



## Terms and Conditions for Sale of Materials

### 1. Applicability; Entire Agreement

(a) These terms and conditions govern the sale of raw materials, ingredients, components, parts, and/or products specified on the Purchase Order (as defined below) ("**Materials**") by **Penta Fine Ingredients, Inc.** ("**Supplier**" or "**Penta**") to the customer identified on the Purchase Order ("**Customer**"). These terms and conditions, together with any mutually executed written agreements, including without limitation Purchase Orders (as defined below) to which these Terms are attached and are hereby incorporated into, or incorporating these terms and conditions and to which Penta and Customer are parties, each of which are hereby incorporated by general reference, are collectively referred to as the "**Terms**."

(b) The Terms comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

### 2. Purchase Order Acceptance.

(a) Customer may order Materials from Penta by submitting to Penta a purchase order in the form agreed by the parties in writing or as otherwise instructed by Penta in writing (each, a "**Purchase Order**"). Each Purchase Order will include: (i) the Materials to be purchased; (ii) quantity of Materials; (iii) requested delivery date; (iv) unit price for the Materials; (v) Delivery Point (as defined below); and (vi) such other terms as reasonably requested by Penta. Penta has the right to accept or reject Purchase Orders in its discretion. Penta may accept any Purchase Order by acknowledging receipt and accepting such Purchase Order in writing (an "**Order Confirmation**"), with such written acceptance confirming the proposed shipment date or proposing a new shipment date ("**Confirmed Shipment Date**") for the Material ordered. No Purchase Order is binding on Penta unless Penta accepts such Purchase Order as set forth in these Terms.

(b) Once a Purchase Order is accepted by Penta: (i) Penta shall provide, and Customer shall purchase, the Material in the amounts set forth in such Purchase Order; (ii) the Terms shall apply to the purchase and sale of the Material listed in the Purchase Order; and (iii) any provision in any Purchase Order, acknowledgment or other document issued by Customer that includes additional terms or inconsistent terms with any provision of these Terms shall be of no force or effect, and are hereby rejected by Penta.

### 3. Changes to Purchase Orders; Cancellation.

(a) Penta may, without penalty or liability, cancel or amend any Purchase Order accepted by Penta in the event that Penta determines that Customer is in violation of its payment obligations or is otherwise in breach of this Agreement.

(b) Customer may request changes to Purchase Orders with respect to quantity and type of Material, or may cancel a Purchase Order, within forty-eight (48) hours after Penta provides its Order Confirmation to Customer. With respect to changes to the Purchase Order, Penta will provide Customer with a new Confirmed Shipment Date for the Purchase Order if Penta is not reasonably able to comply with Customer's requested changes and adhere to the initial Confirmed Shipment Date.

### 4. Shipment and Delivery.

(a) Unless otherwise agreed in writing by the parties, Penta shall deliver the Materials to the address of the Penta facility set forth on the Purchase Order (the "**Delivery Point**") using Penta's standard methods for packaging and shipping such Materials. Any time quoted by Penta for delivery to the Delivery Point is an estimate only, and Penta shall not be liable for any delay in delivery to the Delivery Point. In the event that Penta delays shipment of the Materials by more than seven (7) days after the Confirmed Shipment Date, Customer shall have the right, as its sole remedy, to cancel the related Purchase Order upon written notice provided to Penta within ten (10) days of the Confirmed Shipment Date. Customer shall be responsible for, and shall bear the costs of, the shipment of the Materials from the Delivery Point to Customer's location, including without limitation applicable shipping costs and fees, and insurance.

### 5. Title and Risk of Loss.

(a) Title and risk of loss to the Materials shall pass to the Customer on Penta's tender of the Materials at the Delivery Point. The risk of loss or damage in transit shall be upon Customer.

### 6. Inspection and Rejection of Nonconforming Materials.

(a) Upon receipt of Material from Penta at the Delivery Point, Customer or its designee will inspect the Material to confirm compliance with the Specifications. Customer will notify Penta of any Material shortage or other failure to meet the quantity or specifications of Material ordered pursuant to any Purchase Order within 10 calendar days after receipt of Material at the Delivery Point (the "**Acceptance Period**"). In addition, Customer will notify Penta of any failure of the Material to

conform to the Specifications or apparent defect in the Material (each such Materials, a "**Non-Conforming Materials**") within 30 days after receipt of Material at the Delivery Point.

(b) At Penta's sole expense and option, Customer will return the Non-Conforming Materials to Penta. With respect to remedy, Penta will, at Penta's option, either deliver to Customer replacement Material at no additional cost to Customer or issue Customer a full refund for such Non-Conforming Material (including any charges to Customer for freight, shipping and handling of the Non-Conforming Material). If Penta is unable to correct the shortage, order inaccuracy or Non-Conforming Materials in order for the Materials to conform to the Purchase Order or Specifications, Penta will credit Customer for the full amount of the affected Material. If Customer fails to notify Penta in writing of shortages, defects, or other discrepancies of Materials within the Acceptance Period set forth in this section, Customer will be deemed to have accepted the Materials. Customer acknowledges that the remedies set forth in this Section 6 are Customer's sole and exclusive remedies with respect to the delivery of Non-Conforming Materials.

### 7. Price and Payment Terms.

(a) Customer shall purchase the Materials from Penta at the price communicated by Penta to Customer immediately prior to submission of the applicable Purchase Order by Customer that is set forth in the Purchase Order.

(b) Penta shall issue an invoice to Customer for all amounts due and owing upon delivery of the Materials to the Delivery Point. Customer shall pay all invoiced amounts due to Penta in accordance with Penta's invoice. Customer shall make all payments within 30 calendar days of receipt of the invoice. Customer shall make all payments in US dollars by wire transfer in accordance with the instructions provided by Penta or by such other means as Penta reasonably requires.

(c) All prices are exclusive of, and Customer shall be responsible for the payment of, all sales, use, excise or similar taxes, fees, or charges imposed by any governmental authority on any amounts payable by Customer under these Terms (including interest and penalties thereon) but excluding any taxes with respect to Penta's income or other assets.

(d) Penta may charge interest on late payments. Late interest will be computed on a daily basis, from the invoice due date until the date on which the invoice is paid in full, at the rate of 1.5% per month or the maximum rate permitted by law, whichever is less. Customer shall also reimburse Penta for all reasonable costs incurred by Penta in collecting any late payments, including attorneys' fees and court costs. In addition to all other remedies available under this Agreement or applicable law, if any amount under an invoice remains unpaid for more than 90 calendar days past the due date for payment, Penta may, at its discretion, take any one or more of the following actions: (i) terminate these Terms for material breach by Customer, (ii) withhold further delivery of the Materials, including those previously ordered by but not yet delivered to Customer, and/or (iii) require prepayment of the full amounts for any new Purchase Orders prior to order acceptance by Penta.

### 8. Compliance with Law.

(a) Customer shall comply with all applicable laws, regulations, rules, guidances, and ordinances, including without limitation the U.S. Federal Food, Drug, and Cosmetics Act ("**Applicable Laws**") applicable to these Terms, Customer's performance of its obligations hereunder and Customer's use of the Materials. Supplier shall maintain in good standing all licenses, permissions, authorizations, consents and permits that are required to conduct its business relating to the purchase or use of the Materials.

### 9. Recall

(a) If either Party in good faith determines that a recall (each, a "**Recall**") involving a Material is warranted (whether or not required by a regulatory authority) or that a Material or finished products containing a Material may pose a health or safety risk, such Party will immediately (within 24 hours) notify the other Party in writing. If, after consultation, either Party believes that a Recall should be initiated, the Parties will cooperate in good faith in carrying out the Recall. Each party shall bear their own expenses and costs associated with the Recall.

### 10. Representations and Warranties

(a) Penta represents and warrants that all Materials supplied to Customer materially conform to the specifications provided by Penta ("**Specifications**"). If any Materials fail to conform to Penta's representations and warranties, then Penta will, at its expense and its sole option, correct or replace such nonconforming Materials or refund to Customer any amounts paid for such nonconforming Materials. The foregoing shall be Customer's sole remedy in the event Materials fails to comply with the foregoing representations and warranties.

(b) Customer represents and warrants that (i) it has the full right, power, and authority to enter into these Terms and to perform its obligations under this Agreement; (ii) the execution of this Agreement by the individual whose signature is set forth at the end hereof has been duly authorized by all necessary corporate actions; and (iii) Customer's sale, distribution marketing and use of finished products incorporating the Materials shall comply with applicable laws.

#### 11. Customer Acknowledgments.

(a) Customer understands and agrees that unless stated otherwise in writing by Penta, all Materials are intended for excipient (inactive ingredient) use only. The Materials are not intended to be used as an active pharmaceutical ingredient (API) in any drug product.

(b) Customer assumes full responsibility for any components, parts, and/or products, including without limitation finished products, incorporating the Material (collectively, "**Customer Products**"), and shall ensure that any claims and statements made about Customer Products comply with applicable laws and regulations and are allowed in the countries where Customer markets, distributes, sells, or uses the Customer Products. Penta assumes no responsibility to Customer or any third party with respect to the manufacturing, labeling, packaging, advertising, sale or distribution of Customer Products.

#### 12. Confidential Information.

(a) All non-public, confidential, or proprietary information of Penta, including specifications, formulas, plans, documents, data, business operations, supplier lists, customer lists, pricing, discounts, or rebates shall be treated as "**Confidential Information**." Customer will at all times maintain the Confidential Information of Penta, as the disclosing Party, in strict confidence and use such Confidential Information solely as and to the extent necessary to perform its obligations or exercise its rights hereunder in compliance with these Terms and for no other purpose whatsoever. Customer will protect all such Confidential Information against disclosure, using the same standard of care that Customer applies to protect its own confidential information of a similar nature (which in no event will be less than a reasonable standard of care).

(b) Customer will not disclose any Confidential Information to any Person other than: (i) Customer's representatives solely to the extent they need to know the same to perform their respective obligations under these Terms; or (ii) to the extent required by court order; provided that Customer will immediately notify Penta of any such requirement and fully cooperate with and assist with Penta's attempt to obtain a protective order or otherwise limit such disclosure to the fullest extent permitted by applicable law; provided further that if disclosure is ultimately required, Customer will furnish only that portion of the Confidential Information which, based upon advice of legal counsel, Customer must disclose to comply with such requirement, and any Confidential Information so disclosed will continue to be deemed to be Confidential Information of Penta notwithstanding such disclosure.

(c) Each Party will ensure that its representatives are informed of the existence and content of these Terms and are obligated to protect the confidentiality of all Confidential Information of the other Party in a manner consistent with the receiving Party's obligations hereunder. Customer will be fully responsible and liable to Penta for any unauthorized use or disclosure of any Confidential Information by any of Customer's representatives.

#### 13. Intellectual Property Ownership.

(a) Penta or its licensors will be the sole owner of all right, title and interest in and to any and all intellectual property rights in the Materials or in Penta's supply, storage, packaging, labeling, distribution or handling of the Materials (collectively, "**Penta's Processes**"), including without limitation all improvements, modifications or derivative works of the Materials, and all intellectual property rights developed, made, created, derived, conceived, or reduced to practice as a result of, related to, or in connection with the Materials or Penta's Processes hereunder, or other activities under this Agreement (the foregoing, collectively, "**Penta IP**"), subject to Penta's obligations with respect to Confidential Information of Customer. Except as expressly set forth in this Agreement, Penta does not grant Customer any rights or licenses with respect to any Penta IP, express, implied or by way of estoppel. All rights not granted in this Agreement are reserved by Penta. A default under or termination of this Agreement will not impact Penta's rights, title or interests in Penta IP.

#### 14. Indemnification; Limitation of Liability

(a) Customer will, at all times, indemnify, defend, and hold harmless to the fullest extent permitted by law Penta and its affiliates, and its and their respective officers, directors, agents, and employees (and successors, heirs and assigns) (collectively, the "**Indemnitees**") from all losses, damages, costs, fines, penalties, charges and expenses, including reasonable attorneys' fees, incurred in connection with any action, suit, proceeding, claim, demand, investigation or inquiry (formal or informal), brought by any third party (each, a "**Claim**"), or any settlement of such Claim, whether or not a formal proceeding or action has been instituted which arises out of or is based upon any of the following: (a) Customer's breach of its covenants,

representations and warranties set forth in these Terms; (b) injury or death of a person or the loss of or damage to tangible property, in each case, resulting from Customer's handling, actions, or omissions with respect to the Materials or from Customer Products; (c) Customer's marketing, sale, distribution or use of any Customer Products that incorporate the Materials; (d) any allegation that Customer Products infringe, violate or misappropriate third party intellectual property or proprietary rights (provided that such infringement claims does not result from the Materials); (e) Customer's false or misleading labeling, packaging, or advertising of Customer Products that incorporate Materials; or (f) the gross negligence or willful misconduct of Customer or its representatives.

(b) PENTA SHALL NOT BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THESE TERMS OR THE MATERIALS. PENTA'S TOTAL, CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OR THE MATERIALS SHALL BE LIMITED TO THE TOTAL AMOUNTS PAID BY CUSTOMER UNDER THE APPLICABLE INVOICE FOR THE MATERIALS GIVING RISE TO THE CLAIM. THE FOREGOING DISCLAIMER AND LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT PENTA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

#### 15. Governing Law.

(a) These Terms and the relationship between the Parties will be governed by and construed in accordance with the laws of the State of New Jersey without regard to choice of law principles. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to these Terms in any forum other than the federal and state courts located in New Jersey, and each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each Party agrees that a final judgment in any such proceeding may be enforced in other jurisdictions.

#### 16. Notices.

(a) All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving party in writing in accordance with this Section. All Notices shall be delivered by e-mail, personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

#### 17. Assignment.

(a) Customer shall not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of Penta. Penta may not assign any of its rights or delegate any of its obligations under these Terms without Customer's prior written consent; provided, however, that Penta may, without the consent of Customer, assign any of its rights or delegate, in whole or in part, the performance of any of its obligations under this Agreement to its affiliates, a successor of Penta, by consolidation, merger, or operation of law, or a purchaser of all or substantially all of Penta's assets. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning party of any of its obligations under these Terms.

#### 18. Relationship of the Parties.

(a) The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party.

#### 19. Severability; Survival.

(a) If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

(b) Provisions of these Terms which by their nature should apply beyond their Terms will remain in force after any termination or expiration of these Terms including, but not limited to Sections 8, 9, 10, 11, 12, 13, 14, 15, 17, 18 and 19.