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 Twijmij B.V., Houtbeekweg 4, 3776 LZ Stroe, The Netherlands (hereinafter referred to as “DSM” or “Company”) to Customer (hereinafter “Customer”) and apply to all transactions between DSM and Customer unless and until otherwise agreed.

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 expressed from day one.

1.3 DSM explicitly rejects the applicability of any general terms and conditions of Customer. Further, DSM explicitly expressly reserves 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. Any quotation(s) and/or order(s) from 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.

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 therefor.

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 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 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 invoiced by DSM to Customer or be deducted from any Taxable Sale or purchase Price 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 stated otherwise by DSM in the Confirmed Order, DSM is entitled to increase the price of the Products still to be delivered hereunder if DSM, having had a price increase (e.g. hidden defects) 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.

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 delivery of the Products, the latter date shall not be made without any deduction on account of any Taxes and free of set-off or other counterclaims except for set-offs with uncontroverted and/or uncontested counterclaims.

4.2 With regard to payment for the Products, time is the essence of the essence. DSM may, without prejudice to any other rights or remedies available to DSM, charge interest from the date of the overdue payment at 12% (twelve percent) per annum from the due date computed on a daily basis until all outstanding amounts are 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.

4.3 Every payment by Customer shall in the first place serve to pay the judicial and 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 otherwise stated 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 the Incoterms of the International Chamber of Commerce in Paris, France, at the time of the Confirmed Order (see www.icc-wbo.org).

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 in parts in accordance with the Confirmed Order in parts and to invoice separately. Delay in delivery of any Product shall not relieve Customer of its obligation to accept delivery thereof, unless Customer cannot reasonably be expected to accept such late delivery. Customer shall be entitled to accept the Products and pay the price 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 all losses and damages caused by such action:

(i) 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; or

(ii) in the case of Products which can be resold by DSM, the difference between the price for the Products as quoted in the Confirmed Order as liquidated damages, unless the damages incurred by DSM are lower than 50% of the price 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 shall report any defect or any non-conformity to the Products delivered and 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 agreed upon by DSM and Customer. Customer shall be entitled to reject the Products delivered in case of non-conformity to the Products (the “Specifications”).

7.2 Complaints about the Products shall be made in written form within 8 (eight) days from the date of delivery in respect of any defect, default or shirking which shall be apparent from a reasonable inspection on delivery, and 7 (seven) days from the date of delivery in respect of any default or shirking which shall not be apparent from a reasonable inspection on delivery but which shall be apparent to a reasonable person who was exercising all due care (e.g. hidden defects) was or ought to have been apparent, but in no event later than (i) 1 (one) month from the date of delivery of the Product or (ii) the expiry of the Product’s 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 A determination of whether or not delivered Product conforms to the Specifications shall be made solely by DSM analysing the samples or records retained by DSM and taken from the batches or runs in which the Products were produced at the request and expense of DSM. In case of a dispute between the parties concerning the quality of a batch or portion of a batch, DSM shall request an independent laboratory reasonably acceptable to Customer to have the disputed batch or portion of a batch analysed. The results of such analysis shall be binding upon the parties and the results of which DSM is in possession shall bear the related costs of the laboratory.

8. TRANSFER OF OWNERSHIP AND PROPERTY

8.1 Unless 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 unless and until DSM has received payment in full for the Products, including such costs as interest, charges, expenses, etc.

8.3 In the event of termination of the basis of Article 4 of this Agreement, DSM shall 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 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 the Products at no charge to Customer, or issue a credit for any 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 DSM’s obligation to repair, replace, or credit shall be conditioned on Customer giving DSM prompt notice of any alleged non-conformance of Products and, if applicable, the return of the Products, in accordance with Article 5.1.

9.3 The foregoing warranty is exclusive and in lieu of all other warranties, representations, conditions or other terms, express, implied, statutory, or otherwise, and DSM expressly disclaims any warranty, without limitation, any warranty of merchantability, suitability or fitness for any purpose, absence of infringement of any claim in any intellectual property right covering the Products.

10. LIMITED LIABILITY

10.1 DSM’s liability for and all claims arising out of or in connection with the Products and the Use 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, resultant or consequential, punitive damage or loss, cost or expense, including without limitation, damage based upon lost goodwill, delay in delivery, 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 applicable Laws and Standards or legislation towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, war, riots, sabotage, accident, epidemic, strike, lockout, slowdowns, labor difficulties, difficulties in obtaining necessary raw or raw materials, lack of or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown or shortage of utilities, or delay in delivery or defects in goods supplied by suppliers or subcontractors (“Force Majeure”).

11.2 Upon the occurrence of the event of Force Majeure, the party suffering thereby shall promptly inform the other party by written notice thereof specifying the event and 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 40 days from the agreed delivery date, either Party is entitled to cancel the affected portion 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 manufacture of Products from time to time without notice. Customer acknowledges that data in DSM’s catalogues, product data sheets and other descriptive publications or publications 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 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, regulation and/or standard 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 U.S. 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 unlawful 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 shall assign or delegate any 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 be entitled to exercise its 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 (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 performance before the date of scheduled delivery; or (ii) 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 by 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; in case of non-compliance with Laws and Standards, then DSM may by notice in writing forthwith, without prejudice to any of its other rights:

(i) Failure and return and 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

(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 or provides adequate assurance of such payment for Products to be delivered.

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 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 held to be invalid, unenforceable, or otherwise inapplicable, 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 pertaining provisions held to be invalid or unenforceable shall be reformulated to meet the legal and economic intent of the original provisions to the maximum extent permitted by law.

19. LIMITATION OF ACTIONS

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 The Netherlands, 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 Amsterdam, The Netherlands, 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 and permitted assigns. The parties shall ensure that their directors, officers, employees, agents and legal representatives comply with these Conditions. 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 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 English language. In the event of any inconsistency or contradiction between the English version and any translation thereof, the English version shall prevail.