1. **GENERAL**

1.1 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 South Africa (Pty) Ltd., a company registered in South Africa under registration number 1969/011007/07, with registered office at 70 Brewery Street, Isando 1600, South Africa (“DSM”), to customer (“Customer”) and apply to all transactions between DSM and Customer.

1.2 By contacting the DSM, 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.

1.4 Furthermore, the Conditions supersede any and all terms, conditions, oral and written quotations, communications, agreements and understandings of the parties in respect of the sale and delivery of the Products. Unless stated otherwise in the Confirmed Order, the Conditions differ from any of the terms and conditions of Customer.

2. **QUOTATIONS, ORDERS AND CONFIRMATION**

2.1 Unless stated otherwise by DSM, quotations made by DSM in whatever form are not binding to DSM and are not an invitation to DSM to place an order.

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 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 VAT or other similar applicable taxes, duties, excise, import duties, charges in any jurisdiction levied in relation to the Products or the delivery thereof (“Taxes”). The amount of any Taxes levied by DSM is to be borne by Customer to be Customer’s for account and shall be neither be added to each invoice or separately invoiced. If DSM grants a discount, this discount only relates to the delivery specifically mentioned in the Confirmed Order.

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 deduction 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 payment at 12% (twelve percent) per annum from the date on which any other claim or contribution, governmental charges, freight costs in the determining cost factors.

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 shall have the meaning as defined in the latest version of INCOTERMS published by the International Chamber of Commerce. For delivery of the Products, unless otherwise stated in the Confirmed Order; 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.

5.2 Defects in parts of the Products do not entitle Customer to reject the entire delivery of the Products, unless Customer cannot reasonably be expected to accept delivery of the remaining non-defective parts of the Products. Complaints, if any, do not affect Customer’s obligation to pay as defined in Article 4.

6. **LIMITED WARRANTY**

6.1 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 warranties, as determined in accordance with Article 7, DSM may at its own option (i) repair or replace the Products at DSM’s expense, or (ii) refund the purchase price to Customer. If the cost price determining factors have been subject to an increase. These factors include but are not limited to fluctuation of utility, raw material costs, energy, products obtained by DSM from third parties, wages, salaries, social security costs, taxes, insurance premiums, and other costs and factors.

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 satisfy itself that the Products and satisfy itself that the Products (the “Use”), Customer shall examine the Products and satisfy itself that the Products as stated in the Confirmed Order or, in the alternative, agreed in writing and in the Specifications, and that the specifications used by DSM at the time of delivery of the Products (the “Specifications”).

7.2 Customer’s examination and inspection shall be made by DSM in whatever form are not binding to DSM, unless Customer cannot reasonably be expected to have knowledge to determine whether or not the batch or run in question has met the Specifications. The results of such inspection shall be binding upon the parties and the party unable to uphold its position shall bear the related costs of the laboratory.
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 until the date of delivery thereof shall per occurrence be limited to direct 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, indirect, incidental, consequential or punitive damage or loss, cost or expense, including without limitation, on goodwill, lost sales or profit, delay in delivery, work stoppage, production failure, impairment of other goods or based on any other cause, and 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, 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, orders or decrees of any court, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, strike, lockout, slowdown, labour disturbances, difficulty in obtaining necessary labour or raw materials, lack of or failure of transportation, breakdown of plant or equipment or any emergency event or circumstances beyond its control.

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 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 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 DSM undertakes to make the Products and Customer’s Use thereof harmless from and against any and all damages, losses, costs, expenses, claims, demands and liabilities (including without limitation, but not limited to, claims and/or proceedings arising out of or in connection with the Products and Customer’s Use thereof). Customer acknowledges that the sale of Products shall not, by implication or otherwise, be construed as a warranty of fitness for any purpose.

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 or regulation, 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 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 to procure for the Person for which the Products are provided, whether or not DSM is aware of such persons and/or the activities thereof, or (iii) participate directly or indirectly in such a person or activity for which the Products are provided, whether or not DSM is aware of such persons and/or the activities thereof, 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 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.

15.2 DSM shall have the right to terminate the Confirmed Order if at any time during the term of the Confirmed Order a person or group of persons, who are unrelated to the persons controlling DSM 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 in Customer’s opinion the 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 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 part of the assets of Customer or if Customer enters into a deed of arrangement or any insolvency arrangement makes any assignment for the benefit of its creditors; or in case of non-compliance of Customer with the 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 defective Products and Products in which the Products 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 unless Customer makes such payment for Products on a cash in advance basis and 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 repurchased 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 thereby, nor shall it constitute a waiver 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 and enforceability of the remaining provisions between the parties and shall be severed therefrom. Any provision declared invalid or unenforceable shall be referred to the legal and economic intent of the original provisions to the maximum extent permitted by law.

19. LIMITATION OF ACTION

Unless otherwise stated hereunder and subject to the applicable law, 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 South Africa, 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 shall be initiated exclusively before the competent courts of Johannesburg, 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 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 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 has not excluded 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 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.