GENERAL TERMS AND CONDITIONS OF SALE OF P.T. DSM NUTRITIONAL PRODUCTS INDONESIA

1. GENERAL

1.1 These General Terms and Conditions of Sale (“Conditions”) govern the offering, sale and delivery of all products (hereinafter jointly referred to as the “Product(s)”) from or on behalf of P.T. DSM Nutritional Products Indonesia, 18 Office Park Building, Jl. Imam Bonjol No. 8, Kelurahan Cakung, Kecamatan Pamulang, Tangerang, Banten, Indonesia, and its affiliates (“DSM”), to customer (“Customer”) and apply to all transactions between DSM and Customer. DSM will be the sole party entitled to the property in the Products. Unless the prices have been indicated as firm by DSM, the prices include standard packaging but do not include any Taxes. The amount of any Taxes levied in connection with the sale of the Products shall be borne by Customer. DSM reserves the right at any time to amend the Conditions at any time and without prior notice by posting them on the website of DSM.

2. QUOTATIONS, ORDERS AND CONFIRMATION

2.1 Unless stated otherwise by DSM, quotations made by DSM in whatever form are not binding and as such do not confer on Customer any right to deliver the Products, whether the quotation is accepted or not. All quotations issued by DSM are revocable and subject to change without notice. DSM reserves the right to amend the Conditions at any time and without prior notice by posting them on the website of DSM.

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 tax. Customer agrees to pay all taxes, duties, levies, and similar assessments that DSM may be required to pay with respect to the Products (the “Taxes”). The amount of any Taxes levied in connection with the sale and delivery of the Products shall be borne by Customer. In the event that Customer or any other party fails to pay any Taxes to DSM, Customer agrees to indemnify DSM for all losses, damages and costs incurred by DSM in respect of any claim by any taxing authority for any such Taxes. DSM reserves the right at any time to amend the Conditions at any time and without prior notice by posting them on the website of DSM.

4. PAYMENT AND CUSTOMER’S CREDIT

4.1 Unless stated otherwise in the Confirmed Order, payment shall be made to DSM within thirty (30) days following the date of DSM’s invoice. All payments shall be made without any deduction or set-off, payment for late delivery, payment for delivery of additional or substitute Products or returned or rejected Products, or in case of legal or equitable set-off or other counterclaims against DSM. The date of delivery shall be the date on which Customer receives payment. All payments shall be made to DSM in the currency stated in the Confirmed Order and to any extent not paid within thirty (30) days from the date of delivery, additional interest shall be payable by Customer, calculated on a daily basis at a rate of five percent per annum from the due date.

5. DELIVERY AND ACCEPTANCE

5.1 Unless stated otherwise in the Confirmed Order, all deliveries shall be made FOB (Free On Board) at the place of destination. The term DDP 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.

6. CANCELLATION

6.1 Customer’s wrongful non-acceptance or rejection of Products or cancellation of the Confirmed Order shall entitle DSM to cancel the Order, in addition to any other damages caused by such action: (i) in the case of Products which cannot reasonably be repaired, the purchase price of such Products as quoted in the Confirmed Order; or (ii) in the case of Products which can be repaired, the purchase price of the Products as quoted in the Confirmed Order as liquidated damages, unless Customer can demonstrate 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 CONFIRMATION TO SPECIFICATIONS

7.1 On delivery and during the handling, use, compounding, processing, blending, mixing, processing, transportation, storage, importation and (re)sale of the Products (the “Use”), Customer shall examine the Products to determine if they meet the agreed specifications for the Products as stated in the Confirmed Order or, in the absence of agreed specifications, the applicable Incoterm. If Customer is not satisfied with any aspect of the Products, Customer shall notify DSM accordingly, and DSM shall have the right to repurchase the Products from DSM or in connection with the Products and the Use thereof 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.

8. TRANSFER OF RISK AND PROPERTY

8.1 The risk of the Products shall pass to Customer as from delivery.

9. LIMITED LIABILITY

9.1 DSM hereby warrants that on the date of delivery the Products shall conform to the Specifications. If and to the extent the 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 to Customer for the products failing to conform to the Specifications, the amount of such credit to be determined in accordance with the latest version of INCOTERMS published by the International Chamber of Commerce in Paris, France, at the time of the Confirmed Order.

10. LIABILITY

10.1 DSM’s maximum liability for all claims, demands, losses, damages, costs, and expenses (including interest, legal fees, court costs and other expenses of litigation) of any kind or nature by Customer or any other person or for any and all claims by Customer or any other person arising out of or in connection with the Products and the Use thereof 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.

11. FORCE MAJEURE

11.1 DSM shall not 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 caused by strikes, lockouts, or other labor troubles, or by the necessity of following any law, order or regulation of any governmental authority, or by the occurrence of any unforeseeable events, such as fires, earthquakes, floods, wars, terrorism, riot, sabotage, accidents, epidemics, strikes, floods, hurricanes, or other occurrences, of any kind and nature, for which DSM could not have reasonably been held responsible, and DSM’s obligations under these Conditions shall be suspended to the extent and for the period and to the extent it is limited by such unforeseeable events.

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12. MODIFICATIONS AND INFORMATION; INDENITY  

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 and to substitute materials or parts for the Products and/or manufacture of Products from time to time without notice. Customer acknowledges that data in DSM’s catalogs, handbooks, brochures, bulletins, and other promotional publications distributed or published on its websites may accordingly be varied from time to time without notice.

12.2 Customer shall act, solely, 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 with respect to any of Customer’s obligations. Customer shall indemnify and hold DSM harmless from and against any and all damages, losses, costs, claims and liabilities of or 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 laws and similar laws, but not limited to, embargos, import and export control and anti-corruption and (ii) international trade, such as, but not limited to, the country-specific laws, the United Nations resolutions, the United Nations Security Council Resolution 2229 (2015) or other similar resolutions, as applicable, and any other laws, rules, and regulations applicable to the Use of the Products.

13.2 Customer expressly warrants that employees, agents and subcontractors of the Customer shall not directly or indirectly (i) accept, promise, offer or provide any improper incentive or (ii) enter into agreement (a) with any entity or person - including officials of a government or a government-controlled entity - or (b) relating to a product, which would constitute an offense 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, where 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 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 such rights and obligations to any of its affiliates or to a third party acquiring all or substantially all of its assets or business relating to the Products.

15.2 DSM shall have the right to terminate the Confirmed Order in the event of any time or event during the term of the Confirmed Order a person or group of persons, who are unrelated to the persons controlling Customer at the date of the Confirmed Order, acquires control, through ownership of voting securities or otherwise, over Customer. Customer must notify DSM of such a change of control within ten (10) days of the date of such notice.

16. SUSPENSION AND TERMINATION  

16.1 If Customer is in default 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 mature, or goes 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 for any or all of a substantial part of the assets of Customer or if Customer shall sell or dispose of all or any substantial part of its business or assets, or if any assignment for the benefit of its creditors; or in case of non-compliance of Customer with Laws and Standards, the parties shall be entitled to cancel the affected part of the Confirmed Order without any liability to the other Party.

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.

16.3 Unless otherwise otherwise waived Article 1266 of the Indonesian Civil Code to the extent necessary to effect termination of the Confirmed Order without judicial proceedings, without limiting, the need for any judicial approval.

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 such any term or conditions or any provisions, and any delay by DSM, 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 the validity or enforceability of the remaining provisions between the parties and shall be severed therefrom. The provisions of laws held to be invalid or unenforceable shall be referred 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 thirty (30) days after the event complained of first becomes known to Customer and the action is commenced by Customer within fifteen (15) days after such notice.

20. GOVERNING LAW AND DISPUTE RESOLUTION  

20.1 The parties’ rights and obligations arising out of or in connection with any one or more of the Conditions shall be governed, construed, interpreted and enforced according to the laws of the Republic of Indonesia, without regard to the conflict of laws provisions thereof.

20.2 The parties agree that if any difference, dispute, conflict or controversy (a “Dispute”), arises out of or in connection with a Confirmed Order and/or the Conditions or the performance thereunder, including without limitation any dispute respecting its existence, validity, termination of rights or obligations of any party, the parties shall first attempt to settle the Dispute within thirty (30) days after the receipt by one of the party of a notice from the other party of the existence of the Dispute to settle the Dispute by amicable settlement between the parties.

20.3 If the parties are unable to reach an agreement to settle the Dispute within the thirty (30) day period mentioned in Article 20.2 above, then either party may submit the Dispute to arbitration under the applicable rules of the Singapore International Arbitration Centre (the “Rules”). The arbitration will be conducted in the English language. Notice in writing of the appointment of the arbitrator will be for the account of Customer; and/or

20.4 The tribunal will consist of one (1) arbitrator appointed in accordance with the Rules.

20.5 The tribunal must conduct the arbitration in accordance with these Conditions and the prevailing laws and regulations relating to the arbitration ("Arbitration Laws and Regulations"). Where these Conditions, the Arbitration Laws and Regulations are silent as to the conduct of the arbitration proceedings, the tribunal shall decide as to how the proceedings will be conducted.