GENERAL TERMS AND CONDITIONS OF SALE OF DSM NUTRITIONAL PRODUCTS MALAYSIA SDN BHD

1 GENERAL
1.1 These General Terms and Conditions of Sale (“Conditions”) govern the offering, sale and delivery of all goods and/or services (“Products”) from or on behalf of DSM NUTRITIONAL PRODUCTS MALAYSIA SDN BHD, incorporated under No. 199401009900 (104148-9), Jalan Pinang, 50450 Kuala Lumpur, Malaysia and Lot 105, Jalan Satu Kawasan Perindustrian Olak Lempit, 42700 Banting, Selangor, Malaysia to customer (“Customer”) and shall apply to all transactions between DSM and Customer.

1.2 By contacting on the basis of the Conditions, Customer agrees to its applicability in respect of all dealings even if this is not explicitly stated.

1.3 DSM explicitly rejects the applicability of any general terms and conditions of Customer. Further agreements, supplementations and modifications of terms of prior oral or/written quotations, communications, agreements and understandings of the parties in respect of the sale and delivery of the Products and shall apply in preference to and supersede 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 to the terms and conditions set by Customer shall in no event be construed as an acceptance of any of the terms and conditions of Customer. Nonetheless, DSM’s delivery shall be deemed as acceptance of any of Customer’s terms and conditions. If the Conditions, different from the terms and conditions of Customer, the Conditions, and any subsequent communication or conduct by or on behalf of DSM, including, without limitation, confirmation of any order and delivery of Products, constitute a counter-offer and not acceptance of such terms and conditions submitted by Customer. Any confirmation by DSM in such terms and conditions of Customer, confirms an agreement for the delivery of Products by DSM, as well as acceptance by Customer of any delivery of Products from DSM shall constitute an unconditional acceptance by Customer of the Conditions.

1.4 The current version of the Conditions is available at www.dsnutritionalproducts.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, posting them on the aforementioned Internet site or otherwise. The amended Conditions will take effect on the date of notification of these amendments. The amended Conditions shall apply to all transactions concluded between Customer and DSM as of the day following the date of such notification.

1.5 Any electronic communication between DSM and Customer shall be effective as originals and shall be considered to be a “writing” between the parties. The use of the DSM electronic system will serve as sole proof for the content and the time of delivery and receipt of such electronic communications.

2 QUOTATIONS, ORDERS AND CONFIRMATION
2.1 Unless stated otherwise by DSM, quotations made by DSM in whatever form are not binding on 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. Orders are not binding until accepted by DSM in writing (“Confirmed Order”). DSM shall be entitled to refuse an order without indicating the reasons.

2.2 If the CIP术语 (see INCOTERMS) is used, the projected quantities are subject to increase in the event that actual quantities purchased during the specified period are less than the estimated or projected quantities.

2.3 Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for other deliveries.

3 PRICES
3.1 Prices and currencies of DSM’s Products are as stated in the Confirmed Order. Unless otherwise agreed, DSM’s prices include standard packaging but do not include Value Added Tax, Goods and Services Tax and other specific taxes and/ or levies or charges in any 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.

3.2 Unless the prices have been indicated as firm by DSM in the Confirmed Order, DSM is entitled to increase the price of the Products still to be delivered by the cost, duration and labor of labor if the price thereof has been subject to any increase. These factors include, but are not limited to, raw and auxiliary materials, energy, products obtained by DSM from third parties, taxes, duties, trade, security contributions, governmental charges, freight costs and insurance premiums. A written notice from DSM notifying Customer of such increased costs and effects shall be sent to Customer no later than i) 6 (six) months from the date of delivery of the Products or (ii) the expiry of the Products’ shelf-life, whichever is the earlier. Any Use of the Products shall be deemed to be unconditional acceptance of the Products as of the date of delivery and a waiver of all claims in respect of the Conditions.

3.3 A determination of whether or not delivered 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 disagreement between the parties concerning the quality of a batch or production run of Products supplied by DSM to Customer, DSM will submit representative samples of this batch or production run for inspection to be reasonably acceptable to Customer to have determined whether or not the batch or run in question meets the required specifications. In the event such analysis is binding upon the parties and the party unable to uphold its position shall bear all costs of and incidental to the testing carried out by such independent third party.

3.4 Defects in portions of the Products do not entitle Customer to reject the entire delivery of the Products, unless Customer can reasonably be expected to accept delivery of the remaining non-defective portions 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 Unless stated otherwise DSM is the owner of all rights of the Products from the date of manufacture until all outstanding amounts are paid in full for the Products, including costs such as interest, charges, expenses, taxes, duties, and, if any, all other applicable taxes, duties, and import duties.

8.2 The title to the Products shall pass to Customer and full legal and beneficial ownership of the Products shall remain with DSM unless and until DSM has received payment in full for the Products, including costs such as interest, charges, expenses, taxes, duties, and import duties.

8.3 In the event of termination on the basis of Article 16, DSM shall, without prejudice to any other rights of DSM, be entitled to require immediate return of the Products to DSM at Customer’s cost and, if applicable, the return of the Products, in accordance with Article 7.

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 Products or for credit for the credit of the Products.

9.2 DSM’s obligation to repair, replace or credit shall be contingent upon receipt by DSM of timely notice of any alleged breach of warranty. DSM shall have the right to inspect any alleged Products and, if applicable, the return of the Products, in accordance with Article 7.

9.3 The warranty is exclusive and in lieu of all other warranties, representations, conditions or other terms, express, implied, statutory, contractual or otherwise, including, without limitation, any warranty of merchantability, fitness for a particular purpose, and any warranty of non-infringement of any claim in any intellectual property right covering the Products.

10 LIMITED LIABILITY
10.1 DSM’s liability for any and all claims arising out of or in connection with any Products and uses thereof shall per occurrence be limited to direct damages of Customer and shall under no circumstances exceed the sales value of the
10.2 Wherever it shall under no circumstances be liable to Customer or any other person for any kind of special, incidental, indirect, consequential or punitive damage or any cost, expense, loss or liability, whether with or without limitation, damage based upon lost goodwill, lost sales or profit, delay in delivery, work or production failure, impairment of other good will, or for any other cause, 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 or delay 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, including, without limitation, acts of God, laws and regulations, administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, war, terrorism, 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 that part of the essential machinery, emergency repair or maintenance, breakdown or shortage of utilities, delay in delivering goods supplied by subcontractors ("Force Majeure").

11.2 Upon the 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 its performance of its obligations under the Contract. DSM shall have the right to cancel any of its orders or the obligation to deliver shall be suspended for a period equal to the time loss by reason of Force Majeure. However, should a Force Majeure still continue to be recorded and to continue for a period exceeding 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 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 and 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, descriptive publications distributed or published on its websites may accordingly be varied from time to time without notice.

12.2 Customer must utilise 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 liability or obligation whatsoever on the part of DSM. 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 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 controls 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, promise, offer or provide any improper advantage to or (ii) enter into an agreement (a) with any entity or person, including 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 the 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 may assign any of the rights or obligations under the Contract without the prior written consent of the other party, except that either party may assign such rights and obligations to any affiliate, subsidiary or successor of such party, or (if such party is a natural person) to any heir or legal representative if such party’s death 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 and/or take 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 10 (ten) days after exercising its right to terminate the Confirmed Order by giving Customer written notice of such exercise within 10 (ten) 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 mature, or goes into liquidation (other than for the purpose of reconstruction or amalgamation) or any bankruptcy proceeding shall be instituted by or against Customer or if a trustee in bankruptcy, or a receiver or administrator is appointed for all 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 in case of non-compliance of Customer with Laws and Standards, then DSM may, by notice in writing, forthwith without prejudice to any of its other rights:

(i) demand return and take repossess 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; and

(ii) suspend its performance or terminate the Confirmed Order for pending delivery of Products. 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 repossessed by DSM.

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.

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 all 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/or commercial 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 VENUE

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, interpreted and enforced in accordance with the laws of Malaysia, without regard to the conflict of law 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, controversy or claims which the parties are unable to amicably resolve shall be finally settled by arbitration under the Kuala Lumpur Regional Centre for Arbitration Rules for the time being in force, which rules are deemed to be incorporated by reference into this Article. The seat of arbitration shall be Kuala Lumpur. The language to be used in the arbitration shall be English.

21 SURVIVAL OF RIGHTS & HEADINGS

21.1 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.

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

22 INTELLECTUAL PROPERTY

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

22.2 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.

22.3 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 expressly 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.

23 NOTICES

23.1 All notices to be given shall be in writing and shall either be delivered personally or sent by first-class or airmail pre-paid post and shall be deemed duly served: (i) in the case of a notice delivered personally, at the time of delivery; (ii) in the case of a notice sent by first-class pre-paid post 3 (three) business days after the date of dispatch; (iii) in the case of a notice sent overseas by air-mail, 7 (seven) business days being in the place to which the notice is dispatched after the date of dispatch.

23.2 Each notice shall be addressed to the address of the party concerned set out in the Confirmed Order or such other address as the party shall have previously notified to the sender.