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 “Products”) from or on behalf of DSM Besin Maddeleri Ltd. Şti., Cumhuriyet Cad. Akarca İş Merkezi, D Blok No. 14, Kat.6, TR-34800 Kavacık, Kocaeli, Turkey (“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 hereby rejects the applicability of any general terms and conditions of Customer.

Furthermore, the Conditions supersede any and all terms of prior oral and written quotations, communications, agreements and understandings of the parties in respect of the sale and delivery of the Products and shall apply in preference to and supersede any and all terms and conditions of 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 delivery shall be deemed as acceptance of any of Customer’s terms and conditions. If the terms and conditions of Customer differ from any of the terms and conditions of Customer, the Conditions and any subsequent communications on behalf of Customer including, without limitation, confirmation of an order and delivery of Products, constitute a counter-offer and not acceptance of such terms and conditions of Customer. Any communication or conduct of Customer which confirms an agreement for the delivery of Products by DSM, as evidenced by DSM’s 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-nutritionalproducts.com and www.unlimitednutrition-eu.dsm.com, DSM reserves the right to modify the Conditions at any time. DSM will notify Customer of any such amendments by sending the amended Conditions to Customer, posting them on the aforementioned internet sites or otherwise. The amended Conditions will take effect on the date of notification of these amendments. The amended Conditions shall apply to all transactions that arise between Customer and DSM after the date of such notification.

1.5 Any electronic communication between DSM and Customer shall be effective as original and shall be construed to be equivalent to written correspondence between the electronic communication system used by DSM will serve as sole proof for the content and the time of the communication in receipt of such electronic communications.

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 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 reasons.

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 in writing, DSM’s standard prices shall prevail and do not include Value Added Tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction in respect of any of the Products, or 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 a discount, this discount only relates to the delivery specified 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 prices at its own discretion. DSM shall be delivered if the cost price determining factors have been subject to an increase. These increase factors include but are not limited to: raw and auxiliary materials, energy, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. DSM may, without limitation, reasonable attorney’s fees, expert fees, court costs and other expenses of litigation shall be for Customer’s account.

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 due date computed on a daily basis until all outstanding claims shall have been paid in full. All costs and expenses incurred by DSM with respect to the collection of overdue payments (including, without limitation, reasonable attorney’s fees, expert fees, court costs and other expenses of litigation) shall be for Customer’s account.

Every payment by Customer shall in the first place be applied to settlement of the oldest outstanding claim. Customer is entitled to deduct from the oldest outstanding claim any of the terms and conditions of Customer. Neither DSM shall in no event be construed as an acceptance of any of the terms and conditions of Customer. Neither DSM shall in no event be construed as an acceptance of any tax or other charges of whatsoever nature in connection with the delivery or performance of the Products.

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 Unless stated otherwise in the Confirmed Order, any Use of the Products shall in no event be construed as acceptance of the Products as of the date of delivery and a waiver of all claims in respect of the Products.

4.3 A determination of whether or not delivered Products conform to the Specifications shall be done solely by DSM analysing the samples or records relating to the terms and conditions of any order for production runs in which the Products were produced in accordance with the methods of analysis used by DSM, and the Products concern the parties concerning the quality of a batch or production run of Products supplied by DSM to Customer, DSM will submit representative samples of said batch or run to an independent laboratory and, at Customer’s request, DSM shall bear the related costs of the laboratory.

4.4 All rights of DSM, including but not limited to, any Rights that DSM may invoke a retention of title to or over the Products, shall not pass to Customer for Customer’s account and shall be for Customer’s account.

5. DELIVERY AND ACCEPTANCE

5.1 Unless stated otherwise in the Confirmed Order, all deliveries of Products shall be CIP (Carriage and Insurance Paid) 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 in Paris, France, at the time of the Confirmed Order (see www.iccwbo.org/incoterms).

5.2 Unless stated otherwise in the Confirmed Order, any claim as to performance of the Product shall be made by Customer without delay after the unobstructed delivery of the Product. 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

Customer’s wrongful (i) 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

(ii) in the case of Products which reasonably cannot be resold by DSM to a third party, the price of such Products as quoted in the Confirmed Order

(iii) 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

6.2 DSM’s obligation to repair, replace, or credit for the cost of the Products shall be limited solely to repair or replacement of the Products or for Customer’s account.

7. EXAMINATION AND CONFIRMITY TO SPECIFICATIONS

7.1 On delivery and during the handling, use, commingling, alteration, incorporation, processing, transformation, storage, transportation and resale of the Products (the “Use”), Customer shall examine the Products and satisfy itself that the Products delivered conform to the Specifications as stated in the Confirmed Order or, in the absence of agreed specifications, to the most recent specifications used by DSM at the time of delivery of the Products.

7.2 Complaints about the Products shall be made in writing and must reach DSM not later than 8 (eight) days after the delivery of the Products. Customer shall notify DSM of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and 8 (eight) days from the date on which any other claim (e.g. hidden defect) was or ought to have been apparent, but in no event later than (i) 6 (six) months from the date of delivery of the Products 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.

7.3 DSM’s obligation to repair, replace, or credit for the cost of the Products shall be limited solely to repair or replacement of the Products or for Customer’s account.

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).

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 DSM has received payment in full for the Products.

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 warranties, as determined in accordance with Article 7, DSM may at its option and in its reasonable discretion at any time either repair or replace the Products at no charge to Customer or, issue a credit for any such Products to the amount of the original invoice price. Accordingly, DSM’s obligation shall be limited solely to repair or replacement of the Products or for Customer’s account.

9.2 DSM’s obligation to repair, replace, or credit shall be contingent upon receipt by DSM of timely notice of any alleged non-conformance of Products as described in the applicable Incoterm of the Products, in accordance with Article 7.

The foregoing warranty is exclusive and in lieu of all other warranties, representations, conditions or terms and conditions, express, implied, statutory, contractually or otherwise, including, without limitation, any warranty of merchantability, fitness for any particular purpose, 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 thereof shall per occurrence be limited to direct damages only, unless 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, indirect, consequential or punitive damages, cost, loss or expense, including without limitation, any losses of goodwill, sales or profit, delay in delivery, work stoppage, production, loss of other goodwill, or any loss or damage, cost or expense 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, emergency, starvation, war, terrorism, riot, sabotage, accident, epidemic, strike, lockout, slowdown, labour disturbances, difficulty in obtaining commodities, materials, labour or equipment, currency or price or rate of exchange, strikes, lockouts, other work stoppages, slowdowns, work stoppages, curtailment, shortage of utilities, retaining necessary labour or raw materials, lack of expertise, know how, forces of nature, or otherwise, or the act of any person or group of persons, which would constitute an offence or infringement of Laws and Standards.
11.2 Upon the occurrence of any event of Force Majeure, suffering thereby shall promptly inform the other party by 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 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 meta data included for mere convenience of reference and shall not affect those provisions of the Conditions which are intended to remain in effect after such termination.

13. COMPLIANCE WITH LAWS AND STANDARDS
13.1 Customer acknowledges that the products of the Products may be subject to requirements or limitations under any law, statute, ordinance, rule, code or standard, including, but not limited to, anti-terrorism, 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 (a) 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 infringements of applicable Laws and Standards.

14. INDEPENDENT CONTRACTORS
14.1 DSM and any 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.

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 Customer’s performance before the date of scheduled delivery; or if Customer becomes insolvent or unable to pay its debts as they become due; 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 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 other rights or remedies of DSM, (a) demand return and take repossess 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/or (b) suspend its performance or terminate the Confirmed Order for pending delivery of Products until Customer makes such payment for Products on a cash in advance basis or provides adequate assurance of such payment for Products to 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
18.1 In the event 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 severable from thereon. The pertaining provisions held to be invalid or unenforceable shall be reformed to meet their written agreement in the intent of the original provisions 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 Turkey, 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. 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 Istanbul, without restricting any rights of appeal and without prejudice to DSM’s right to submit the matter to any other competent court.

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 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.

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