GENERAL TERMS AND CONDITIONS OF SALE OF DSM NUTRITIONAL PRODUCTS RUS LLC

1. GENERAL

1.1 These General Terms and Conditions of Sale ("Conditions") govern the sale and delivery of all goods and/or services (hereinafter jointly referred to as "Products") bought from DSM Nutritional Products RUS LLC, 29/2 Musy Dzhalilya, Naberezhnye, Chelyabinsk, 423800, Republic of Tatarstan, Russia ("DSM"), to customer ("Customer") and apply to all transactions between DSM and 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.

1.3 DSM explicitly rejects the applicability of any general terms and conditions of Customer. 

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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 direct damages of Customer and shall under no circumstances exceed the sales value of the batch of the relevant Product supplied to Customer.

10.2 DSM shall under no circumstances be liable to Customer directly or indirectly (i) accept, promise, offer or agree (a) with any entity or person • including without limit, damage, delay in delivery, work stoppage, production failure, impairment of other goods or based on any other cause, and/or (b) 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, cost or expense arising out of or in connection with any delay, 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, acts of subordinate measure, decrees of any court, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, strike, lockout, labour disturbances, difficulty in obtaining necessary labour or raw materials, lack of or failure of transportation, breakdown of plant or essential equipment, participation in military or emergency repair, maintenance, breakdown or shortage of utilities, delay in delivery or defects in goods supplied by suppliers or subcontractors (“Force Majeure”).

11.2 Upon the occurrence of any event of Force Majeure, the affected party shall promptly inform the other party by written notice thereof specifying the cause and the event and how it will affect its performance of any 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, 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, 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, product data sheets and other descriptive publications distributed by DSM or its websites may accordingly be varied from time to time without notice.

12.2 Customer must utilize 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 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-competitive and anti-corrupt practices and international trade, such as, but not limited to, embargos, import and export control and sanctioned party lists (“Laws and Standards”).

13.2 Customer shall be responsible for ensuring compliance with all Laws and Standards associated with its intended Use of the Products; and (ii) obtaining any 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. Customer 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.

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 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 remedy such non-performance within a reasonable period of time, DSM may terminate the relevant provisions of the Conditions which are intended to remain in effect after such termination.

17. HEADINGS

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

18. INTELLECTUAL PROPERTY

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

19. 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.

20. 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.

21. 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.

22. The parties agree that any suits, actions or proceedings that may be instituted by any party shall be instituted exclusively before the arbitration court of the Tatarstan Republic, without restricting any rights of appeal and without prejudice to DSM’s right to submit the matter to any other competent court.

23. 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.


25. The parties agree that any suits, actions or proceedings that may be instituted by any party shall be instituted exclusively before the arbitration court of the Tatarstan Republic, without restricting any rights of appeal and without prejudice to DSM’s right to submit the matter to any other competent court.


27. DSM shall not be held liable for any loss or damage in that respect.

28. 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.


30. The parties agree that any suits, actions or proceedings that may be instituted by any party shall be instituted exclusively before the arbitration court of the Tatarstan Republic, without restricting any rights of appeal and without prejudice to DSM’s right to submit the matter to any other competent court.