and conditions of Customer.

1.4 Furthermore, the Conditions supersede any and all terms and conditions of Customer, whether written, communicated, 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 and all terms and conditions of any order placed by Customer and any other terms and conditions submitted by Customer. Failure by DSM to object in due time shall not be construed as an acceptance of any of the terms and conditions of Customer. Neither DSM’s commencement of performance nor DSM’s delivery or partial delivery of the Products shall be of the essence and shall not be of the essence and shall not be of the essence, regardless of any advice to the contrary from Customer.

1.5 The current version of the Conditions is available at [www.icomer.com]. DSM reserves the right to amend the Conditions at any time. DSM will notify Customer of any such amendments by sending the amended Conditions to Customer's most recent email address on file with DSM or, if Customer has not designated an email address, by posting them on the aforementioned Internet site or otherwise. The amended Conditions will take effect on the date of notification of these amendments to Customer. The amended Conditions shall apply to all transactions concluded between DSM and Customer after the date of such notification.

2. QUOTATIONS, ORDERS AND CONFIRMATION

2.1 Unless stated otherwise by DSM, quotations made by DSM in whatever form are not binding to DSM and may be revoked at DSM’s mere discretion or upon the Customer’s written notice, without prejudice to any of DSM’s rights hereunder.

2.2 Price quotations based on estimated or projected quantities are subject to increase in the event that actual quantities purchased during the specified period exceed or are less than the estimated or projected quantities.

2.3 Each delivery shall be considered to be a separate transaction. Customer will pay for the content of each delivery and will not be entitled to any credit for any undelivered or unaccepted quantities.

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 any other applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Products or the delivery thereof ("Taxes"). The amounts for Taxes levied in connection with the sale of Products to Customer shall be for Customer’s account and shall neither be either 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.

3.2 Unless the prices have been indicated as firm by DSM in the Confirmed Order, DSM is entitled to increase the prices in the Confirmed Order (i) to the extent that the cost price determining factors have been subject to an increase, these factors include but not be limited to any increase in the costs for raw materials, energy, products obtained by DSM from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premia, provided DSM notifies Customer of such increase which shall not exceed the increase in the determining cost factors.

PAYMENT AND CUSTOMER’S CREDIT

4.1 Unless stated otherwise in the Confirmed Order, payment for Products can only be made by Customer can only be made by Customer prior to delivery of the Products by DSM. DSM will notify Customer of any such late delivery. Customer shall be obliged to accept the Products and pay the rate per unit stated in the Confirmed Order for the quantity of Products delivered by DSM.

4.2 With regard to payment for the Products, time is of the essence. DSM may, without prejudice to any other rights of DSM, charge interest on any overdue payment at 12% (twelve percent) per annum from the due date until DSM has been reimbursed by Customer for all outstanding amounts are paid in full. All costs and expenses incurred by DSM with respect to the collection or enforcement of any of its claims, including, without limitation, reasonable attorney’s fees, expert fees, court costs and other expenses of litigation) shall be borne by Customer. Every payment by Customer shall in the first place serve to pay the judicial and extra-judicial costs and the accrued interest and shall afterwards be applied to the outstanding invoice items in the order of clamping (i.e., first payment of amounts due regardless of any advice to the contrary from Customer.

4.3 Any complaint with respect to the invoice must be notified to DSM in writing within 20 (twenty) days after the date of invoice. Thereafter, Customer shall be deemed to have approved the invoice.

DELIVERY AND ACCEPTANCE

5.1 Unless stated otherwise in the Confirmed Order, Delivery of the Products shall be made at the prices as quoted in the Confirmed Order (see Article 16) to place of destination. The term CIF shall have the meaning as defined in the latest version of INCOTERMS published by the International Chamber of Commerce in Paris, France, at the time of the Confirmed Order (see [www.icomer.com]).

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 in accordance with Article 16, DSM shall, without prejudice to any other rights hereunder, be entitled to deliver the Products in parts and to invoice separately. Delay in delivery of any Products shall not relieve Customer of its obligations hereunder. As a result, Customer cannot reasonably be expected to accept such late delivery. Customer shall be obliged to accept the Products and pay the rate specified in the Confirmed Order in respect of the quantity of Products delivered by DSM.

CANCELLATION

6.1 Customer’s wrongful non-acceptance or rejection of Products or cancellation of the Confirmed Order shall entitle DSM to recover from 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; or

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

EXAMINATION AND CONFORMANCE TO SPECIFICATIONS

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 as stated in the Confirmed Order or, in the absence of agreed specifications, to the most recent specifications used by DSM at the time of delivery of the Products (the “Specifications”).

Complaints about the Products shall be made in writing and must be made by Customer not later than 7 (seven) days from the date of delivery in respect of any defect, default or shortage which would be apparent upon reasonable inspection. In case of any defect, default or shortage, 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 at its option. Accordingly, DSM’s obligation shall be limited solely to repair or replacement of the Products or for credit of the Products.

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

The foregoing warranty is exclusive and in lieu of all other warranty, representations, conditions or other terms, express, implied, statutory, contractually or otherwise, including, without limiting the generality hereof, any warranty of merchantability, fitness for a particular purpose or any other warranty or condition of any kind, expressed or implied, relating to the Products, delivered by DSM.

10. LIMITED LIABILITY

10.1 DSM’s liability for any and all claims arising out of the connection with the Products, or otherwise therefrom shall per occurrence be limited to direct damages of Customer and shall under no circumstances exceed the sales value of the defective batch of the relevant Product supplied to Customer.

10.2 DSM shall under no circumstances be liable to Customer or any other person for any kind of special, incidental, indirect, consequential or punitive damage or loss, cost or expense, including without
limitation, damage based upon lost goodwill, lost sales or profit, delay in delivery, work stoppage, production failure, impairment of other goods or 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 in performing any obligation towards the other party caused by any circumstance beyond its reasonable control or arising without limitation of acts of God, laws and regulations, administrative measures, orders or decrees of any court, essential shortage or emergency, embargo, fire, riot, sabotage, accident, epidemic, strike, lockout, slowdown, Labour 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 Upon the occurrence of any event of Force Majeure, the party suffering thereby shall promptly inform the other party in writing if required by the other party to specify the cause of the event and how it will affect its performance of its obligations under the Contract. Party shall in good faith give to the other party, before the date of scheduled delivery, or if Customer becomes insolvent or unable to pay its debts as they fall due, or enters into liquidation (other than for the purpose of a reconstruction or amalgamation) or any bankruptcy proceedings shall be instituted by or against Customer or if a trustee or receiver or administrator is appointed over any 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, then DSM may by notice in writing forthwith, without prejudice to any of its other rights:
(i) demand payment and take repossession of any delivered Products which have not been paid for and all costs relating to the recovery of the Products shall be for the account of Customer; 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 DSM.

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 may, at any time in the ordinary course of any dealings, obligation to deliver shall be suspended for a period equal to the time lost by reason of Force Majeure. However, Customer's right to Force Majeure event continue or be expected to continue for a period extending to more than 60 (sixty) 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.

12.2 Customer must utilize and solely rely on its own expertise, know-how 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 any losses and all damages, 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 standard, including, but not limited to, all applicable regulations relating to (i) anti-bribery and anti-corruption and (ii) international trade, such as, 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 of the Customer shall not directly or indirectly (i) accept, offer or promise, provide or impede any bribe or bribe, (ii) enter into an agreement (a) with any entity or person - including officials of a government or a government-controlled entity - relating to the sale or export of 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 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 will assign its rights or obligations under the Confirmed Order without the prior written consent of the other party, except that either party may assign such rights and obligations to any affiliate or successor to a third party, or any sale of 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 10 (ten) days thereof. DSM may exercise its right to terminate the Confirmed Order by customer written notice of such event.

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 such payment for all and costs relating to the recovery of the Products shall be for the account of Customer; 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 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 repossessed by DSM.

17. WAIVER

Express 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 AND CONVERSION

In the event that any provision of the Conditions shall be held to be 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 severable from the same. The 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 within 30 (thirty) days after the event complained of first becomes known to Customer and an action is commenced by Customer within 12 (twelve) months after such notice.

20. GOVERNING LAW AND ARBITRATION

20.1 The parties’ rights and obligations arising out of or in connection with the Confirmed Order and/or the Conditions shall be governed, construed and interpreted in accordance with the Laws of India, without regard to the conflict of law’s provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall not apply.

20.2 Any dispute in connection with or arising out of the Confirmed Order that the parties fail to amicably resolve shall be referred to arbitration of a sole arbitrator to be appointed jointly by the parties in accordance with the Indian Arbitration and Conciliation Act, 1996 or statutory modification or enactment thereof. The award of the arbitrator shall be final and binding on the Parties. The place of arbitration shall be Mumbai, India, and the language of arbitration proceedings shall be English. The arbitrator’s fee shall be borne equally by the Parties. Each party irrevocably and unconditionally submits to the jurisdiction of the Courts in Mumbai, India, alone to determine any question that may arise other than a matter as provided for hereinafter.

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, permitted assigns, directors, officers, employees, agents and legal representatives. Termination of one or more of the parties’ rights and obligations hereunder 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 inserted for mere convenience of reference and shall not affect the latter’s construction or interpretation.

23. INTELLECTUAL PROPERTY

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 the Use of the Products, whether singly or in combination with other materials or in any processing operation.

24. LANGUAGE

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