

## DEERLAND PROBIOTICS & ENZYMES, INC. SALES TERMS AND CONDITIONS

**1. PRICE AND SHIPMENT.** Except as otherwise specified on the face of the quotation, all prices shall be ExWorkss (Incoterms 2020), Deerland factory, and exclude applicable taxes, duties and similar charges. Seller may revise its pricing at any time upon 10 days' advance notice to Buyer. Unless Buyer elects to terminate this contract as to such material by written notice given to Seller within such 10-day period, the new price shall apply to all material shipped after expiration of the notice period, irrespective of the dates when the orders for such shipments were placed. The proposed shipping date is an estimate. Seller's weights taken at shipping point shall govern. Seller reserves the right to route shipment.

**2. RISK OF LOSS.** Title and risk of loss or damage to the goods shall pass to Buyer upon Seller's placement of the goods at Buyer's disposal at Seller's premises or other named location, in accordance with Incoterms® 2020 EXW. Seller shall not be responsible for loading the goods onto any transport vehicle or for clearing the goods for export. Buyer assumes all responsibility for transportation, insurance, export documentation, and any associated costs or liabilities from the point of delivery. The Buyer shall promptly pick up goods upon the Seller's notice that they are ready for dispatch, unless another specific delivery date is agreed by the Seller in exceptional cases. Otherwise the Seller shall be entitled to store the goods at the expense and risk of the Buyer according to the Seller's discretion.

**3. PAYMENT TERMS.** Payment terms, once approved by credit department, for domestic sales are net 30 days from the date of invoice without any set-off or deduction. In case of payment delay, the Seller shall be entitled to charge default interest applicable under US laws. .

The payment terms set forth herein are subject to Buyer and Seller maintaining a mutually acceptable credit arrangement. International payment terms are either by wire transfer or Irrevocable Letter of Credit. Overdue payments will bear interest at the lesser rate of 1.5% per month or the rate permitted by applicable law. Seller reserves the right to withhold any or all shipments to the Buyer if any amount owed by Buyer to Seller is more than 10 days past due. In the event of such a default, Seller shall not be under any obligation to ship until all outstanding invoices under all contracts are paid regardless of whether some of the outstanding invoices are not yet past due. Failure of Seller to exercise any right under this contract shall not be deemed a waiver thereof. In case of a deterioration in respect of the creditworthiness of the Buyer, the Seller shall be entitled to reduce a stated payment deadline, demand advance payments or rescind the contract. Should the Buyer be in default with a payment obligation towards the Seller, all other payment obligations shall become immediately due for payment, even if the granted deadline for the said obligation has not yet expired. If Buyer fails to make any payment when due, Seller may, without liability and without prejudice to any other rights or remedies, suspend further deliveries or performance under this Agreement. Seller shall have no obligation to deliver any goods while any invoice remains unpaid beyond its due date. Seller may resume deliveries upon receipt of payment in full or adequate assurances of Buyer's ability to perform.

### 4. CANCELLATION.

(a) If an order is cancelled before any raw materials are purchased, there is no charge for cancellation. If an order is cancelled before production, but after raw materials are purchased, the following applies. If the raw materials cannot be returned without charge, Buyer will pay a cancellation fee in the amount of raw materials purchased, plus any applicable disposal fee. If Seller determines that the raw material can be used to fill orders for other customers, Seller may reduce the cancellation fee to 25% of the cost of the raw material. Except as provided below, no cancellations will be accepted after material has been manufactured, and if Buyer declines to accept product after manufacturing it will be charged for the entire order plus any applicable disposal costs. If Seller determines that the product can be used to fill orders for other customers, Seller may elect to accept a post-production cancellation upon receipt of a 25% re-stocking fee. Seller may cancel this order in whole or in part, by written notice if (a) Buyer becomes insolvent or makes a general assignment for the benefit of creditors, (b) a petition is filed or proceedings are commenced against Buyer under any foreign or domestic bankruptcy laws, or (c) Buyer defaults in the performance of any of its obligations under this contract or any other order or contract between Buyer and Seller.

(b) In case of delivery delays for which the Seller is not responsible, the Seller shall be entitled to extend the delivery deadline. Alternatively, the Seller shall be able to adjust the delivery quantities, unless the Buyer provides evidence that a partial delivery is unreasonable.

(c) In case of a significant increase in the cost of raw materials, energy costs and/or transportation costs, the Seller shall be entitled to rescind the confirmed order.

(d) The Buyer shall not be able to bring any claims as a result of section 4.

**5. INFRINGEMENT.** Seller reserves the right to discontinue deliveries hereunder of any material if, in the opinion of Seller, its manufacture, sale and/or use would infringe any patent or other intellectual property right. If the material sold hereunder is to be manufactured to Buyer's specifications, Buyer shall indemnify Seller against any claims or liability for intellectual property infringement on account of such manufacture and sale.

**6. INTELLECTUAL PROPERTY.** "Intellectual Property" shall include, without limitation, any know-how, patents, patent applications, trade secrets, trademarks, and designs, all of them related to the Goods and/or services. Any Intellectual Property rights arising from or connected to the Goods and/or services belongs exclusively to Seller and may also extend to the Finished Goods, as the case may be. The sale of the Goods and/or services by the Seller to the Buyer shall not be construed as granting, whether implicitly or explicitly, a license to the Buyer for use any of the Intellectual Property rights for compositions containing the Goods and/or applications of the Goods and/or services.

**7. NO CHALLENGE.** Buyer shall not challenge any Seller's Intellectual Property, whether registered or not, before courts or any public authorities, and shall withdraw any legal or administrative action and cease any activities initiated to that effect.

**8. SELLER'S INTELLECTUAL PROPERTY RIGHTS**

- (a) Unless otherwise agreed upon in writing, any intellectual property, including without limitation any know-how, patents, patent applications, trade secrets, trademarks (registered and unregistered), copyrights and designs arising out of or related to the delivery of the Seller's goods and services (including related documentation) remains and/or shall become the sole and exclusive property of the Seller or its affiliated companies or their licensors ("ADM"). The Buyer is prohibited to reproduce, copy, distribute, reverse engineer or otherwise make use of any intellectual property related to any of Seller's deliverable and is further prohibited to use the Seller's know-how or Information subject to Confidentiality for any other purpose unless as specifically agreed upon in writing between Buyer and Seller. The sale of goods or services shall not be construed (neither explicitly nor implicitly) as granting a license to make use of any intellectual property rights owned by Seller.
- (b) If the Seller develops or manufactures goods or carries out services based on specifications of the Buyer, and the specifications are or become subject to any intellectual property infringement claims by third parties, the Buyer shall immediately indemnify and hold harmless the Seller from such claims upon first demand. The obligation to indemnify relates to any costs incurred by the Seller in connection with such claims.
- (c) Seller provides no warranty or guarantee that use of provided services, goods and finished goods (final products) by Buyer does not infringe third party rights.
- (d) Buyer shall not challenge any intellectual property of Seller, whether registered or not, before courts or any public authorities, and shall withdraw any legal or administrative action and cease any activities initiated to that effect.
- (e) Buyer shall not use or register any trademark that is identical or similar to or contains substantial elements of any ADM/Seller trademark. Buyer is obliged to cancel any such Buyer's trademark registration. Seller may also request Buyer to cooperate in good faith to immediately assign such trademark, together with any goodwill, at Buyer's own cost, to any entity named by Seller.

**9. NO TRADEMARK IN THE ABSENCE OF A TRADEMARK LICENSING AGREEMENT.** Buyer acknowledges that Seller is the sole owner of all Seller trademarks. Buyer may resell Goods bearing a Seller trademark only under the condition that the Goods are unaltered and have not been removed from original packaging bearing the Seller trademark. Buyer acquires no license to any trademarks owned by Seller for use in Buyer's labels or promotional materials including trademarks Seller uses for the Goods when the Goods are combined with other ingredients to form a Buyer product or Finished Goods. Any use of Seller's trademarks by Buyer, whether for ingredient branding (i.e. using ADM's trademarks on the Finished Goods to indicate or advertise the Goods) or otherwise, shall require a separate written license agreement with Seller, laying down the guidelines for such use. Without such an agreement, any reference to the Seller Goods on Buyer's Finished Goods shall be made solely by the scientific/generic name of such Seller Goods. If Buyer wishes to use any of Seller's trademarks it shall contact Seller with regard to a Trademark License Agreement and provide Seller with information on the Finished Goods and specific countries where use under license is intended. It is at Seller's sole discretion whether such license shall be granted (but grant shall not be unreasonably withheld).

**10. NO RIGHT TO REGISTER TRADEMARKS.** Buyer shall not use or register any trademark that is identical or similar to or contains substantial elements of any Seller trademark. Buyer is obliged to cancel any such Buyer's trademark registration. Seller may also request Buyer to cooperate in good faith to immediately assign such trademark, together with any goodwill, at Buyer's own cost, to any entity named by Seller.

**11. PATENT LICENSE.** The use of any of the Intellectual Property rights for compositions consisting or containing the Goods and/or applications of the Goods and/or services may require the granting of a patent license. The patent license terms shall be defined in the sales contract, including the permitted patent exploitation rights.

**12. PATENT EXPLOITATION RIGHTS.** Unless otherwise agreed with Buyer, Seller is the only entity entitled to manufacture the Goods for Buyer. The patent license may include Buyer's right to sublicense. Any sublicense shall not go beyond the permitted patent rights licensed to Buyer pursuant to the sales contract. Buyer shall impose all the obligations and limitations stated herein and the sales contract on its sublicensees and shall in any event be liable for any action or omission committed by its sublicensees which may result on a breach of all these terms as if such breach had been committed by Buyer.

**13. NO RESEARCH.** Buyer acknowledges and agrees that the Goods are supplied for further commercialization purposes, either alone or as part of finished products. Buyer acknowledges and agrees that the Goods or any part thereof, shall not be used in research or in any other activity not expressly permitted by Seller. Buyer shall not use the Goods or any part thereof as part of Buyer's or its affiliates' or any third party's research nor shall Buyer or its affiliates claim the Goods or any part thereof as part of Buyer' or affiliates' intellectual property rights derived therefrom (including without limitation applying for patent applications), amongst others, unless there is a written separate agreement with Buyer in that regard.

**14. WARRANTY; LIABILITY.** Seller warrants that the material sold hereunder shall conform with the specifications for such material. **THIS IS AN EXCLUSIVE WARRANTY AND ANY OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES (INCLUDING WARRANTIES AGAINST INFRINGEMENT AS TO THE MATERIAL SOLD OR WITH RESPECT TO ANY INSTRUCTIONS OR TECHNICAL ADVICE) ARE HEREBY DISCLAIMED.** Seller or its affiliated companies is not supporting any claim on the effectiveness or functionality or fitness for a particular use or application of the Goods, in particular, but not limited to, when contained in or conforming finished goods containing the Goods ("Finished Goods"). Any claims made by Buyer, its affiliates and/or its sublicensees, including those which may relate to the health benefits of the Goods and/or the Buyer's Finished Goods shall be at Buyer's sole risk and responsibility. Buyer shall hold ADM harmless and compensate for any third party suits, claims or losses to the extent arising out of or related to statements or claims made by, or on behalf of, the Buyer with respect to the Goods or the Finished Goods. When use of claims by Buyer include use of Seller trademarks, Buyer shall obtain prior written consent of Seller on the latter. Buyer's sole remedy for breach of warranty shall be (a) replacement of any defective material, or (b) refund of the purchase price therefore, at Seller's option. On delivery to Buyer, Buyer assumes all responsibility and liability for, and agrees to defend and indemnify Seller against, all claims, loss or damage resulting from Buyer's storage, handling or use of the materials purchased, alone or in combination with other substances or containers

**15. DEFECTS; NOTIFICATIONS; REMEDIES.** The defect claims of the Buyer shall require that it has undertaken an inbound inspection of the goods immediately upon delivery, latest within two days after delivery, unless the goods are destined for immediate use. Should a defect be discovered during the inbound inspection or subsequently in case of hidden defects, the Seller shall be notified of such immediately in writing, however at the latest within 3 working days after delivery or in case of hidden defects immediately after detection, whereby the timely sending of the notice shall suffice in respect of compliance with the deadline stated above. Should the Buyer fail to undertake proper inbound inspection and/or timely notification of defects, the Seller's liability in respect of such defects shall be excluded.

The Seller shall be entitled to make the supplementary performance dependent on the Buyer paying the purchase price which is due. If Seller disputes the Buyer's claim regarding visible or hidden defects in the relevant Good(s) which fails to conform to the specifications, the dispute shall be submitted to an independent laboratory (who shall act as expert and not as arbitrator) mutually appointed by the parties. If the parties fail to mutually appoint an independent laboratory within ten (10) calendar days, Seller shall be entitled to appoint one at its own discretion and notify Buyer of such. The Buyer shall provide Seller with the relevant samples of the alleged defective Goods in order for the independent laboratory to fairly conduct the analysis. The conclusion of such independent laboratory following analysis of the allegedly defective Good(s) shall be final and binding. The cost of the analysis shall be borne by the party whose analysis was in error. Should the Buyer fail to undertake proper inbound inspection and/or notification of defects, the Seller's liability in respect of the defects which have not been notified shall be excluded. If Seller determines in its reasonable discretion that any Goods identified in Buyer's notice pursuant to this Section 6 are Nonconforming Products, Seller will, in its sole discretion, either (i) correct or replace such Nonconforming Products or (ii) refund to Buyer the Fees paid by Buyer to Seller for such Nonconforming Products. Buyer will, at Seller's expense and risk of loss, ship all Nonconforming Products to Seller's preferred location or destroy such Nonconforming Products, as instructed by Seller in writing. If Seller exercises its right to replace the Nonconforming Products, Seller will deliver the replacement Products to a mutually agreed location, at Seller's expense. This Section sets forth Buyer's sole and exclusive remedy for delivery of Nonconforming Products.

**16. LIMITATION OF CLAIMS.** No claim by Buyer of any kind shall be greater in amount than the purchase price of the materials in respect of which damages are claimed. In addition, SELLER SHALL HAVE NO LIABILITY WHATSOEVER (IN TORT, CONTRACT OR OTHERWISE) FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INJURIES TO PERSONS OR TO PROPERTY). Failure by Buyer to give Seller written notice of claim within 30 days from date of delivery or, in the case of non-delivery, from the date fixed for delivery, shall constitute a waiver by Buyer of all claims in respect of such materials. Any action for breach of this contract by Buyer must be commenced within one year after the cause of action has accrued.

**17. SAFETY; HEALTH.** Seller will provide Buyer a Certificate of Analysis for the materials sold.

**18. RECALLS.** If a recall is required by applicable law, or if the Seller reasonably determines that a recall is advisable due to a defect, contamination, or other non-conformity, Seller shall immediately notify Buyer. Both parties shall communicate and cooperate fully during the recall process. Seller shall fully cooperate and take all such steps as are reasonably requested to implement any Recall Action in a timely and complete manner, including providing all pertinent information regarding Products subject to or implicated in such recall. Seller shall bear the costs associated with any Recall Action resulting from (a) its actions or inactions; or (b) breach of Seller's warranties. Without limiting the generality of the foregoing sentence, in the event of a Recall Action caused by Seller's actions or inactions or breach of its warranties, Seller shall reimburse Buyer upon demand for: (c) all losses, damages, costs and expenses incurred by Buyer in connection with any seizure, destruction, recall or withdrawal of such Products; (d) all amounts paid by Buyer for Goods so seized, destroyed, recalled or withdrawn; (e) Buyer's cost of Products incorporated into such seized, destroyed, recalled or withdrawn Goods; and (f) any costs in excess of the Purchase Order price for any required replacement products.

**19. QUALITY DOCUMENTATION:** Seller shall provide Buyer all necessary quality documentation reasonably requested by Buyer related to the Goods. Buyer may request such documentation at any time. Seller shall provide Goods that conform with specifications as agreed with Buyer.

**20. CONFIDENTIALITY:** Each party shall treat as strictly confidential and proprietary any information, including but not limited to, data, drawings, knowledge, know-how, production processes, formulation, ideas, trade secrets, processing instructions, specifications, and/or business – whether with or without confidentiality flag- information communicated to it by the other party or its affiliates, regardless of form, in connection with this Agreement. No party shall, without the other party's prior written consent, at any time use such information for any purpose other than in connection with the performance of its obligations under this contract or disclose such information to any third party or to employees – except to employees that necessarily require it for reasons of their activity ("need-to-know" principle) and who are bound to provisions which are at least as strict as the provisions set forth in this section. Neither party shall announce, publicize or discuss with third parties any portion, including but not limited to, the subject matter of this Agreement. Buyer shall not include Seller's name or trademarks in its sales materials or on its finished product unless the parties have entered into a separate Trademark Licensing Agreement. This obligation of confidentiality does not apply to information that is in the public domain or that comes into the public domain through no act or omission of the receiving party or that is disclosed under force of law or legal process. This confidentiality provision shall survive any expiration, termination or revocation of this Agreement, and shall be binding upon the parties as long as the parties have knowledge of and possession of such confidential and proprietary information. Additionally, the parties shall use the Information Subject to Confidentiality solely for internal purposes within the contractual purpose and apart from that not to directly or indirectly commercially exploit or reproduce (in particular, but not limited to the prohibition of so called "Reverse Engineering") in any other way – including for any other personal use – or to have it exploited or reproduced by Third Parties and with respect to the Information Subject to Confidentiality not to apply for any intellectual property rights – in particular, but not limited to trademarks, designs, patents or utility models. Otherwise, Seller's prior written consent is required.

The obligations to maintain confidentiality shall not apply to any information or parts thereof that verifiably

- a) was already in possession of the Buyer at the time of its disclosure by Seller and that is not subject to the obligation to maintain confidentiality imposed by Seller; or
- b) expressly was released by Seller in writing; or
- c) is publicly available through press or other sources accessible to the general public; or
- d) another party makes accessible to the Buyer in a legally permissible way;

The burden of proof with respect to proving the existence of the above circumstances constituting exceptions rests with the Buyer.

In the event that the Buyer is bound under applicable law or due to official or judicial order to disclose any Information Subject to Confidentiality, it shall immediately inform Seller in writing and to a reasonable extent provide Seller – in as far as this is possible – with the possibility to oppose to such disclosure and to take judicial protective orders or other appropriate measures.



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The Seller will save and process its customer's data with careful observation of the applicable data privacy provisions either manually or automatically and only for contractual purposes.

Reference is made to the Seller's data protection regulations which can be retrieved from <https://www.adm.com/privacy-statement>.

**21. INDEMNITY:** Each party (the "Indemnifying Party") agrees to release, defend, indemnify and hold harmless the other party and its directors, officers, employees, agents, and representatives from and against all liabilities, claims, legal actions, expenses, costs (including, without limitation, reasonable attorney's fees), damages, or demands whether arising in tort, contract, or otherwise for injuries or damages to any person or property arising out of or in connection with this Agreement, any breach of this Agreement by the Indemnifying Party, and/or any defect in the Goods, adulterated or misbranded Goods, any negligent act, material omission, or intentional misconduct of the Indemnifying Party, its directors, officers, employees, agents, or contractors. This indemnification obligation shall apply without regard to cause or causes, including without limitation, the negligence of any party, whether such negligence be sole, joint or concurrent, active or passive and under any theory of liability, including without limitation, theories in contract, tort or strict liability. This indemnification obligation shall be supported by adequate liability insurance coverage.