1. GENERAL

1.1 These General Terms and Conditions of Sale (“Conditions”) govern the offering, sale and delivery of DSM Nutritional Products Peru SA’s (“DSM”) products, herein referred to as the “Products(s)” from or on behalf of DSM NUTRITIONAL PRODUCTS PERU SA, Av. Los Frutales 245, Lima, Peru(“DSM”), to customer (“Customer”) and apply to all transactions between DSM and Customer.

1.2 By contracting on the basis of the Conditions, Customer accepts them and acknowledges that Customer has no rights of withdrawal in respect of all future dealings, even if this is not explicitly stated.

1.3 DSM explicitly 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 other agreements, communications or conduct of Customer which are accepted by DSM.

2. PRICES AND QUOTATIONS

2.1 Unless stated otherwise by DSM, quotations made by DSM in whatever form are not binding and 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 Any change of the conditions 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 stated 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 and any governmental charges, freight costs and insurance premiums. DSM shall notify Customer of such increase which shall not exceed the increase in the determining cost factors.

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 free of set-off or other counterclaims except for set-offs with uncontroverted 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 payments. Such interest shall be calculated from the due date as calculated from a date which is seven days after a date of delivery, and shall be calculated at the maximum commercial moratorium interest rate, from the due date computed on a daily basis until all outstanding amounts have been paid, including, without limitation, confirmation of an order and delivery of Products, constitute a counteroffer and not acceptance of such terms and conditions as finally accepted by Customer. Customer’s communication or conduct of Customer which confirms an agreement for the delivery of Products as well as acceptance by Customer of any delivery of Products from DSM shall constitute an unqualified acceptance by Customer of the Conditions.

4.3 Every payment by Customer shall in the first place reduce the 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 the invoice. Thereafter, Customer shall be deemed to have accepted the invoice.

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 in Paris, France, at the time of the Confirmed Order (see www.iccwbo.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 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 such 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 entitle DSM to impose the following penalties to the Customer in addition to the demand of any “subsequent 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 with a surcharge of 25% (twenty-five percent) of the price of the Products as quoted in the Confirmed Order as liquidated damages.

(ii) In the case of Products which can be resold by DSM, a penalty equal to 50% (fifty percent) of the price for the Products as quoted in the Confirmed Order as liquidated damages.

7. EXAMINATION AND CONFORMITY TO SPECIFICATIONS

7.1 Customer’s examination and during the handling, use, commingling, alteration, incorporation, processing, transportation, storage, importation and (re)sale of the Products, as well as the nearest to Customer’s account or 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.

7.2 Unless stated otherwise in the Confirmed Order, DSM is entitled to increase the price of the Products still to be delivered if the cost price determining factors have been subject to a change. These factors include but are not limited to: raw and auxiliary materials, energy, products obtained by DSM from third parties, wages, salaries, taxes, insurance premiums, governmental charges, freight costs and insurance premiums. DSM shall notify Customer of such increase which shall not exceed the increase in the determining cost factors.

8. TRANSFER OF RISK AND PROPERTY

8.1 The risk of the Products shall pass to Customer according to the applicable Incoterms (see Article 5.1).

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 etc.

8.3 In the event of termination on the basis of Article 16, DSM shall, without prejudice to any other rights or claims against Customer, be entitled to require Customer to dispose of, at Customer’s risk and charge, the remaining Products and Customer shall be limited solely to repair or replacement of the Products or for credit of the Products.

9. LIMITED LIABILITY

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 in the reasonable time either repair or replace the Products, or refund to Customer the full purchase price, or, in the event of termination of the sale, by Customer 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.

9.2 DSM’s obligation to repair, replace, or credit shall not be continued unless, at its option, DSM is given notice of any alleged non-conformance of the Products and, if applicable, the return of the Products, in accordance with Article 7.

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

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 of Customer and shall under no circumstances exceed the sales value of the Products.
defective batch of the relevant Product supplied to Customer.

10.2 DSM shall under no circumstances be liable to Customer or any third party, 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 profits or loss of 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 or 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 act of war, strike, lockout, riot, civil commotion, governmental, legal, or regulatory order, event or condition beyond its control (collectively referred to as "Force Majeure").

11.2 In the event of occurrence 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 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 period of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period extending to more than 60 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 final, upon a certain period of time or delivery 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 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 provided by DSM shall not give rise to any additional obligations. Customer shall indemnify and hold DSM harmless from any and all damages, losses, costs, expenses, claims, demands and liabilities (including without limitation product liability claims) 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 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.

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 any arrangement 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 offense or infringement of applicable Laws and Standards, and Customer shall not, by implication or otherwise, permit any breach of any of its obligations under the Confirmed Order or the Conditions 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.

13.3 Customer shall be exclusively responsible for (i) ensuring compliance with all Laws and Standards associated with the 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 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 (ten) days after the event complained of first becomes known to Customer and an action is commenced by Customer within (twelve) months after such notice.

19. LIMITATION OF ACTION

19.1 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 (ten) days after the event complained of first becomes known to Customer and an action is commenced by Customer within (twelve) months after such notice.

19.2 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.

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 Peru, 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 Lima, without restricting any rights of appeal and without prejudice to DSM's right to submit the matter to any other competent court.