

## DSM Nutritional Products Canada Inc. General Supply Conditions for Goods and Services



These General Supply Conditions apply to and form an integral part of all requests for proposal, quotations Purchase Orders, and Order Confirmations. DSM expressly rejects the applicability of any other general terms and conditions or stipulations of Buyer.

1. **CONTROLLING DOCUMENT**-The acceptance of Buyer's order is expressly made conditional on Buyer's assent to the terms and conditions set forth herein, and DSM Nutritional Products Canada Inc. ("DSM") agrees to furnish goods (the "Products") only upon these terms and conditions. This document constitutes the entire agreement between the parties. Differing terms and conditions shall require a separate written agreement. THE TERMS OF THIS AGREEMENT SHALL SUPERSEDE ANY CONFLICTING TERMS CONTAINED ON BUYER'S PURCHASE ORDER OR ANY DOCUMENT OR INSTRUMENT SUBMITTED BY BUYER. No course of prior or current dealings between the parties and no usage of trade shall be relevant to supplement or explain any term. Photocopies, electronic copies and facsimile transmissions of documents shall be effective as originals and shall be considered a "writing" between the parties. Acceptance of these Terms and Conditions by Buyer shall be confirmed upon shipment of Product.
2. **PRICE AND TAXES** - Buyer shall pay DSM the price set forth on the face hereof, or in the event no price is set forth on the face hereof, the standard price for Products published by DSM on the date DSM ships Buyer's order or any price expressly quoted by DSM in writing to Buyer. Price lists from DSM are for general information and do not constitute a binding, open offer from DSM for the sale of goods. A quote deviating from the standard price list is valid only for an individual order and for the time period specified in the quote. Pricing includes DSM standard packaging, delivery and labels. Unless otherwise agreed in writing, pricing does not include applicable federal, state, local, use, excise or other taxes; customs, duties or any fee imposed by a governmental agency; or special packaging, labeling or delivery as set forth below. If exception from such taxes is claimed, Buyer must provide a certificate of exception at the time of order. In the event DSM is required to prepay such taxes Buyer will reimburse DSM for this cost. DSM reserves the right to change the prices and specifications of its Products at any time unless otherwise agreed to in writing. Additional charges for non-self entered web based purchases may apply.
3. **SHIPMENT** - DSM is committed to meeting customer requirements for Product delivery. Any shipping or delivery dates indicated by Buyer or DSM are estimates only, and DSM shall have no liability to Buyer for failure to complete or deliver an order by the date indicated or for any of Buyer's incidental or consequential damages arising from a delay. DSM shall ship Product to Buyer DDP place of shipment, with packaging and carriers as designated by DSM unless otherwise specified in writing between the parties. DSM's title to Product passes to Buyer upon delivery of Product. DSM will not consider any claim for non-conforming Product or shortages ("Non-Conformance") unless Buyer complies with the notice and authorization requirements set forth at Paragraph 6. Buyer may not return Product without DSM written authorization. If a return is authorized, Buyer shall return all Non-Conforming Product within ten (10) days after receipt of authorization, and shall ship the Product point of destination F.O.B. Returns of all conforming Product are subject to a restocking charge of 10% computed at original invoice value. When retest is required Buyer will be charged an additional fee per Product lot. All Product sought to be returned must be within the lot expiry period and received not later than ninety (90) days after originally shipped by DSM. All returns must be returned to the originating DSM location unless otherwise directed by DSM. ALL UNAUTHORIZED RETURNS BECOME THE PROPERTY OF DSM AND NO CREDIT WILL BE ISSUED. Product for which delivery is suspended pending payment by Buyer as well as Product of which delivery is wrongfully rejected or not accepted by Buyer, shall be held and stored by DSM at risk and expense of Buyer. *Special delivery terms*; expedited delivery may be an additional fee and deliveries of less than minimum order quantities may be subject to an additional fee; specially requested analyses and/or deliveries in DSM non-standard packages shall be subject to additional charges. All shipment costs are to be paid by DSM subject to the special delivery charges set forth herein. In those areas where the "released value

ratings” apply, DSM shall ship on this basis unless otherwise requested in writing. Freight allowances for customer pick-ups will be based on rate schedules from the nearest DSM Distribution Center.

4. **TERMS OF PAYMENT** - Payment for Product shall be due as of the payment date stated on the invoice. With regard to payment of price for the Product, time is of the essence. Any overdue payment may be subject to a late payment charge of 1.5% per month (18% per year) or the highest amount permitted by law. Unless otherwise indicated in writing, each shipment shall be considered an independent transaction and payment therefore shall be made accordingly. All orders are subject to approval of DSM credit department. If in the judgment of DSM, the financial condition of the Buyer at any time does not justify continuance of shipment on the terms of payment specified, DSM may require full or partial payment in advance. In the event of bankruptcy or insolvency of Buyer, or in the event of any proceeding brought by or against Buyer under insolvency laws, DSM shall be entitled to cancel any order of the Buyer then outstanding and shall receive reimbursement from Buyer for its costs to date of cancellation. Buyer authorizes DSM to investigate Buyer’s credit and financial standing, and at DSM request shall provide DSM with financial information and individual guaranties before, during or after fulfillment of any order. DSM shall maintain a security interest in the Product (and replacement) delivered hereunder and in the proceeds from the sale and disposition thereof, until Buyer has made payment in full for such Product. Buyer shall, upon DSM request, execute all documents (such as a UCC-1) necessary to perfect such security interest. DSM has the right, upon demand, to repossess goods delivered hereunder if Buyer fails to make timely payments. All payment shall be made without any deduction and free of any set-off or other counterclaim.
5. **INSPECTION** - Buyer shall be responsible for inspecting and examining all Products shipped hereunder prior to acceptance. Buyer shall give DSM written notice specifying the alleged Non-Conformance if rejection is intended within five (5) days following delivery to Buyer. Failure by Buyer to provide such written notice of rejection within five (5) days of delivery shall be deemed to be acceptance of the Product by Buyer as of the date of shipment. Any resale, commingling, alteration or incorporation of the Product by Buyer shall be deemed acceptance of the Product as of the date of shipment.
6. **WARRANTY** - There are no express warranties hereunder. The Products will meet their published specifications when used in accordance with their applicable instructions and stored correctly. The liability of DSM is limited, at DSM’s option, solely to replace the Product, or apply an appropriate credit adjustment not to exceed the sales price to Buyer, provided that (a) DSM is promptly (within five (5) days of receipt of allegedly Non-Conforming Product) notified in writing by Buyer setting forth the alleged Non-Conformance, date of purchase, date of receipt, and invoice number , (b) Buyer shall set aside and hold such Product without further use or processing until DSM advises Buyer as to the proper disposition of the Product; and (c) the Non-Conforming Product is returned to or inspected by DSM, and DSM examines such Product to its satisfaction and determines that such Non-Conformance exists, and was not caused by negligence, misuse, improper storage, or accident. Buyer shall have no right to “cover” by procuring substitute goods at the cost of DSM. **DSM MAKES NO OTHER WARRANTY, EXPRESSED OR IMPLIED. DSM EXPRESSLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF DSM. DSM NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR DSM ANY OTHER LIABILITIES. UNDER NO CIRCUMSTANCES SHALL DSM BE LIABLE TO BUYER OR ANY OTHER PERSON FOR ANY KIND OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGE, LOSS, OR EXPENSE.** Buyer’s remedies under this agreement shall be limited to replacement of the Product that failed to conform to the warranty. This warranty section sets forth the sole and exclusive remedy against DSM for the furnishing of Non-Conforming Product. No action may be taken against DSM for breach of this agreement more than one (1) year after the accrual of a cause of action.
7. **INDEMNIFICATION** - Buyer shall indemnify and hold DSM harmless from and against any and all damage, losses, costs (including attorney’s fees), expenses, claims, demands and liabilities arising out of or in connection with the Products, Buyer’s use thereof and/or Buyer’s use or application of any information disclosed or provided on behalf of DSM.
8. **INTELLECTUAL PROPERTY** - All specifications, designs, data, information, methods, patterns, and ideas made, used, conceived, developed or acquired by DSM incident to its performance under this agreement and all patent, trade-secret, know how, copyright, trademark or other proprietary rights therein shall be the exclusive property of DSM and no part of the purchase price hereunder shall be deemed applicable to the foregoing unless otherwise agreed to in writing by DSM.

9. **FORCE MAJEURE** - DSM shall be relieved of the performance of its obligations for the duration and to the extent that it is prevented in the performance of its obligations by reasons of force majeure. For purposes of this clause, force majeure is defined as circumstances or events which have not been foreseen at the time of entering into this transaction, which are not the fault of DSM and which prevent the performance of all obligations hereunder and which are not capable of being remedied. Force majeure events include, but are not limited to, acts of God, acts of war, acts of Government, acts of Buyer, inability to obtain necessary labor, materials or manufacturing facilities, blockades, revolutions, industrial disputes and commercial impracticality.
10. **HUMAN RIGHTS** - DSM represents that it does not discriminate against any employee or applicant for employment on the grounds of race, color, religion, sex, sexual orientation or national origin. DSM takes affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation or national origin. **DSM complies with the Canadian Human Rights Act, and all applicable federal, provincial and local laws.**
11. **ASSIGNABILITY** - This contract is personal to the parties hereto and shall not be assigned to any third party by either the Buyer or DSM without the other party's written consent.
12. **LAW AND JURISDICTION** - This agreement shall be deemed to be made in Ontario, Canada and governed in all respects by the laws of Ontario, Canada. The parties to this agreement irrevocably consent to the jurisdiction of the Ontario Superior Court of Justice in the city of Toronto. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or related agreements.

The parties hereto declare that they have requested that these present and all related documents be drafted in the English language.

*Les parties ont exigé que les présents ainsi que les documents s'y rapportant rediger dans la langue Anglais.*

In the event the Products contain a) algal docosahexaenoic acid (the "*life'sDHA* Products") and/or b) arachidonic acid (the "*life'sARA* Products"), the following additional terms and conditions shall apply unless the Products containing DHA and/ARA are to be used by Buyer in Infant Formula Products, in which case the appropriate supply agreement, field of use agreements, and/or other related contract shall supersede these General Supply Conditions for Goods and Services:

13. "Infant Formula Products" shall mean a breast milk substitute formulated industrially in accordance with applicable Codex Alimentarius and/or United States Food and Drug Administration standards and/or similar regulations governing infant formula products and/or breast milk substitutes (i) to satisfy the total normal nutritional requirements of infants from birth up to between four (4) and six (6) months of age and adapted to their physiological characteristics and/or fed in addition to other food to infants up to approximately one (1) year of age and older, or (ii) to satisfy the normal nutritional requirements of infants born prematurely. Unless expressly permitted by DSM in a separate written agreement, Buyer shall not be permitted to distribute or resell *life'sDHA* Products to any third parties.
14. **USES OF LIFE'SDHA PRODUCTS; USE RESTRICTIONS** - Buyer shall incorporate *life'sDHA* Products into Buyer products or certain third party products as expressly permitted by DSM (collectively, the "Buyer Product(s)"), subject to the restrictions set forth below:

**IF BUYER INCORPORATES THE LIFE'SDHA PRODUCTS INTO ANY FOOD AND BEVERAGE AND/OR DIETARY SUPPLEMENT APPLICATIONS**, in addition to the other restrictions and limitations that may be communicated in writing by DSM, Buyer, on behalf of itself and any party who received *life'sDHA* Products from Buyer, agrees to the following use restrictions: the *life'sDHA* Products shall not be used by or sold by Buyer as an ingredient in, or component of, the following products for distribution and sale to consumers: (a) any Infant Formula Product (defined above), and/or (b) any dietary supplement product for babies/children 6 months of age or younger (c) prior to October 31, 2018, any organic milk, milk powder, half and half, or light or heavy whipping cream in the United States of America, and/or (d) any private label brand dietary supplement (including Infant Formula Products) sold in mass market retail stores, that are intended for ingestion and not for mixture with any food

and beverage, in the United States of America and Canada unless buyer obtains prior written approval, and/or (e) any branded prescription product (unless Buyer has prior written approval from DSM) and any generic pharmaceutical products that require a health care professional's written prescription to purchase, whether or not regulatory approval for market and sale is required. Unless expressly permitted by DSM in a separate written agreement, Buyer shall not be permitted to distribute or resell *life'sDHA* Products to any third parties.

15. REQUIRED AMOUNT - Unless otherwise agreed to in writing by both parties, Buyer covenants and agrees to include (i) in any food and beverage Buyer Product which includes *life'sDHA* Product, no less than 32 mg of *life'sDHA* in each serving of the Buyer Product(s); and (ii) in any dietary supplement Buyer Product which includes *life'sDHA* Product, no less than 100 mg of *life'sDHA* in each serving of the Buyer Product(s).

16. USE OF TRADEMARKS.

(a) During the time Buyer is purchasing the *life'sDHA* Products and/or *life'sARA* Products, DSM and/or its affiliates grant to Buyer the non-exclusive right and license to use the DSM trademarks, logos and designations ("DSM Trademarks") as such DSM Trademarks are specified on DSM's Trademark Usage and Style Guide found on DSM's website at: <http://www.lifesdha.com/business-opportunities.aspx> ("Trademark Usage and Style Guide") which is hereby incorporated, as it may be reasonably modified by DSM from time to time. DSM may, from time to time, modify the DSM Trademarks and shall notify Buyer in writing if DSM desires to have Buyer begin displaying the modified DSM Trademarks. In that event, Buyer shall modify its use of the DSM Trademarks, provided the modified trademark conforms to the size characteristics set forth in the Trademark Usage and Style Guide; provided further, however, that before implementing the use of any modified DSM Trademarks, Buyer shall be allowed to use all remaining packaging labels and promotional materials in its inventory that bear the original DSM Trademarks in accordance with the terms of this Agreement. Buyer shall use the DSM Trademarks only in connection with the Buyer Products and Buyer's activities related to the *life'sDHA* Products and/or *life'sARA* Products, and not in connection with any product that is not a *life'sDHA* Product or *life'sARA* Product. Buyer's use of such DSM Trademarks will be in accordance with DSM's policies in effect from time to time, including but not limited to trademark usage and cooperative advertising policies. Upon request from DSM, Buyer shall submit to DSM proposed samples of any initial labeling redesign that affects the way DSM Trademarks are used by Buyer for DSM's approval prior to the time Buyer orders or uses any such labeling.

(b) DSM Trademarks shall be prominently displayed on each package of Buyer Products containing *life'sDHA* Products (excluding bulk or mass packaging whereby fully packaged units are overwrapped with additional packaging) in such manner as is set forth on the Trademark Usage and Style Guide. Buyer shall indicate that *life'sDHA*™ is a trademark of DSM. Buyer, on behalf of itself and any party who receives *life'sDHA* Products from Buyer, shall include the DSM Trademarks and a description of DSM and the benefits of the *life'sDHA* Products, in such manner as such descriptions are reasonably agreed by the parties, on Buyer's website and in any press release or other written public announcements relating to the Buyer Products or Buyer's activities related to the *life'sDHA* Products. Use by any party that receives *life'sDHA* Products from Buyer is subject to the (approval of DSM and) the same terms and conditions as Buyer. Buyer shall include the DSM Trademarks on all print advertising, brochures, and other promotional materials referencing any of Buyer's activities related to the *life'sDHA* Products, as well as in all of its marketing events, sponsorships, and endorsements and all print, broadcast or electronic media, provided such advertising includes a reference to (a) DSM, (b) the *life'sDHA* Products, (c) DHA or omega-3 fatty acids, (d) any health benefit or other claim related to the brain or eyes, even if the advertising makes no mention of DSM, the *life'sDHA* Products, DHA or omega-3 fatty acids, or (e) any health benefit or other claim related to the heart that is attributed to the *life'sDHA* Products, DHA or omega-3 fatty acids. Notwithstanding the foregoing, in its sole discretion, DSM reserves the right to withdraw Buyer's right to use the DSM Trademarks.

(c) DSM does not warrant that any pending trademark applications or any applications it will file for the trademarks in any territory, will mature to valid and enforceable registrations or that the use of the pending trademark on or in relation to DSM Products does not infringe the rights of any third party.

(d) DSM and/or its affiliates shall not be liable towards Buyer or any other third party for the use of the DSM Trademarks.

(e) Buyer is obligated to ensure and warrants that Buyer's products shall be in compliance with all applicable legal requirements and with the established standards of quality of Buyer's products.

(f) Buyer warrants that all advertising of Buyer's products is subject to regulatory compliance in all territories where Buyer's products are sold.

17. SHIPMENT - Unless otherwise agreed to in writing between the parties, all sales of *life'sDHA* Products and/or *life'sARA* Products are EXW (ExWorks) DSM's or its affiliates' warehouse. Buyer agrees that title to and risk of loss of the *life'sDHA* Products and/or *life'sARA* Products shall be transferred to Buyer upon DSM and/or its affiliates making the *life'sDHA* Products and/or *life'sARA* Products available to a carrier for shipment to Buyer.