



**GENERAL TERMS AND CONDITIONS OF SALE DSM-FIRMENICH**

**1. General**

- 1.1 These General Terms and Conditions of Sale ("Conditions") govern the offering, sale and delivery of all goods and/or services (hereinafter jointly referred to as the "Product(s)") from or on behalf of an Affiliate of DSM-Firmenich AG offering and/or selling the Products (such Affiliate referred to as "Seller") to buyer ("Buyer") and unless otherwise agreed in writing, such Conditions apply to all transactions between Seller and Buyer. Affiliate of DSM-Firmenich AG means any corporation or entity which directly, or indirectly controls or is controlled by, or is under common control with DSM-Firmenich AG. An entity shall be deemed to "control" another entity if it has the power to direct or cause the direction of the management or policies of the other entity, whether through ownership of fifty per cent (50%) or more of the outstanding capital or otherwise.
- 1.2 By contracting on the basis of the Conditions, Buyer agrees to the applicability thereof in respect of all future dealings, even if this is not explicitly stated.
- 1.3 Seller explicitly rejects the applicability of any general terms and conditions of Buyer. 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 Buyer and any other terms and conditions submitted by Buyer. Failure by Seller to object to the terms and conditions set by Buyer shall in no event be construed as an acceptance of any of the terms and conditions of Buyer. Neither Seller's commencement of performance nor Seller's delivery shall be deemed as acceptance of any of Buyer's terms and conditions. If the Conditions differ from any of the terms and conditions of Buyer, the Conditions and any subsequent communication or conduct by or on behalf of Seller, 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 Buyer. Any communication or conduct of Buyer which confirms an agreement for the delivery of Products by Seller, as well as acceptance by Buyer of any delivery of Products from Seller shall constitute an acceptance by Buyer of the Conditions.
- 1.4 The current version of the Conditions is available at <https://www.dsm-firmenich.com>. Seller reserves the right to amend the Conditions at any time.
- 1.5 Any electronic communication between Seller and Buyer shall be effective as originals and shall be considered to be in "writing" between the parties. The electronic communication system used by Seller will serve as sole proof for the content and the time of delivery and receipt of such electronic communications.

**2. Quotations, Order and Confirmations**

- 2.1 Unless stated otherwise, quotations made by Seller in whatever form are not binding to Seller and merely constitute an invitation to Buyer to place an order. All quotations issued by Seller are revocable and subject to change without notice. Orders are not binding until accepted by Seller in writing ("the Confirmed Order"). Seller shall be entitled to refuse an order without indicating the reasons. Any Confirmed Order shall be deemed to be firm and may be modified, rescinded or cancelled, in whole or in part, only upon mutual written agreement of Seller and Buyer.
- 2.2 Price quotations based on estimated or projected quantities are subject to increase if 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.
- 2.4 Except as provided for in Article 6.3, any samples supplied to Buyer are solely for information purposes and in no way imply any express or implied conditions or warranties of any kind, including as to quality, description, merchantability, suitability or fitness for any purpose. Buyer shall be deemed to have satisfied itself as to such matters prior to ordering the Products.

**3. Prices**

- 3.1 Prices and currencies of Seller's Products are as set out in the Confirmed Order. Unless otherwise agreed in writing, Seller'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 Buyer shall be for Buyer's account and shall either be added to each invoice or separately invoiced by Seller to Buyer. If Seller grants a discount, this discount only relates to the delivery specifically mentioned in the Confirmed Order.
- 3.2 Unless the prices have been indicated as firm in the Confirmed Order, Seller is entitled 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 raw and auxiliary materials, energy, products obtained by Seller from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. Seller shall notify Buyer of such increase.

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### 4. Payment

- 4.1 Unless stated otherwise in the Confirmed Order, payment shall be made on the basis of net cash, to be received by Seller within 30 (thirty) days following the date of Seller's invoice. All payments shall be made without any deduction on account of any Taxes and free of set-off or other counterclaims except for set-offs with uncontested and/or enforceable counterclaims.
- 4.2 Seller may, without prejudice to any other rights of Seller, charge interest on any overdue payment at the rate of twelve percent (12%) or the highest rate allowed by the law of the Buyer's place of business until all outstanding amounts are paid in full. All costs and expenses incurred by Seller 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 for Buyer's account.
- 4.3 Every payment by Buyer shall first serve to pay 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 Buyer.
- 4.4 Any complaint with respect to the invoice must be notified to Seller in writing within 20 (twenty) days after the date of invoice. Thereafter, Buyer shall be deemed to have approved the invoice.

### 5. Delivery

- 5.1 Applicable INCOTERMS are those stated in the Confirmed Order or otherwise agreed between Seller and Buyer. INCOTERMS 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.
- 5.2 Unless stated otherwise in the Confirmed Order, any times or dates for delivery by Seller are estimates and shall not be of the essence. Seller is entitled to deliver the Products in parts as stated in the Confirmed Order and to invoice separately. In no event shall Seller be liable for any damages and/or costs due to delay in delivery. Delay in delivery of any Products shall not relieve Buyer of its obligation to accept delivery thereof. Buyer shall be obliged to accept the Products and pay the rate specified in the Confirmed Order for the quantity of Products delivered by Seller. If Seller is unable to serve total demand for the Products, Seller may allocate the available quantity of the Products as it deems most fair in making partial shipments or shipments cancellation, and may give preference to the earliest commitments. For Confirmed Orders where delivery is to be made by collection by Buyer, such collection shall be at such premises of Seller as it may designate to Buyer and delivery shall be deemed to have taken place when the Products are made available for collection by Buyer at such premises. If Buyer does not collect the Products from such premises of Seller within 5 (five) days of delivery, Seller may charge Buyer for storage at commercial rates and Buyer agrees to pay such storage charges on demand.
- 5.3 Products ordered under Incoterms EXW will be invoiced on, or shortly after the date the Products have been placed at Buyer's disposal.
- 5.4 When Products are delivered in Seller owned returnable packaging, as indicated by Seller (such as stainless-steel tanks), Buyer shall send such returnable packaging back to Seller carriage free at the latest ninety (90) days after the initial shipment date. Seller shall have the right to impose penalties on Buyer for any later return of such packaging, up to its full value if it is not sent back within one hundred twenty (120) days after the initial shipment date.

### 6. Inspection and Conformity to Specification

- 6.1 On delivery and during the handling, use, commingling, alteration, incorporation, processing, transportation, storage, importation and (re)sale of the Products (the "Use"), Buyer 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 Seller at the time of delivery of the Products (the "Specifications").
- 6.2 Complaints about the Products shall be made in writing and must reach Seller not later than 7 (seven) days from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and 7 (seven) days 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. At Seller's choice, a sample shall immediately be sent to Seller, or Seller shall be granted access to the Products for which a claim is made. Any 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.
- 6.3 A determination of whether or not delivered Products conform to the Specifications shall be done solely by Seller analysing the samples or records retained by Seller and those taken from the batches in which the Products were produced in accordance with the methods of analysis used by Seller.
- 6.4 Defects affecting a portion of the Products do not entitle Buyer to reject the entire delivery of the Products. Complaints, if any, do not affect Buyer's obligation to pay as defined in Article 4. Upon receipt of a complaint, Seller is entitled to suspend all further deliveries until the complaints are established to be unfounded and/or refuted or until the defect has been totally cured. Buyer may not send the Products back to Seller unless authorised in advance. Claims do not discharge Buyer from its obligation to (i) properly document its claim and (ii) mitigate any loss.

### 7. Risk and Transfer of Property

- 7.1 Risk of the Products shall pass to Buyer in accordance with the applicable Incoterm (see Article 5.1).
- 7.2 Title to the Products shall not pass to Buyer and full legal and beneficial ownership of the Products shall remain with Seller until Seller has received payment in full for the Products, including costs such as interest, charges, expenses etc.

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- 7.3 Products for which delivery is suspended pending payment by Buyer, as well as Products of which delivery is wrongfully rejected or not accepted by Buyer, shall be held and stored by Seller at the risk and expense of Buyer.
- 7.4 In the event of termination on the basis of Article 13 Seller shall, without prejudice to any other rights of Seller, be entitled to require immediate return of the Products, or to repossess the Products, for which it may invoke a retention of title.
- 7.5 Until payment for the Products has been completed, Buyer is entitled to use the Products solely to the extent required in its ordinary course of business, and, to the extent possible, it shall: (i) keep the Products separate and in a clearly identifiable manner; (ii) notify Seller immediately of any claims by third parties which may affect the Products; and (iii) adequately insure the Products. Unless otherwise expressly authorised by Seller in writing in advance, Buyer may not resell the Products to any third party.

### 8. Limited Warranty and Limited Liability

- 8.1 Seller 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 6, Seller may at its discretion, within a reasonable time, either repair or replace the Products at no charge to Buyer or issue a credit for any such Products in the amount of the original invoice price. Accordingly, Seller's obligation shall be limited solely to repair or replacement of the Products or for credit of the Products.
- 8.2 Seller's obligation to repair, replace, or credit shall be contingent upon receipt by Seller of timely notice of any alleged non-conformance of Products and, if applicable, the return of the Products, in accordance with Article 6.
- 8.3 The foregoing warranty is exclusive and in lieu of all other warranties, representations, conditions or other terms, express, implied, statutory, contractually 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 covering the Products.
- 8.4 SELLER'S LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS AND THE USE THEREOF SHALL UNDER NO CIRCUMSTANCES EXCEED THE SUM OF BUYER'S PAYMENTS FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE CLAIM. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON FOR ANY LOSS OF GOODWILL, LOSS OF SALES OR PROFITS, LOSSES RESULTING FROM WORK STOPPAGE, PRODUCTION FAILURE, IMPAIRMENT OF OTHER GOODS OR OTHERWISE, LOSSES RESULTING FROM FAILURE TO MEET OTHER CONTRACTUAL COMMITMENTS, OR ANY KIND OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGE OR LOSS, COST OR EXPENSE, WHETHER ARISING OUT OF OR IN CONNECTION WITH BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE OR OTHERWISE.

### 9. Force Majeure

- 9.1 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 or pandemic and/or any resulting government actions impacting production, 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 delivery or defects in goods supplied by suppliers or subcontractors ("Force Majeure").
- 9.2 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 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 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. If Seller's supply of Products is limited as a result of a Force Majeure event, Seller shall allocate the Products amongst Buyer and other customers in such manner as Seller may reasonably determine.

### 10. Modifications and Information

- 10.1 Unless the Specifications have been agreed to be firm for a certain period of time or quantity of Products, Seller 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. Buyer acknowledges that data in Seller'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. Any statement, representation, recommendation, advice, sample or other information of Seller in relation to the Specifications, the Products and the Use thereof shall be furnished for the accommodation of Buyer only.
- 10.2 Buyer must solely rely on its own expertise, knowhow and judgment in relation to the Products and Buyer's Use thereof as well as in Buyer's application of any information obtained from Seller for the purposes intended by Buyer. Consultation provided by Seller shall not give rise to any additional obligations. Details and information provided with regard to the suitability and Use of the Products shall not be binding and Seller does not assume any liability based on such consultations. Any data provided by Seller in any certificate and/or datasheet, such as but not limited to safety datasheet, technical datasheet and information on allergens, are the result of internal verification based on Seller methodologies, are accurate to the best of Seller's knowledge at the date of the certificate or datasheet and are given for information purposes only. No warranty is expressed or implied as to the quality, accuracy, completeness and compliance of the data or the results to be obtained from the use of such data by Buyer.
- 10.3 Buyer shall indemnify and hold Seller harmless from and against any and all damages, losses, costs, expenses, claims, demands and

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liabilities (including without limitation product liabilities) arising out of or in connection with the Products and Buyer's Use thereof or application of any information disclosed or provided by or on behalf of Seller.

### 11. Compliance with Laws and Standards

- 11.1 Each party acknowledge that it shall comply with any applicable 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 anticorruption, (ii) international trade such as, but not limited to, embargos, import and export control and sanctioned party lists, and (iii) data privacy and data security ("Laws and Standards").
- 11.2 Buyer expressly warrants that employees, agents and subcontractor of the Buyer shall not directly or indirectly (i) accept, promise, offer or provide any improper advantage to or (ii) enter into an agreement (a) 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 offence or infringement of applicable Laws and Standards.
- 11.3 Buyer 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.

### 12. Assignment and Change of Control

- 12.1 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 Seller may assign such rights and obligations to any Affiliate of DSM-Firmenich AG or to a third party acquiring all or a substantial part of its assets or business relating to the Products.
- 12.2 Seller shall have the right to terminate the Confirmed Order with immediate effect if at any time during the term of the Confirmed Order a person or group of persons, who are unrelated to the persons controlling Buyer as of the date of the Confirmed Order, acquires control, through ownership of voting securities or otherwise, over Buyer. Buyer must notify Seller of such acquisition within 10 (ten) days thereof. Seller may exercise its right to terminate the Confirmed Order by giving Buyer written notice within 10 (ten) days after the date of receipt of such notice.

### 13. Suspension and Termination

- 13.1 If (i) Buyer is in default of performance of its obligations towards Seller and fails to provide adequate assurance of Buyer's performance before the date of scheduled delivery; or (ii) if Seller has reasonable doubts with respect to Buyer's performance of its obligations and Buyer fails to provide to Seller adequate assurance of Buyer's performance before the date of scheduled delivery and in any case within thirty (30) days of Seller's demand for such assurance; or (iii) if Buyer 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 Buyer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Buyer or if Buyer enters into a deed of arrangement or makes any assignment for the benefit of its creditors; or (iv) in case of non-compliance of Buyer with Laws and Standards, then Seller may by notice in writing forthwith, without prejudice to any of its other rights: (i) demand return and take repossession 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 Buyer; and/or (ii) suspend its performance or terminate the Confirmed Order for pending delivery of Products unless Buyer makes such payment for Products on a cash in advance basis or provides adequate assurance of such payment for Products to Seller.
- 13.2 In any such event of Article 13.1 all outstanding claims of Seller shall become due and payable immediately with respect to the Products delivered to Buyer and not repossessed by Seller.

### 14. Waiver

Failure, delay or omission by Seller to enforce at any time any provision of the Conditions shall not be construed as a waiver of Seller's right to act or to enforce any such provision. No waiver by Seller of any breach of Buyer's obligations shall constitute a waiver of any other prior or subsequent breach.

### 15. Severability

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 pertaining 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.

### 16. Limitation of Action

Unless otherwise stated hereunder, no action by Buyer shall be brought unless Buyer first provides written notice to Seller of any claim alleged to exist against Seller within 30 (thirty) days after the event complained of first becomes known to Buyer and an action is commenced by Buyer within 12 (twelve) months after such notice.

### 17. Governing Law and Jurisdiction

- 17.1 These Conditions shall be construed and interpreted in accordance with, and governed by, the laws of the country (or state) in which Seller is incorporated, without regard to the conflict of law provisions thereof. Where applicable, the United Nations Convention on

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Contracts for the International Sale of Goods shall not apply.

- 17.2 Any dispute, controversy, or claims arising under, out of or relating to these Conditions or a Confirmed Order shall be settled amicably between the parties. If no amicable settlement can be reached, both parties hereby irrevocably submit to the exclusive jurisdiction of the competent courts at the seat of incorporation of Seller, without restricting any rights of appeal.

### 18. Independent Parties

Seller and Buyer are independent parties, and the relationship created hereby shall not be deemed to be that of principal and agent. No sale to or obligation of either party towards a third party shall in any way bind the other party.

### 19. Survival of Rights

The parties' rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The parties shall ensure that their directors, officers, employees, agents and legal representatives comply with these Conditions. 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.

### 20. Heading

The headings contained in the Conditions are included for mere convenience of reference and shall not affect the latter's construction or interpretation.

### 21. Intellectual Property

- 21.1 All intellectual property rights arising out of or in connection with the Products shall be the exclusive property of Seller.
- 21.2 Seller 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 Seller shall not be held liable for any loss or damage in that respect.
- 21.3 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 Buyer explicitly assumes all risks of any intellectual property infringement by reason of its importation and/or the Use of the Products, whether singly or in combination with other materials or in any processing operation.
- 21.4 Unless otherwise expressly authorised by Seller in writing in advance, Buyer shall not disclose, resell or otherwise make available Seller formulae, original creations, technologies, Products, samples and proprietary information to any third party, or make use of them for any purpose other than as set out above. Buyer undertakes furthermore not to analyse, reverse engineer, match or counterfeit (in any case, either by itself or through another person) the Products for its own account or for the account of any third party and not to use in its products similar goods from third parties which are the result of analysing, reverse engineering, matching or counterfeiting the Products.

### 22. Confidentiality

Any and all information provided by or on behalf of Seller shall be treated as confidential and shall only be used by Buyer for the purpose of all transactions. Disclosing information is only allowed to any of its employees or a third party on a strict need-to-know basis, except in case Buyer is required to disclose the information by virtue of a court order or statutory duty, in such event the Buyer shall immediately inform Seller and reasonably cooperate with Seller should it seek to obtain a protective order. Buyer shall upon demand promptly return to Seller all such information. Buyer shall not retain a copy thereof. Buyer shall treat the existence of the relationship as confidential. Buyer or its employees will sign a confidentiality agreement upon request.

### 23. Language

Only the English version of these Conditions shall be authentic and shall prevail, in case of inconsistency, over any translation of these Conditions in another language.