GENERAL TERMS AND CONDITIONS OF SALE OF DSM NUTRITION PRODUCTS ENTITIES IN CHINA

1. GENERAL

1.1 These General Terms and Conditions of Sale (“Conditions”) govern the offering, sale and delivery of all goods and services (hereinafter referred to as the “Products”) from or on behalf of DSM Vitamins (Shanghai) Ltd, DSM Vitamins (Shandong) Ltd, DSM Vitamins (Changchun) Ltd, DSM Vitamins (Sichuan) Ltd, DSM Fine Chemicals (Shanghai) Ltd, DSM Nutritional Products entities in China (“DSM”) to customer (“Customer”) 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 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 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.

1.4 The current version of the Conditions is available at http://www.dsm.com/en_US/html/dsm/CONTACTS_CHINA.html and any modifications or amendments to the Conditions shall be posted on the DSM website. DSM reserves the right 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 site 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 Customer and DSM after the date of such notification.

1.5 DSM and Customer agree that valid, enforceable and binding communications shall be transmitted to each other electronically. Any electronic communication between DSM and Customer shall be effective as originals and shall be considered to be “written” even if neither of the parties to the communication has agreed to a non-electronic version of the communication. The electronic communication system used by DSM will serve as sole proof for the content and the time of delivery and receipt of such electronic communications.

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. Unconfirmed quotations may result from electronic means of communication. Any electronic communication between DSM and Customer shall be effective as originals and shall be considered to be “written” even if neither of the parties to the communication has agreed to a non-electronic version of the communication. The electronic communication system used by DSM will serve as sole proof for the content and the time of delivery and receipt of such electronic communications.

2.2 Price quotations based on estimated or projected quantities are subject to increase in the event that actual requirements exceed the estimated or projected requirements.

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 out in the DSM 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 connection with the delivery thereof (“Taxes”). The amount of any Taxes levied in connection with the sale of Products to Customer shall be added to the price of the Products and shall neither be apportioned nor shall be subtracted. TAxable amounts that are either 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 DSM Confirmed Order.

3.2 Unless the prices have been indicated as firm by DSM in the DSM Confirmed Order, DSM is entitled to increase the price of the Products still to be delivered if the cost price of the Products subject to the increase are subject to an increase. These factors include but are not limited to: rate of exchange, materials, energy, products obtained by DSM from third parties, wages, salaries, social security contributions, 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 DSM 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 or set-off of any Taxes and if any settlement 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. Customer shall pay the net price of the Products on the date of delivery. DSM reserves the right to object to any other damages caused by such action:

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 regarding 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. Otherwise, Customer shall be deemed to have approved the invoice.

5. DELIVERY AND ACCEPTANCE

5.1 Unless stated otherwise in the DSM Confirmed Order, all deliveries (Carriage and Insurance Paid To) place of destination. The term CIP shall have the meaning as defined in the latest version of the Incoterms published by the International Chamber of Commerce in Paris, France, at the time of the DSM Confirmed Order.

5.2 In case the transaction under the DSM Confirmed Order is a Chinese domestic sale, unless stated otherwise in the DSM Confirmed Order, Products shall be delivered at the warehouse designated by DSM and Customer and shall take delivery from such designated warehouse. The risk of the Products shall pass to the Customer upon delivery or as of the time the Products are ready for delivery at the designated warehouse if Customer fails to take delivery at the delivery date or within the delivery period.

5.3 DSM’s obligation to comply with any other terms or conditions as stated in the “DSM Confirmed Order”, DSM shall be entitled to refuse an order without indicating the reasons.

5.4 Price quotations based on estimated or projected quantities are subject to increase in the event that actual requirements exceed the estimated or projected requirements.

5.5 Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for other deliveries.

6. CANCELLATION

6.1 Customer’s wrongful non-acceptance or rejection of Products or cancellation of the DSM Confirmed Order shall entitle DSM to recover from Customer, in addition to any other damages caused by such actions:

(i) In the case of Products which cannot be resold by DSM to a third party, the price of such Products as quoted in the DSM Confirmed Order or, 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 DSM Confirmed Order as liquidated damages, unless Customer can demonstrate that the actual damages incurred by DSM are lower than 50% (fifty percent) of the price or were not suffered at all.

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, Customer will examine the Products and satisfy itself that the Products meet the agreed specifications for the Products as stated in the DSM 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”).

7.2 Complaints about the Products shall be made in writing and must reach DSM not later than 7 (seven) days from the date of delivery or from the date of discovery of any defect or shortage which would be apparent from a reasonable inspection of the Products or 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) the expiry of the Products’ shelf-life whichever is the earlier. Any Use of the Products after the expiry of the shelf-life of the Products shall mean a permanent 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 Products conform to the Specifications shall be done solely by DSM by 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 of analysis used by DSM. 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 submit representative samples of said batch or run to 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 bind upon the parties and the party unable to uphold its position shall bear the related costs of the laboratory.

7.4 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 a delivery of a part of the Products. Complaints, if any, do not affect Customer’s obligation to pay as defined in Article 4.

TRANSFER OF RIGHT AND PROPERTY

8.1 The risk of the Products shall pass to Customer according to the applicable Incoterm (see Article 5.1.) or the relevant provision of 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, redeliver the Products, or to repossess the Products, for which it may invoke a retention of title.

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 by DSM 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 the Products which reasonably cannot be resold by DSM to a third party, the price of which was not suffered at all.
GENERAL TERMS AND CONDITIONS OF SALE OF DSM NUTRITIONAL PRODUCTS ENTITIES IN CHINA

9.2 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, the return of the Products, in accordance with Article 17.

9.3 The foregoing warranty is exclusive and in lieu of all other warranties, including warranties of merchantability and fitness 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 at all times be limited to the 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 for loss or cost, excluding without limitation, damage based upon lost goodwill, lost sales or profit, delay in delivery, work stoppage, production failure, impairment of reputation, or on any other basis, or 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, orders or decrees of any court, 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 delivering or defects in goods supplied by suppliers or subcontractors (“Force Majeure”).

11.2 Upon the 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 and when it will affect its performance of any of its obligations under the DSM Confirmed Order. In the event of any delay, the obligation to deliver shall be suspended for the time equal to the time of any delay of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period extending beyond 60 (sixty) days after the agreed delivery date, either Party is entitled to cancel the affected part of the DSM 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 the Products at any time and without prior 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 and against any and all damages, losses, costs, expenses, claims, losses 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 COMPLIANCE STANDARDS

13.1 Customer acknowledges that the Use of the Products may be subject to 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 (“Laws and Standards”).

13.2 Customer expressly warrants that employees, agents and subcontractors of the Supplier shall not directly or indirectly (i) accept, promise or offer any improper advantage, (ii) for the purpose of entering into or maintaining an agreement which would constitute an offence or infringement of applicable Compliance Requirements, with any entity or person including but not limited to, a government-controlled entity, or relating to a product.

14. INDEPENDENT CONTRACTORS

14.1 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 DSM 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 have the right to terminate the DSM Confirmed Order with immediate effect if at any time during the term of the DSM Confirmed Order a person or group of persons, who are unrelated to the persons controlling the use of the Products, acquires control, through ownership of voting securities or otherwise, over Customer. Customer must notify DSM of any such acquisition within 10 (ten) days thereafter. DSM may exercise its right to terminate the DSM 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 the DSM Confirmed Order, Customer may be entitled to give to DSM written notice of an 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:

(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 DSM 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 or claims, which, in the opinion of DSM have not been paid by Customer, shall be paid immediately with respect to the Products delivered to Customer and not repossessed by DSM.

17. WAIVER

17.1 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

18.1 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 remaining provisions held to be invalid or unenforceable shall be reformed to the maximum extent permitted by law.

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 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 DSM Confirmed Order and/or the Conditions shall be governed, construed, interpreted and enforced according to the laws of People’s Republic of China, 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 Any dispute, controversy or claims arising under, out of or relating to the Conditions or to this transaction hereunder shall be settled amicably between the Parties. If no amicable settlement can be reached, both Parties agree to submit the dispute to the jurisdiction of China Economic and Trade Arbitration Commission (“CIETAC”). The arbitration shall be conducted in accordance with the Arbitration Rules of CIETAC.

21. SURVIVAL OF RIGHTS

21.1 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

22.1 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 responsibility for any intellectual exclusive infringement by reason of the Use of the Products, whether singly or in combination with other materials or in any processing operation.

24. LANGUAGE

24.1 The original version of the Conditions is made in the English language. If the Chinese translation version and the English version are used at the same time and if there is any inconsistency or contradiction between the English version and the Chinese translation version thereof, the English version shall prevail.

CONFIDENTIAL

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