GENERAL TERMS AND CONDITIONS OF SALE OF DSM NUTRITIONAL PRODUCTS VIETNAM 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 “Product(s)”) from or on behalf of DSM Nutritional Products Vietnam Ltd, 33 Lower A, Street 14, Vietnam Singapore II-A industrial park, Vinh Tan Ward, Tan Uyen district (“DSM”), to customer (the “Customer”) and apply to all transactions between DSM and the Customer, unless expressly amended by written agreement between DSM and the Customer.

1.2 By contracting on the basis of the Conditions, Customer agrees to the applicability thereof in respect of all future dealings, even if this is not explicitly stated in any such agreement.

1.3 DSM explicitly rejects the applicability of any general terms and conditions of Customer. Furthermore, by entering into the Conditions, Customer accepts and agrees that any terms of prior oral and written quotations, communications, agreements and understandings of the parties in respect of the sale and delivery of the Products is superseded by the Conditions. DSM’s terms and conditions will be deemed to form part of every quotation made by DSM in whatever form, unless expressly rejected or amended by written agreement between DSM and the Customer. Any electronic communication between the parties, terms of prior oral and written quotations, agreements and understandings of the parties in respect of the sale and delivery of the Products is superseded by the Conditions. The Conditions will govern the offer of the Products. The Conditions differ from any of the 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.

Neither DSM’s commencement of performance nor DSM’s delivery shall be deemed as acceptance of any of Customer’s terms and conditions. If the Conditions differ from any of the terms and conditions of Customer, the Conditions and any subsequent communication or conduct by or on behalf of Customer shall be deemed to constitute a counter-offer and non-acceptance of such terms and conditions submitted by Customer. Any terms or conditions of Customer which confirm an agreement for the delivery of Products by DSM, as well as acceptance by Customer of any delivery shall be excluded.

1.4 The current version of the Conditions is available at www.NUTRITIONALPRODUCTS.COM.VN. DSM reserves the right to amend the Conditions at any time. DSM may notify Customer of any such amendments by sending the amended Conditions to Customer by e-mail or fax or posting them on the aforementioned Internet site or otherwise. The amended Conditions will take effect on the date of notice or, if no notice is given, on the date of delivery of the first Products thereafter.

1.5 Amendments to the Conditions are effective as of the date of such delivery or notice, if notice is given. Any such amendments and additions thereto to the Conditions shall be effective as a modification of the original Conditions and shall constitute an unqualified acceptance by Customer of the Conditions.

2. QUOTATIONS, ORDERS AND CONFIRMATION
2.1 Unless stated otherwise by DSM, (price) quotations made by DSM in whatever form are not binding to DSM and merely constitute an invitation to Customer to place an order rather than an offer for the sale of Products. All quotations issued by DSM are revocable and subject to change without notice. Orders are not binding until accepted by DSM in writing (the “Confirmed Order”). DSM shall be entitled to reject or refuse to accept an Order for the reasons:

2.2 Price quotations based on estimated or projected costs and prices are not binding, and DSM may increase the price of such Products if it reasonably believes that such prices or costs have increased, in which case DSM shall notify Customer thereof.

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 the Products are as set out in the Confirmed Order. Unless otherwise agreed by the parties, prices include standard packaging but do not include Value Added Tax or any other similar applicable taxes, duties, 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 any discount on each invoice (the “Discount”), the invoice price shall be reduced by the amount of the Discount specifically mentioned in the Confirmed Order. The invoice price is exclusive of Taxes, unless stated otherwise in a 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 if the cost price determining factors have been materially altered from the date of the Confirmed Order. These factors include but are not limited to: raw and auxiliary materials, energy, products obtained by DSM from third parties, fluctuations in foreign exchange rates, security contributions, governmental charges, freight costs, duties duties, Value Added Tax or other insurance premiums. DSM shall notify Customer of such increase which shall not exceed the increase in the determining cost factors.

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 30 (thirty) days following the date of DSM’s invoice. All payments shall be made without any deduction on account of any Taxes and free of set-off or other counterclaims except for set-offs with uncontested and/or enforceable counterclaims.

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 debt, and without limiting DSM’s rights, confirm the collection of overdue payments including, without limitation, reasonable attorney’s fees, expert fees, court costs and other expenses of litigation, which shall be chargeable to Customer.

4.3 Every payment by Customer shall in the first place serve to pay the judicial and extra-judicial costs of actions or proceedings commenced or threatened by DSM and shall not be deducted from the oldest outstanding claim regardless of any advice to the contrary from Customer.

4.4 Any complaint with respect to the invoice must be notified to DSM in writing within 20 (twenty) days after the date of such invoice. Thereafter, Customer 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 term CIP shall have the meaning as defined in the latest version of INCOTERMS published by the International Chamber of Commerce, France at the time of the Confirmed Order (see www.ICCWD.ORG/INCOTERMS).

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 as stated in the Confirmed Order in instalments and to invoice separately. Delay in delivery of any Products shall not relieve Customer of its obligation to accept delivery thereof, unless Customer cannot reasonably be expected to accept delivery due to such late delivery. Customer shall be obliged to accept the Products and pay the rate specified in the Confirmed Order for the quantity of Products delivered by DSM.

6. 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 purchase price of such Products; or

(ii) in the case of Products which can be resold by DSM, damages equal to 50% (fifty percent) of the purchase price as quoted in the Confirmed Order as liquidated damages, unless Customer can demonstrate that the actual damages incurred by DSM are lower than 50% of the price of 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, within a period of 10 (ten) days from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and (subject to the provisions of Article 7) any other defects claimed by DSM in the Preliminary Notice or (ii) the expiry of the Products’ shelf-life whichever is the earlier. Any 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.

7.2 A determination of whether or not the 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 discord between the parties concerning the quality of a batch or parts thereof, DSM shall have the right to determine the quality of such batch. Customer, DSM will submit representative samples of said batch or run to an independent laboratory recognized by both parties, and shall have the right to determine whether or not the batch or run in question has met the Specifications. The results of such analysis shall be binding upon the parties and shall be conclusive as to the shelf-life of the Products.

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 be passed to Customer and full legal and beneficial ownership of the Products shall remain with DSM until and unless DSM has received payment in full for the Products, including costs such as interest, charges, expenses etc.

8.3 In the event of termination on the basis of a force majeure event or a material breach of terms of rights of DSM, be entitled to require immediate return of the Products, or to repossess the Products, for which it may invoke retention of title.

9. LIMITED WARRANTY
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 such Products in the amount of the original invoice price. Accordingly, DSM’s obligation is limited solely to repair or replacement of the Products or for credit of the Products.

9.2 Customer is wholly obligated to give written notice to DSM of all defects in the Products, if any, or to return the Products, in accordance with and subject to the terms and conditions of this Article 9.

9.3 The foregoing warranty is exclusive and in lieu of all other warranties, representations, conditions or other terms, express, implied, statutory, or otherwise. Customer waives any warranty of merchantability, suitability or fitness for any purpose, or absence of 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 the Products and the Use

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thereof shall per occurrence be limited to direct damages of Customer and shall under no circumstances exceed, in each case, the value of the defective batch of the relevant Product supplied to Customer.

10.2 Neither party shall under no circumstances be liable to Customer or any other person for any kind of special, indirect, incidental, consequential or punitive damage or loss, cost or expense, including without limitation, lost goodwill, lost sales or profits, delay in delivery, in work stoppage, production failure, impairment of other goods or based on any other cause, and whether arising directly or indirectly from a breach or any other materials or in any part or product or from the operation of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown or shortage of utility, delay in delivery in defects in goods supplied by suppliers or subcontractors ("Force Majeure").

11.1 Neither party shall be liable in any way for any damages, losses, costs or expenses arising out of or in connection with 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, sabotage, accident, epidemic, strike, lockout, slowdown, labour disturbances, difficulty in obtaining necessary labour or raw materials, lack of fuel or power, failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown or shortage of utility, delay in delivery in defects in goods supplied by suppliers or subcontractors ("Force Majeure").

11.2 Upon the occurrence of any event of Force Majeure, the party thereby affected shall promptly inform the other party by written notice thereof specifying the cause of the event and how it will affect performance of any 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 loss by reason of Force Majeure. However, if such event continues to 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. 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 or its Suppliers shall notify DSM of any significant changes in DSM’s catalogues, product data sheets and other descriptive publications distributed or published on its websites. DSM 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, DSM shall not be held liable for 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 shall ensure 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 (i) anti-corruption and anti-corrupion 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, promise, offer or provide any improper advantage to or (ii) enter into an agreement 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 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 may assign any of the rights or obligations or transfer the products or render the prior written consent of the other party, except that either party may assign such rights and obligations to another party in the event of a merger, acquisition, transfer 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 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 thereof. DSM may exercise 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 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 proceeding shall be instituted by or against Customer or if a trustee or receiver or administrator is appointed for all or a substantial portion of 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 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; and (ii) suspend its performance or terminate the Confirmed Order for pending delivery of Products or DSM may make such payment for Products on a cash in advance basis or provides adequate assurance of such payments 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 repaided 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. 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 deemed to be invalid or unenforceable, the same shall not affect in any respect whatever, the validity and enforceability of the remaining provisions between the parties and shall be severed therefrom. The remaining provisions held to be invalid or unenforceable shall be reformed to meet the legal and economic intent of the original provision 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 according to the laws of Vietnam, 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.

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, for whatever reason, 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 included for more 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. 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.

23.2 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. In the event of any inconsistency or contradiction between the English version and any translation thereof, the English version shall prevail.