GENERAL TERMS AND CONDITIONS OF SALE OF P.T. DSM NUTRITIONAL PRODUCTS INDONESIA

1. GENERAL

1.1 These General Terms and Conditions of Sale (“Conditions”) govern the offering, sale and delivery of all products of DSM (jointly referred to as the “Product(s)”) from or on behalf of P.T. DSM Nutritional Products Indonesia, 18 Office Park Building, 3rd Floor Jl. Imam Samal, No. 18, Kelapa Gading, Kebagusan, Pasar Minggu Jakarta 12520, Indonesia, and its affiliates (“DSM”), to customer (“Customer”) or apply to all transactions between DSM and Customer.

1.2 By contracting on the basis of the Conditions, Customer acknowledges and accepts all terms herein, unless Customer submits a written protest to DSM indicating otherwise within five (5) business days from the date of delivery or invoice. In the event that Customer fails to do so, DSM may take delivery of the Products as if the Conditions are accepted.

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 or written agreements, communications, understandings and understandings of the parties in respect of the sale and delivery of the Products and shall apply in preference to and supersedes 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 terms and conditions. If any Conditions differ from any of the terms and conditions of Customer, the Conditions and any subsequent communication or conduct by or on behalf of DSM shall govern in the absence of, or a lack of agreement on, an order and delivery of Products. Any order and delivery of Products shall constitute a counter-offer and not acceptance of such terms and conditions submitted by Customer, and shall constitute an unconditional offer from DSM of Customer which confirms an agreement for the delivery of Products by DSM, as well as acceptance by Customer of all DSM conditions of sale and delivery of Products free from any terms, conditions or reservations, without nullifying any conditions in Customer’s order or otherwise constituting an unqualified acceptance by Customer of the Conditions.

1.4 The latest version of the Conditions is available at www.dsmnutritionalproducts.com. DSM reserves the right to amend the Conditions at any time. DSM will notify Customer of amendments by sending the amended Conditions to Customer, posting them on the aforementioned internet sites or otherwise. The amended Conditions shall come into 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 Any electronic communication between DSM and Customer shall be effective as originals and shall be considered to be in “writing” between the parties. The electronic communication system used by DSM will serve as proof of 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. DSM reserves the right to withdraw 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 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 in relation to the Products or the delivery thereof ("Taxes"). The amount of any Taxes levied in connection with the sale of any Products to the Customer bears to DSM’s account and shall either be added to each invoice or separately invoiced by DSM to Customer. If DSM does not receive payment for Taxes within the agreed time only taxes included in the delivery specifically mentioned in the Confirmed Order.

3.2 Unless the prices have been indicated as firm by DSM in the Confirmed Order, DSM reserves the right to increase the price of the Products still to be delivered if the cost price determining factors have been subject to an increase. These factors include but are not limited to:

4. PAYMENT AND CUSTOMER’S CREDIT

4.1 Unless stated otherwise in the Confirmed Order, payment for the Products shall be due within thirty (30) days following the date of DSM’s invoice. All payments shall be made without any deduction or set-off, except for set-offs or otherwise, including, without limitation, any interest, fees, expenses, court costs and other expenses of litigation. DSM reserves the right to refuse an order or otherwise consider a Customer’s price quotation based on estimated or projected prices for the Products, unless DSM reserves the right to change the price of the Products at the time of invoice separate. Unless stated otherwise in the Confirmed Order and subject to the payment of overdue invoices, DSM may, at its discretion, set-off or otherwise, against any payment due without any deduction or set-off. DSM shall be entitled to compute on a daily basis until all outstanding 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, court costs and other expenses of litigation) shall be borne by the Customer.

4.2 Every payment by Customer shall in the first place to pay to DSM the judicial and extra-judicial costs and the accrued interest and shall afterwards be deducted from the oldest outstanding claim regardless of any advice to the contrary from Customer.

4.3 Any complaint with respect to the invoice must be notified to DSM in writing within twenty (20) days after the date of invoice. Hereafter, Customer shall have deemed to have approved the invoice.

5. DELIVERY AND ACCEPTANCE

5.1 Unless stated otherwise in the Confirmed Order, all deliveries shall be made EXW (EX Works Duty Paid) at place of destination. The term DDP shall have the meaning as defined in the latest version of INCOTERMS published by the Chamber of Commerce 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 be of the essence. DSM may, without prejudice to any other rights of DSM, charge interest on any overdue payment at two (2) percent per annum from due date or due date as stated in the Confirmed Order or liquidated damages, unless stated otherwise in the Confirmed Order, as defined in Article 7.

5.3 DSM shall reserve the right to change delivery times or dates for delivery by DSM at any time without prejudice to any other rights of DSM. DSM reserves the right to amend the Conditions at any time. DSM reserves the right to deliver before or after the agreed time or otherwise, including, without limitation, any warranty of fitness, merchantability, suit ability or fitness for any purpose, or absence of infringement of any claim in any intellectual property right covering the Products.

6. CANCELLATION

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

(i) in the case of Products which cannot reasonably be resold, DSM may invoicing in full the price such Products as quoted in the Confirmed Order; or

(ii) in the case of Products which can be resold by DSM, damages equal to fifty (50) percent of the price for the Products as quoted in the Confirmed Order as liquidated damages, unless Customer can demonstrate that the actual damages incurred by DSM are lower than fifty (50) percent of the price or were not suffered at all.

7. EXAMINATION AND CONFORMITY TO SPECIFICATIONS

7.1 On delivery and during the handling, use, commercializing, processing, transportation, storage, importation and (re)sale of the Products (the “Use”), Customer shall examine the Products and meet the agreed specifications for the Products stated in the Confirmed Order or, in the absence of agreed specifications, shall meet the applicable quality standards of the industry. Any complaint with respect to the Products delivered 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 seven (7) days from the date of delivery in respect of any defect, default, or omission, or any claim from the product. Any failure to make a reasonable inspection on delivery, and seven (7) days from the date on which any other claim (e.g. hidden defect) appears to have been apparent, but in no event later than (i) six (6) months from the date of delivery of the Products or (ii) the expiry of the Products’ shelf life. Any use of a non-confirmed application or 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.

7.3 A determination of whether or not delivered Products conform to the Conditions and any additional documents 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 of analysis used by DSM. In case of a discord between the parties concerning the quality of a delivery of Products DSM shall submit to DSM a representative sample of said batch or run to an independent laboratory and shall have the right to accept, excepting whether or not the batch or run in question has met the Specifications. The results of such analysis shall be binding on the parties. Notwithstanding anything to the contrary, 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 upon delivery, unless stated otherwise in the Confirmed Order (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 until and until DSM has received payment in full for the Products, including delivery, interest, charges, expenses etc.

8.3 In the event of termination on the basis of Article 10.2, without prejudice to any other rights of DSM, DSM shall be entitled to require immediate return of the Products, or to repossess the Products, for which it may invoke a retention of title.

9. LIMITED WARRANTY

9.1 DSM only 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 reason time either repair or replace the Products at no charge to Customer, or issue a credit for the price of such Products. Pursuant to the above, DSM is entitled to invoice separately. Delay in delivery of any Products shall not relieve Customer of its obligation to accept delivery thereof, unless Customer can 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.

10. LIMITED LIABILITY

10.1 DSM’s maximum liability for any and all claims, damages, loss, liability, damages or expense, including without limitation, any warranty of fitness, merchantability, suit ability or fitness for any purpose, or absence of infringement of any claim in any intellectual property right covering the Products.

11. FORCE MAJEURE

11.1 Force Majeure 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 to deliver or accept Products or for any other reason beyond DSM’s control and whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation, negligence or any other cause.

12. LEGAL PROVISIONS

12.1 DSM shall not be liable to Customer or any other person for any kind of special, incidental, indirect, consequential or punitive damage or loss, costs or expenses whatsoever, to the extent that such damage, loss, costs or expenses were caused by or in connection with any delay in delivery or any other cause beyond DSM’s control and whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation, negligence or any other cause.
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 default, or other contingency beyond DSM's control, the other party by written notice thereof specifying the cause of the event and how it will affect its performance under the Agreement may exercise its right to terminate the Agreement and DSM's right to act or to enforce any such term or provision thereof shall not affect in any respect whatsoever, the validity of the Agreement or the rights and obligations thereunder of any party intellectual property rights which might be involved. Any dispute regarding its existence, validity, enforceability or infringement of applicable Laws and Standards, including but not limited to, embargo, import and export control and corruption and (ii) international trade, such as, but not limited to, embargos, import and export control and sanctions of the United Nations Security Council or other applicable embargoes and sanctions. DSM has not verified the possible existence of third party intellectual property rights which might be involved 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.

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 under the Specifications 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 utilize 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 to any additional obligations. Customer shall indemnify and hold DSM harmless from and against any and all damages, losses, costs, expenses, claims and liabilities as may arise 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 or regulation. DSM reserves the right to require in such a manner as DSM shall determine. The party suffering thereby shall promptly inform the other party of the existence of the Dispute to settle the same. The parties agree that if any difference, dispute, conflict or controversy (a "Dispute"), arises out of or in connection with the Products and/or delivery of the Products and/or the Agreement, including but not limited to, any interpretation or construction thereof, the parties shall be entitled to have the Dispute settled by the arbitrator or arbitrators appointed in accordance with the Arbitration Laws and Regulations. The decisions of the arbitrator under the Arbitration Laws and Regulations are final and binding on the parties and may not be challenged, except as provided in the Arbitration Laws and Regulations. The provisions of this Article 20 shall not affect the latter's construction or interpretation.

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 Agreement 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, as such, but not limited to, disparities in the performance of its obligations, for whatever reason, shall not affect the validity of the Agreement or the rights and obligations thereunder of any party intellectual property rights which might be involved.

16. SUSPENSION AND TERMINATION

16.1 If Customer is in default of performance of its obligations towards DSM and fails to provide 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 if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors; or in case of non-fulfillment of the Laws and Standards, then DSM may by notice in writing forthwith, without prejudice to any of its other rights:

(i) deliver in accordance with and take re-possession 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 Agreement for delivering delivery of Products unless Customer makes such payment for the Products on a cash in advance basis or provides adequate assurance of such payment for Products to DSM.

16.2 If 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 repaid by DSM.

17. WAIVER

17.1 Failure by DSM to enforce at any time any provision of this Agreement shall not be construed as a waiver of DSM's right thereunder in 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 of any breach of any 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 by a court of competent jurisdiction 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, which shall be severable therefrom. Any such 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.

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 thirty (30) days after the event complained of first becomes known to Customer and an action is commenced by Customer within twelve (12) months after such notice.

20. GOVERNING LAW AND DISPUTE RESOLUTION

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 the Republic of Indonesia, without regard to the conflict of laws provisions thereof.

20.2 The parties agree that if any difference, dispute, conflict or controversy (a "Dispute"), arises out of or in connection with a Confirmed Order and/or the Conditions or the performance thereunder, including without limitation any dispute regarding its existence, validity, termination of rights or obligations of any party, the parties will attempt for a period of thirty (30) days after the receipt by one party of a notice from the other party of the existence of the Dispute to settle the Dispute by amicable agreement between the parties.

20.3 If the parties are unable to reach agreement to settle the Dispute within the thirty (30) day period mentioned above, then either party may submit the Dispute to arbitration under the applicable rules of the Singapore International Arbitration Centre (the "Rules"). The arbitration shall be conducted in the English language in Singapore.

20.4 The tribunal will consist of one (1) arbitrator appointed by the Rules.

20.5 The tribunal must conduct the arbitration in accordance with these Conditions and the prevailing laws and regulations relating to arbitration ("Arbitration Laws and Regulations"). Where these Conditions, the Arbitration Laws and Regulations are silent as to the conduct of the arbitration proceedings, the tribunal must decide as to how the proceedings will be conducted.

20.6 No party will be entitled to commence or file any action in a court of law relating to any Dispute until the matter will have been determined by the tribunal as provided in this Article 20 and then only for the enforcement of the arbitration award.

20.7 Except as otherwise permitted in the Arbitration Laws and Regulations, the decision of the tribunal will be final, binding and incontestable and may be used as a basis for enforcement thereon in Indonesia or elsewhere.

20.8 The provisions of this Article 20 shall survive the termination or expiration of the Confirmed Order and/or the Conditions.

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 involved 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 risks of any intellectual property 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 If a party requests in writing that this agreement (in the English language) be made in the Indonesian language and executed by the parties, as may be required under Law No. 24 of 2009 on National Flag, Language, Emblem, and Song or its implementing regulations, the parties shall do so within thirty (30) business days of the date of such written request. The Indonesian language version shall prevail and the relevant Indonesian version shall be deemed to be automatically amended to conform with and to make the relevant Indonesian text consistent with the relevant English text.