1. GENERAL

1.1 These General Terms and Conditions of Sale (“Conditions”) are the only Conditions (unless DSM agrees in writing to any other terms) which shall govern the sale of all goods and services (the “Products”) from or on behalf of DSM New Zealand Ltd, Unit 44, McLaren Road, Henderson, New Zealand (“DSM”), to Customer (“Customer”) and apply to all transactions between Customer and DSM.

1.2 By contracting on the basis of the Conditions, Customer will be deemed to have agreed to all the matters contained in this document, save for any of its terms and conditions of sale notwithstanding any terms and conditions of Customer, save as may be notified to DSM in writing.

2. PRICES

2.1 Unless DSM has otherwise stated, the prices stated in the Confirmed Order (“Prices”) include delivery to Customer’s invoice address, unless otherwise specified, but exclude taxes and other charges levied or charges in any jurisdiction levied in relation to the Products or the delivery thereof (“Taxes”). The amount of any Taxes and other charges levied or charges in any jurisdiction levied in relation to the Products or the delivery thereof shall be added to each invoice or separately invoiced by DSM.

2.2 Customer will be responsible for all Taxes and other charges relating to the sale and delivery of the Products and any other costs and expenses incurred by DSM in relation to the sale and delivery of the Products, unless otherwise stated.

3. PAYMENT AND CUSTOMER’S CREDIT

3.1 Unless stated otherwise in the Confirmed Order, payment shall be made in New Zealand dollars, net of cash, to be received by DSM by the 20th of the month following the date of DSM’s invoice. All payments shall be made without any deduction, offset or other counterclaims except for set-offs with uncontested and/or enforceable counterclaims. All bank charges shall be borne by Customer.

4. DELIVERY AND ACCEPTANCE

4.1 Customer will examine the Products and satisfy itself that the Products are in accordance with the Conditions, save for any or all of the terms and conditions of Customer. DSM is not responsible for any defects in the Products or any delayed delivery, unless the defect is the result of Customer’s own acts or omissions.

5. PAYMENT TERMS

5.1 Unless stated otherwise in the Confirmed Order, all deliveries of Products shall be CIP (Carriage and Insurance Paid To) the Customer or such other address as may be agreed to in writing, including without limitation, confirmation of an order and delivery of Products, and Customer will be responsible for all Taxes and other charges relating to the sale and delivery of the Products, unless otherwise specified.

6. CANCELLATION

6.1 Customer’s wrongful non-acceptance or rejection of Products or Customer’s breach of the Conditions will be deemed as rejections of any order to DSM to recover from Customer, in addition to any other damages caused by such action:

(i) the loss or damage 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 fifty (50) percent of the price for the Products in the Confirmed Order as liquidated damages, unless Customer can demonstrate that the actual damages incurred by DSM are lower than such amount or that the price of the Products were not suffered at all.

7. EXAMINATION AND CONFORMITY TO SPECIFICATIONS

7.1 On delivery and during the handling, use, commingling, alteration, enforcement of the User Agreement, operation, transportation, storage, importation and (re)sale of the Products (the “Use”), Customer shall examine the Products and satisfy itself that the Products are in accordance with the Conditions. DSM’s obligation to repair, replace or credit shall be terminated within a reasonable time either repair or replace the Products. Customer and DSM agrees to the applicability thereof in respect of any and all products, excepting, expressed, implied, contractually or otherwise, are expressly excluded.

8. TRANSFER OF RISK AND PROPERTY

8.1 DSM does not retain title to the Products until the title to the Products shall pass to Customer, according to the relevant provisions (see Article 5).

9. LIMITATION OF LIABILITY

9.1 DSM shall not be liable in any way for any damages, costs or expenses arising out of or in connection with the Products or the User Agreement with the Products, except for any such damages, costs or expenses that in DSM’s sole discretion arise from DSM’s negligence or otherwise.

10. FORCE MAJEURE

10.1 Neither party shall be liable in the event of any act of God, war, lockout, strike or any other similar event, or any circumstances beyond its respective control.

11. FORCE MAJEURE

11.1 DSM shall not be liable in any way for any damages, costs or expenses arising out of or in connection with the Products or the User Agreement with the Products, except for any such damages, costs or expenses that in DSM’s sole discretion arise from DSM’s negligence or otherwise.
11.2 Upon the occurrence of any event of Force Majeure, the party suffering thereby shall promptly inform the other party with a view to specifying the cause of the event and how it will affect its performance of its obligations under the Conditions until such date as it is reasonable to delay, if any. If an obligation to deliver shall be suspended for a period equal to the time loss by reason of Force Majeure. However, should a Force Majeure event recur or be expected to continue for a period extending to more than sixty (60) days after the agreement of the parties to cancel the affected part of the Confirmed Order without any liability to the other Party.

12. MODIFICATIONS AND INFORMATION; INDEMNITY

12.1 Unless otherwise agreed in a Confirmed Order to be firm for a certain period of time or quantity of Products, DSM reserves the right to modify or change specifications and quantities 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 laws and standards publications and other 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, knowledge 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 liability) 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 Products may be subject to requirements or limitations under any law, statute, ordinance, rule, code or standard, including, but not limited to, any laws relating to (i) fraud, bribery and anti-corruption; (ii) international trade; (iii) environment; (iv) health and safety; (v) food and drug; (vi) intellectual property; (vii) consumer protection; (viii) data protection; (ix) intellectual property; (x) anti-competitive practices; (xi) competition; (xii) money laundering; and (xiii) data protection.

13.2 Customer expressly warrants that employees, agents and service providers shall (i) directly or indirectly (i) accept, promise, offer or provide any improper advantage to any employee of any entity or person, including officials of a government or a government-controlled entity, or (ii) relating to a product which would contravene any applicable laws and standards.

13.3 Customer shall be exclusively responsible for ensuring compliance with all laws and standards associated with its intended use of the Products; and (iii) 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 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 a substantial part of its assets or business relating to the Products. DSM shall have the right to terminate the Confirmed Order with immediate effect if at any time during the term of the Confirmed Order, except for a 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 by giving Customer written notice of such event 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 or if it becomes insolvent, liquidated orgram, or if it makes a general 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 and subject to the Specific Order, terminate this Agreement without further liability for pending delivery of Products unless Customer makes such payment for Products on a cash in advance basis or provides acceptable assurance of its compliance with this Agreement.

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

17. SECURITY INTERESTS

17.1 For the purposes of Article 8 and Article 18, Customer acknowledges that under a Confirmed Order, it grants a security interest to DSM in (i) the Products (until title passes to Customer in accordance with Article 8); (ii) any Proceeds described in Article 8.3; and (iii) any items in any delivery or storage facility in which the Products are located, under section 68, until Customer has paid in full for all Products supplied by DSM and under section 148. Customer will have the right to remove an accession under section 127; (viii) prevent a Security Agreement over any Products being void; (ix) enable DSM to exercise DSM’s rights in connection with the Products; or (x) prove that Customer is complying with a Security Agreement.

17.5 The Security interest arising under a Confirmed Order attaches at a later time. In addition to perfecting any Security Interest under a Confirmed Order by registration DSM may perfect any Security by possession in the Products, or (ii) prevent a Security Agreement over any Products.

17.7 Customer’s rights under the Personal Property Securities Act 1999 to (i) receive a notice of sale under section 141(1)(a); (ii) receive a statement of account under section 116; (iii) be entitled to a copy of a Financing Statement under section 119; (iv) receive notice of a secured party’s proposal to retain possession of the Products; or (v) receive permission to remove an accession under section 125; (vi) be reimbursed for damaged caused when a secured party removes an accession under section 126; (vii) receive notice of the removal of an accession under section 127; (viii) apply to the Court for an order concerning the removal of an accession under section 131; (ix) receive notice of a general lien over all items in its possession belonging to the Customer described in Article 18, or (x) receive a copy of any verification statement received by DSM following the registration of a financing statement or a financing change statement relating to a Confirmed Order or the security interest it creates under section 148.

18. GENERAL LIEN

In addition to any right of lien to which DSM may be entitled under common law, DSM will be entitled to exercise a general lien over all items in its possession belonging to Customer until Customer has paid in full for all Products supplied by DSM. Any lien exercised in relation to a Confirmed Order shall be subject to the priority that 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 de

19. WAIVERS

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.

20. SEVERABILITY

In the event that any provision of the Conditions shall be held to be invalid or unenforceable, the same shall be deemed to affect in any respect whatsoever, the validity and enforceability of the remaining provisions between the parties and shall be severed therefrom. The parties in good faith have agreed upon a reasonable method of interpretation of this Agreement. 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.

21. LIMITATION OF ACTION

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

22. GOVERNING LAW AND JURISDICTION

The parties and their 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 Zealand, 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 instituted exclusively before the competent courts of New Zealand, or, in accordance with the provisions of the Confirmed Order, without restricting any rights of appeal and without prejudice to DSM’s right to submit the matter to any other competent court.

23. 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, agreements, promises, understandings, conditions or warranties, express or implied, are made by either party and that there are no other conditions or terms being binding.

24. 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 assignees, 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.

25. HEADINGS

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

26. INTELLECTUAL PROPERTY

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

26.2 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 de

27. THE SALE OF PRODUCTS

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, without recourse to DSM in any combination with other materials or in any processing operation.