GENERAL TERMS AND CONDITIONS OF SALE OF DSM PRODUTOS NUTRICIONALIS BRASIL S.A.

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 “Products(s)”) from or on behalf of DSM Produtos Nutricionais Brasil S.A., and its affiliates ("DSM"), to customer ("Customer") and apply to all transactions between DSM and Customer.

1.2 By contracting on the basis of the Conditions, Customer acknowledges and accepts the applicability thereof in respect of all future dealings, even if this is not explicitly stated.

1.3 DSM explicitly regrets the unavailability of any general terms and conditions of Customer. Furthermore, the Conditions supersede any and all terms of prior oral and written quotations, commitments and understandings made by or on behalf of DSM, including, without limitation, confirmation of an order and delivery of Products and applicable terms and conditions submitted by Customer. Any communication or conduct of Customer which constitutes a “writing” between the parties, 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. Conditions differ from any of the terms and conditions of Customer, the Conditions and any subsequent conduct by or on behalf of DSM, including, without limitation, confirmation of an order and delivery of Products, constitute a counter-offer and not acceptance of such terms and conditions submitted by Customer. Any communication or conduct of Customer which confirms an agreement for the delivery of Products by 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 HTTP://WWW.DSMA.COM/EN/US/HTML/DISPACTS_BRAZIL.AST.isValid. It is the customer’s responsibility to amend 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 concluded between DSM and the customer after the date of such notification.

2. QUOTATIONS, ORDERS AND CONFIRMATION

2.1 Unless stated otherwise by DSM, quotations made by DSM in whatever form are not binding to DSM. DSM reserves the right to accept or reject any order or 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 forth on 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, fees 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 added to each invoice or separately invoiced by DSM to Customer. If DSM grants a discount, this discount only relates to the delivery specifications stated 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 the following factors have been subject to an increase. These factors include but are not limited to: raw and auxiliary materials, energy expenses, taxes, duties, levies, fees 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 added to each invoice or separately invoiced by DSM to Customer. If DSM grants a discount, this discount only relates to the delivery specifications stated in the Confirmed Order.

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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 or remedies, charge over due payment at 12% (twelve percent) per annum from the due date computed on a daily basis until all overdue 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, and other expenses of litigation) 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 To) 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.worldint.com).

5.2 Unless stated otherwise in the Confirmed Order, any times or dates for delivery by DSM are estimates and are not binding on DSM. DSM will deliver the Products as stated in the Confirmed Order in parts and to invoice separately. Delay in delivery of any Products 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 obliged to accept delivery of Products and pay the rate 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 be irrevocable and subject to change without notification. In addition, DSM will be entitled to require immediate return of the Originals, and from Customer, in addition to any other damages caused by such action:

(i) In the case of Products which reasonably cannot be sold 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, damages equal to 50% (fifty percent) of the price for the Products as quoted in the Confirmed Order as liquidated damages, unless Customer can prove that the actual losses 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 satisfy itself that the Products delivered conform to all applicable specifications for the Products 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 (the “Specifications”). If the examination shows that the Products do not conform to the Specifications and in the event of defect, default or shortfall which would be apparent from a reasonable inspection on delivery, and seven (seven) days from the date on which any other claim (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) 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.

7.2 A determination of whether or not delivered Products conform to the Specifications shall be done solely by DSM analysing the samples or records retained by DSM and taken from the batches or production runs in which the Products were produced in accordance with the methods and procedures described in the Specifications. In case of a discord between the parties concerning the quality of a batch or production run of Products supplied by DSM to Customer, DSM will have the right to request from said batch or run 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 unable to uphold its position shall bear the related costs and expenses.

7.3 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 the aforementioned defects or defective parts of the Products. Complaints, if any, do not affect 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 Incoterm (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 costs such as interest, charges, expenses or taxes.

8.3 In the event of termination on the basis of Article 16, DSM shall, without prejudice to any other rights and obligations, require immediate return of the Products, or to repossession 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 or replace the Products at no cost to Customer and issue a credit note to Customer for any such Products in the amount of the original invoice price. Accordingly, DSM’s obligation shall be limited solely to repair or replacement of the Products or to credit for the Products.

9.2 DSM’s obligation to repair, replace, or credit shall be contingent upon receipt by DSM of timely notice of any alleged failure, defect or shortfall and, if applicable, the return of the Products, in accordance with Article 7. In no event will DSM’s obligations under this Article or the warranty be exclusive and in lieu of all other warranties, representations, conditions or other terms, express, implied, statutory, contractually or otherwise, including, without limitation, any warranties of merchantability, fitness or suitability for any purpose, or absence of 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 be limited to the amount paid by the Customer for the Products and/or the value 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, indirect, consequential or punitive damage or loss, cost or expense, including without limitation, damage based upon lost goodwill, lost sales or profit, delay in delivery, work stoppage, loss of raw materials or 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, acts of any third party or any one of them, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, strike, lockout, slowdown, labour disturbances, difficulty 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 subcontractors (“Force Majeure”).

11.2 In the event of any event of Force Majeure, the party 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. The affected party shall endeavour to overcome the consequences of the Force Majeure. In the event of any delay, the obligation to deliver shall be suspended for a period equal to the time lost during the force majeure event.

11.3 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 DSM as of the date of the Confirmed Order, acquires control, through ownership of voting securities or otherwise, of Customer. DSM shall be entitled to make 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.

12. SUSPENSION AND TERMINATION
12.1 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 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 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 and remedies, (i) demand payment of all amounts due and payable thereunder and (ii) cease to provide any Products.

12.2 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.

13. COMPLIANCE WITH LAWS AND STANDARDS
13.1 Customer shall ensure 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: (i) anti-corruption and anti-bribery laws and regulations; (ii) anti-corruption and anti-bribery laws and regulations; (iii) customs and import-export related legislation and national regulations (“Laws and Standards”).

13.2 Customer expressly warrants that employees, agents and subcontractors of the Customer shall not directly or indirectly 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 infringement of applicable Laws and Standards.

14. INDEPENDENT CONTRACTORS

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. 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. The pertaining provisions held to be invalid or unenforceable shall be reformed to meet the legal and economic intent of the original provisions to the maximum extent permitted by law.

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 “Sticky 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. SURVIVAL OF RIGHTS

The parties’ rights and obligations shall bind 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.

19. HEADINGS

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

20. GOVERNING LAWS AND JURISDICTION

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 Brazil, 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. LEGAL PERSONALITY

Neither party shall be held liable for any loss or damage in that respect.

22. INTELLECTUAL PROPERTY

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

23. TERMINATION

DSM has not verified the possible existence of third party intellectual property rights which might be infringed as a consequence of the use and/or delivery of the Products and DSM shall not be held liable for any loss or damage in that respect.

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 the Portuguese translation thereof, the Portuguese version shall prevail.