



Penta Terms and Conditions for Purchase of Materials

1. Applicability; Entire Agreement

(a) These terms and conditions of purchase govern the purchase of raw materials, ingredients, components, parts, and/or products, inclusive of labeling and packaging, specified on the Purchase Order (“**Materials**”) by **Penta Fine Ingredients, Inc.** (“**Penta**” or “**Purchaser**”) from the seller, supplier, or vendor identified on the Purchase Order (“**Supplier**”). These terms and conditions, together with any mutually executed written agreements attached hereto or incorporating these terms and conditions and to which Penta and Supplier are parties, each of which are hereby incorporated by general reference, are collectively referred to as the “**Terms**.”

(b) The Terms, together with the Purchase Order to which these Terms are attached and are hereby incorporated into, 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) Penta may order Materials from Supplier 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**”). Supplier must acknowledge receipt and acceptance of each Purchase Order, as well as provide a shipment date (“**Confirmed Shipment Date**”) for the Material ordered, within seventy-two (72) hours of Supplier’s receipt of the Purchase Order by delivering to Penta a notification of such acceptance containing at a minimum the Materials(s) and quantity and the Confirmed Shipment Date (the “**Order Confirmation**”).

(b) Once a Purchase Order is accepted by Supplier: (i) Supplier shall provide, and Penta 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 Order Confirmation, invoice or other document issued by Supplier 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. Penta is not obligated to make any minimum purchases or future purchases.

3. Changes to Purchase Orders; Cancellation.

(a) Supplier will not make any changes to Purchase Orders that Penta has submitted to Supplier, including type of Materials or quantity, unless Penta has requested the change in writing or has otherwise approved the change in writing.

(b) Penta may request changes to Purchase Orders with respect to quantity and type of Material at any time prior to the Confirmed Shipment Date, and Supplier will promptly acknowledge receipt of any such change and will comply with such changes in a timely manner. Supplier will provide Penta with a new Confirmed Shipment Date for the Purchase Order if Supplier is not reasonably able to comply with Penta’s requested changes and adhere to the Confirmed Shipment Date.

(c) Penta shall have the right to cancel a Purchase Order in whole or in part, and without charges, expense or liability, any time prior to shipment of the Materials.

4. Shipment and Delivery.

(a) Unless otherwise agreed in writing by the parties, Seller shall deliver the Materials to the shipping address set forth on the Purchase Order (the “**Delivery Point**”). Delivery shall not be deemed to be complete until all the Materials have been received and accepted by Penta.

(b) All Materials shall be packaged, marked and otherwise prepared for shipment by Supplier (i) in suitable containers, (ii) in accordance with sound commercial practices, (iii) in a manner sufficient to prevent damage and (iv) in compliance with all Applicable Laws.

(c) Supplier will promptly notify Penta if Supplier fails to ship Material on or before the Confirmed Shipment Date. If Supplier fails to ship Material more than seven (7) days following the applicable Confirmed Shipment Date, Penta may, at its option: (i) cancel all or any portion of the Purchase Order without liability to Supplier except that, if Penta elects to purchase substitute goods, Supplier will reimburse Penta for the difference between the price of the Material and the price paid by Penta for substitute goods (including freight

charges), if higher than the Materials Price and applicable freight charges that Penta would have paid if Supplier had delivered the Material in accordance with the applicable Purchase Order, or (ii) require Supplier to deliver the delayed quantity of Material using expedited shipping at Supplier’s sole expense. The costs Supplier will be responsible for pursuant to the foregoing clauses (i) and (ii) are “**Late Shipment Charges**”. This amount is not a penalty and Supplier’s payment of Late Shipment Charges will not waive or diminish any other rights or remedies available to Penta under these Terms, at law or in equity to recover its direct damages and costs actually incurred.

5. Title and Risk of Loss.

(a) Title to the Materials shall pass to the Penta at the Delivery Point. The risk of loss or damage in transit shall be upon Supplier. Supplier shall maintain insurance covering all damage to or loss of the Materials incurred during shipment and file insurance claims. Penta shall not pay any unauthorized freight or fuel charges.

6. Inspection and Rejection of Nonconforming Materials.

(a) Upon receipt of Material from Supplier at the Delivery Point, Penta or its designee will inspect the Material to confirm compliance with the Specifications. Penta will notify Supplier of any Material shortage or other failure to meet the quantity or models of Material ordered pursuant to any Purchase Order within 10 days after receipt of Material at the Delivery Point. In addition, Penta will notify Supplier 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 Supplier’s sole expense and option, Penta will return the Non-Conforming Materials to Supplier. With respect to remedy, Supplier will, at Penta’s option, either deliver to Penta replacement Material within seven (7) days of receiving written notice from Penta at no additional cost to Penta or issue Penta a full refund for such Non-Conforming Material (including any charges to Penta for freight, shipping and handling of the Non-Conforming Material). If Supplier is unable or unwilling to correct the shortage, order inaccuracy or Non-Conforming Materials in a manner and in a time period set forth in this section or such longer time period acceptable to Penta, Supplier will credit Penta for the full amount of the affected Material and will reimburse Penta for any other losses, charges, costs and expenses associated with the Non-Conforming Material. If Penta fails to notify Supplier in writing of shortages, defects, or other discrepancies of Materials within the time periods set forth in this section, Penta will be deemed to have accepted the Materials. Notwithstanding anything to the contrary set forth herein, if after accepting a shipment, Penta subsequently discovers latent defects (including without limitation, nonconformance to the Specifications) not reasonably discoverable during the time periods set forth in this section, Penta may revoke its acceptance of such shipment by giving written notice and disclosing the nature of any defects to Supplier as soon as practicable after discovering such defects.

7. Payment Terms.

(a) The Seller shall issue an invoice to Penta for all amounts due and owing upon delivery of the Materials. Penta shall pay all invoiced amounts due to Seller in accordance with Supplier’s invoice. Penta shall make all payments within 45 days of receipt of the invoice.

8. Compliance with Law.

(a) Supplier 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**”). Supplier shall maintain in good standing all licenses, permissions, authorizations, consents and permits that are required to carry out its obligations. Supplier will ensure that its facilities and all Materials supplied to Penta are compliant with all Applicable Laws, including that all facilities subject to FDA registration are so registered. Upon request, Supplier agrees to produce supporting documentation to demonstrate its compliance with Applicable Laws and this section. With reasonable advance notice, Supplier agrees to submit to routine and for-cause audits by Penta or its designated representative. Supplier will use best efforts to remediate any audit findings to Penta’s satisfaction within thirty (30) calendar days.

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. Supplier shall be responsible for all costs associated with the Recall and any related claims or proceedings, including but not limited to refunds to customers, lost profits, transportation costs, overhead costs, attorney fees, and other expenses in processing such Recall.

10. Representations and Warranties

(a) Supplier represents and warrants that all Materials supplied to Penta strictly conform to the specifications approved by both parties (“**Specifications**”). If either Party determines that a change to the Specifications is needed to comply with Applicable Laws, such Party will notify the other Party. From time to time, Penta may issue revised Specifications to be implemented within a reasonable time and with cooperation of Supplier. Following the implementation of any such revised Specifications, any outstanding Purchase Order would be fulfilled using Material satisfying the revised Specifications. Any Material not used to fulfill outstanding Purchase Orders prior to the implementation of the revised Specifications will become Non-Conforming Material.

(b) Supplier represents and warrants that all Materials provided by Supplier under these Terms are fit for human consumption and shall be manufactured, packaged, labeled, stored, and shipped in accordance with current good manufacturing practices (cGMPs) and Applicable Laws. Supplier shall not make any change or alteration in the Specifications without Penta’s prior written consent.

11. 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**.” Supplier 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 hereunder in compliance with these Terms and for no other purpose whatsoever. Supplier will protect all such Confidential Information against disclosure, using the same standard of care that Supplier 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) Supplier will not disclose any Confidential Information to any Person other than: (i) Supplier’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 Supplier 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, Supplier will furnish only that portion of the Confidential Information which, based upon advice of legal counsel, Supplier 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. Supplier will be fully responsible and liable to Penta for any unauthorized use or disclosure of any Confidential Information by any of Supplier’s representatives.

12. Indemnification; Limitation of Liability

(a) Supplier 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 “**Penta 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) Supplier’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 Supplier’s manufacture or supply of Materials; (c) any and all costs associated with any Recall paid by Penta Indemnitees resulting from Supplier’s failure to comply with the Specifications or Applicable Law in the manufacture or supply of the Materials; or (d) the gross negligence or willful misconduct of Supplier or its representatives.

(b) PENTA SHALL NOT BE LIABLE TO SUPPLIER 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 THAT PENTA PAYS TO SUPPLIER 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 THE OTHER PARTY 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.

13. Governing Law. 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.

14. Notices. 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. 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.

15. Assignment. Supplier shall not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of Penta. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Supplier of any of its obligations under these Terms.

16. Relationship of the Parties. 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.

17. 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, 17.