1. GENERAL

1.1 These General Terms and Conditions of Sale (“Conditions”) govern the offering, sale and delivery of all the subject services provided or referred to as the “Product(s)” from or on behalf of DSM Nutritional Products Ecuador S.A domiciled at Manuel Zambrano s/n y Av. 10 de Agosto, Quito, (hereinafter referred to as “DSM”) 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 or special Conditions of Customer. Furthermore, the Conditions supersede any and all terms of prior oral and written quotations, contracts, bids or 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 Conditions or terms. If the Conditions differ from any of the terms and conditions of Customer, the Conditions and any subsequent contracts shall be binding only 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, shall be acceptance by Customer of any delivery of Products from DSM shall constitute an unqualified acceptance by Customer of the 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 shall not constitute an invitation to Customer to enter into an order.

2.2 All quotations issued by DSM are revocable by DSM in whatever form are not binding unless and until accepted by DSM in writing ("the Confirmed Order"). DSM shall be entitled to refuse an order without indicating the reasons.

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 added to each invoice or separately invoiced by DSM to Customer. 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 must be made in full cash, to be received by DSM within thirty (30) days following the date of DSM’s invoice. All payments shall be made free of set-off or other counterclaims except for set-off with uncontested and/or enforceable counterclaims.

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.iccwbo.org/incoterms).

5.2 Unless stated otherwise in the Confirmed Order, any times or dates for delivery by DSM are estimates and shall not be considered to be a “writing” between the parties. The electronic communication system used by DSM will serve as sole proof for the content and the time of dispatch and receipt of such electronic communications.

6. CANCELLATION

6.1 Customer’s wrongful non-acceptance or rejection of Products or cancellation of the Confirmed Order shall result in DSM’s obligation to accept delivery thereof, unless Customer cannot reasonably be expected to accept such late delivery. 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.

7. EXAMINATION AND CONFORMITY TO SPECIFICATIONS

7.1 On delivery and during the handling, use, commingling, alteration, incorporation, processing, transformation and any other treatment of the Products (the “Use”), Customer shall examine the Products and satisfy itself that the Products delivered 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 used by DSM at the time of delivery of the Products (the "Specifications").

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).

9. LIMITED WARRANTY

9.1 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 and, if applicable, of the return of the Products, in accordance with Article 7. DSM may at its own option and within a reasonable time either repair or replace 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 shall be limited solely to repair or replacement of the Products or for credit of the Products.

10. 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, in 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, including but not limited to, damages, loss, or injury, consequential or punitive damage based upon lost goodwill, lost sales or profit, delay in delivery, work stoppage, production failure, impairment of other goods or business, or any other delay, 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, and whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation, negligence or otherwise.

11.2 Upon the occurrence of any event of Force Majeure, the party suffering thereby shall promptly inform the other party noting thereon specifying the cause of the event and how and how it will affect performance of its obligations under the Confirmed Order. In the event of any delay, the obligations of the party delayed shall be deemed 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 or published 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 processes with 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 liability) 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 applicable law, statute, ordinance, rule, code or standard, including, but not limited to, all applicable regulations relating to (i) anti-bribery and anti-corruption laws, 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) as a person or official of a government or a government-controlled entity, or (b) relating to a product, which would constitute an offense or, in respect 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 herein 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 without any notice, prior to the due date of the Confirmed Order, if DSM reasonably believes that Customer or any of its affiliates or third party acquiring control, through ownership of voting securities or otherwise, over Customer. Customer must provide written notice 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 Customer is in default of performance of its obligations under this Agreement towards DSM and fails to provide to DSM within 10 (ten) days after the date of receipt of such notice, either: (i) 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 (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 DSM.

16.2 In any such event of Article 16.1 all outstanding claims of DSM shall become due 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 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 of Customer’s rights or obligations.

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 hereof.

19. LIMITATION OF ACTION
Unless otherwise stated herein, no action by Customer shall be brought unless Customer first provides written notice to DSM of any claim alleged to exist against another party arising out of or in connection with the Confirmed Order and/or the

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

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. INTELLIGENT 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 notified 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 hold 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 Spanish translation thereof, the Spanish version shall prevail.