GENERAL TERMS AND CONDITIONS OF SALE OF DSM NUTRITIONAL PRODUCTS LTD
BRANCH PENTAPHARM

1. GENERAL

1.1 These General Terms and Conditions of Sale (“Conditions”) govern the offering, sale and delivery of all goods and services (hereinafter jointly referred to as the “Products”) from or on behalf of DSM Nutritional Products Ltd Branch Pentapharm, Dorchester Road, Dundonald Industrial Park, Belfast, BT47 3SA, United Kingdom and its affiliates (“DSM”), to customer (“Customer”) and apply to all transactions between DSM and Customer.

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

1.3 DSM explicitly rejects the applicability of any general terms and conditions of Customer. Furthermore, the Conditions supersede any and all terms and conditions of purchase, written or oral, any communications, agreements and understandings of the parties in respect of the sale and delivery of the Products and shall apply in preference to any supplementary terms and conditions of DSM and all terms and conditions on 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. Neither DSM’s commencement of performance nor DSM’s acceptance of any order shall constitute an acceptance of Customer’s terms and conditions. If the Conditions differ from any of the terms and conditions of Customer or any subsequent communication or conduct by or on behalf of DSM, including, without limitation, confirmation of an order and delivery of Products, confirming a change of offer or accept any such terms and conditions submitted by Customer. Any communication or conduct of Customer which conflicts with or deviates from the delivery terms of DSM, as well as acceptance by Customer of any delivery of Products from DSM shall constitute an unqualified acceptance by Customer of the Conditions.

1.4 The current version of the Conditions is available at www.dsm-nutritional-products.com and www.pentapharm.com. DSM reserves the right to amend the Conditions at any time. DSM will notify Customer of any such amendments by sending Customer the amended Conditions with highlighting the changes and in addition posting them on the aforementioned Internet sites. Customer may reject the amended Conditions within 30 days by notice to DSM. If Customer does not reject the amended Conditions within that period, they will take effect upon its expiry. The amended Conditions will have an effect on any future orders. The amended Conditions shall apply to all transactions concluded between Customer and DSM after the date of such notification.

1.5 The neutral position between DSM and Customer shall be effective as originals and shall be considered to be a “writing” between the parties. The electronic communication system used by DSM 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 otherwise stated by DSM, quotations made by DSM in whatever form are not binding to 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 (“the Confirmed Order”). DSM shall be entitled to refuse an order without indicating the reason for doing so.

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 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 The 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 charge. DSM reserves the right, 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 deducted from the intended price 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 if if, since the date of the last determination of the price, factors have been subject to an increase. These factors include but are not limited to: raw and auxiliary materials, energy and fuel costs, labor costs, exchange rate fluctuations, duties, taxes, penalties, insurance premiums, governmental charges, freight costs and insurance premiums. DSM shall notify Customer of such increase and 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 provided for in these Conditions and any subsequent communication or conduct by or on behalf of DSM, including, without limitation, confirmation of an order and delivery of Products, exercising a condition or a set-off irrespective of such terms and conditions submitted by Customer. Any communication or conduct of Customer which conflicts with the delivery terms of DSM, as well as acceptance by Customer of any delivery of Products from DSM shall constitute an unqualified acceptance by Customer of the Conditions.

4.3 Every payment by Customer shall in the first place serve to reduce any unpaid and/or extra-judicial costs and the accrued interest and shall afterwards 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 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 CIF (Carriage and Insurance Paid To) place of destination. The term CIF is defined as 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.worldtrade.org).

5.2 Unless stated otherwise in the Confirmed Order, any times or dates for delivery by DSM are estimates. Unless stated otherwise in the Confirmed Order, the sale of the Products shall be complete upon delivery. Title to the Products shall pass to Customer upon delivery.

5.3 Customer’s right to accept or reject the delivery of the Products is limited solely to repair or replacement of the Products or to return of the Products in accord with the applicable Incoterms (see Article 5.1).

5.4 Customer’s right to reject the delivery of the Products shall be limited solely to repair or replacement of the Products or to return of the Products in accord with the applicable Incoterms (see Article 5.1).

5.5 DSM shall not be liable for any delay in delivery of the Products, nor is it held to take any steps to prevent or correct such delay. DSM is not responsible for the failure of any carrier or other third party to comply with any scheduled times or dates for delivery.

5.6 Unless stated otherwise in the Confirmed Order, the Products will be shipped in a manner and packaging standard for such products, but we do not guarantee the condition of delivery. However, if the Customer observes any defect or shortage, it shall be notified to DSM in writing within 16 (sixteen) days after delivery. Claims for non-delivery shall be made in writing and must reach DSM no later than 7 (seven) 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 7 (seven) days from the date of notification of defects (e.g. hidden defects) was or ought to have been apparent, but in no event later than (i) 6 (six) months from the invoice date of the Products or (ii) expiry of the Products’ shelf-life which 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.

5.7 DSM reserves the right to make any changes it deems necessary in the Products, which may affect the delivered Products without prior notice to Customer.

6. CANCELLATION

6.1 Customer’s wrongful non-acceptance or rejection of Products or cancellation of the 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, the return of 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 as liquidated 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.

7. EXAMINATION AND CONFIRMITY TO SPECIFICATIONS

7.1 On delivery and during the handling, use, consideration, application, alteration, assembly, separation, processing, testing, inspection, repair, reassembling, transport, storage, installation and (re)sale of the Products (the “Use”), Customer shall examine the Products and assure 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 of DSM regarding the sale of the Products (the “Specifications”).

7.2 Complaints about the Products shall be made in writing and must reach DSM no later than 7 (seven) days after the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and 7 (seven) days from the date of notification of defects (e.g. hidden defects) was or ought to have been apparent, but in no event later than (i) 6 (six) months from the invoice date of the Products or (ii) expiry of the Products’ shelf-life which 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.

7.3 A determination of whether or not delivered Products conform to the Specifications shall be done either by DSM in accordance with the Methods of analysis used by DSM or retained by DSM and taken from the batches or production runs in which the Products were produced, or by an independent laboratory reasonably acceptable to Customer to have determined, 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 the party unproving his position shall bear the cost of the related laboratory.

7.4 Defects in parts of the Products do not entitle Customer to reject the entire delivery of the Products. Unless stated otherwise in the Confirmed Order, Customer is not entitled to expect delivery of the remaining non defective parts of the Products. Complaints, if any, do not prejudice to any other rights of DSM. Customer’s obligation to pay as defined in Article 4.

8. TRANSFER OF RISK AND PROPERTY

8.1 The risk of the Products shall pass to Customer according to the applicable Incoterms (see Article 5.1).

8.2 The title to the Products shall not pass 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 Article 16, DSM shall, without prejudice to any other rights of DSM, be entitled to require immediate return of the Products, or to repossess the Products, for which it may invoke a 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 that 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, and without prejudice to any remedy already granted to Customer, either (a) repair the Products at no charge to Customer, or (b) issue a credit for any such Products in the amount of the original invoice price. DSM’s entire liability shall be limited solely to repair or replacement of the Products or for credit of the Products.

9.2 DSM’s obligation to repair, replace, or credit shall be limited to the Products that are in breach with such warranty, as determined in accordance with Article 7. DSM does not warrant the accuracy of any alleged non-conformance of Products and, if applicable, the return of the Products, in accordance with these Conditions.

9.3 The foregoing warranty is exclusive and in lieu of all other warranties, representations, conditions or other terms, express, implied, statutory, or otherwise, including, without limitation, any warranty of merchantability, suitability or fitness for any purpose, or absence of infringement of any claim in an 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 thereof shall be limited to the extent of the 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, consequential or punitive damage or loss, cost or expense, including without limitation, damage based upon lost goodwill, lost business, lost profits or income, in delivery, performance, or non-performance, loss, production failure, impairment of other goods or based on any other cause, and whether arising out of or in connection with breach of war or 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 including, without limitation, acts of God, laws and regulations, administrative measures, strikes, lockouts, labor disputes, epidemic, riot, sabotage, accident, epidemic, strike, lockout, slowdown, labor trouble, currency restriction, 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 sub contractors (“Force Majeure”).

11.2 In the event of Force Majeure, the party suffering thereby shall promptly inform the other party of written notice thereof specifying the cause of the event and how it will affect its performance 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 lost by reason of Force Majeure. However, should a 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. 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, right to modify the Specifications and/or manufacture of Products and to substitute materials used in the production and manufacture of Products from time to time without notice. Customer acknowledges that data in DSM’s catalogues, product data sheets 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, 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 and against any and all damages, losses, costs, expenses, claims, demands and liabilities (including without limitation product liability arising 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 regulation, whether or not by DSM, 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, the Foreign Corrupt Practices Act and sanctioned party lists (“Laws and Standards”).

13.2 Customer expressly warrants that employees, agents and other representatives of 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 any officer 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 that the relationship created hereby shall not be deemed to be that of principal and agent.

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 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.

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 to DSM adequate assurance of its ability to perform its obligations 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 in bankruptcy or 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 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/or
(ii) suspend its performance or terminate the Confirmed Order for pending delivery of Products Customer may make 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 provision. 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 or enforceability of the remaining provisions of the parties and shall be severed therefrom. The pertaining provisions held to be invalid or unenforceable shall be reformed to meet the legal and valid intent of the party claiming the purpose 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 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 Switzerland, 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.

20.2 The parties agree that any suits, actions or proceedings that may be instituted by any party against the other party caused by any circumstance beyond its reasonable control, without restricting any rights of appeal and without prejudice to DSM’s right to submit the matter to any other competent court.

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 be without prejudice to the respective rights which are intended to remain in effect after such termination.

22. HEADINGS
The headings contained in the Conditions are included 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 shall not have the exclusive right to 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. In the event of any inconsistency or contradiction between the English version and any translation thereof, the English version shall prevail.