



### GENERAL TERMS AND CONDITIONS

– Effective June 2003 –

The products to which these General Terms and Conditions refer are the products supplied or sold by Dumas ApS (hereinafter referred to as "Dumas") to the purchaser thereof (hereinafter referred to as "Buyer"). These products are sold only under the following General Terms and Conditions:

#### **1. Price**

(a) All prices are expressed net FOB Århus, Denmark, or other major European port, and unless otherwise agreed in writing by Dumas, are subject to change without notice and are at the prices in effect at the time of order placement. Quotations will be given on request for any product(s) offered by Dumas. Quotations will remain in effect only for the period of validity specified therein or, if no such period is stated, for thirty (30) days from the date the quotation is given.

(b) Unless otherwise expressly stated, all prices are exclusive of costs of transportation and insurance and federal, state and local sales taxes, import duties and the like.

(c) Dumas is entitled to deliver 10% more or less than the quantity stipulated. Within this quantity, Dumas is entitled to make part-deliveries.

#### **2. Payment**

(a) Payment for all products is net cash EUR on delivery or shipment except that a Buyer with an established credit account currently approved by Dumas shall pay net cash within thirty (30) days following invoice date. Partial shipments will be invoiced as made.

(b) Interest from the due date until payment at the maximum rate allowable by law but in any event not more than eighteen percent (18%) per annum will be charged on invoices unpaid sixty (60) days after due date. If unpaid amounts are collected through legal proceedings or an attorney, Buyer shall pay reasonable attorneys' fees and court costs.

#### **3. Delivery Dates and Excusable Delays**

All shipment and/or delivery dates are subject to Dumas' availability schedule. Dumas will make every reasonable effort to meet any delivery date(s) quoted; however, Dumas will not be liable for its failure to meet any quoted delivery date(s) or for any delay in performance due to any unforeseen circumstances or any causes beyond Dumas' control including, without prejudice to the foregoing generality, strike, lockout, riot, war, fire, acts of God, accident, failure or breakdown of parts necessary for the production, subcontractor, supplier, Buyer caused delays, inability to obtain labour, materials or manufacturing facilities, or compliance with any law, regulation or order, whether valid or invalid, of any governmental body or instrumentality thereof. Performance shall be deemed suspended during and extended for such time as any such circumstances or causes delay its execution. Whenever such circumstances or causes have been remedied, Dumas will make and Buyer shall accept performance hereunder. No penalty clause of any kind shall be effective.

#### **4. Packaging**

All products shall be packed, if appropriate, for shipping and storage in accordance with standard commercial practices.

#### **5. Shipment**

(a) All prices are net ex works, Denmark. Buyer will pay all transportation charges.

(b) Normally Dumas will ship in accordance with Buyer's shipping instructions. In the absence of shipping instructions or unsuitable Buyer's shipping instructions, Dumas reserves the right to ship by an appropriate method.

#### **6. Passage of Title**

Title to products sold and risk of loss and damage shall pass to Buyer upon delivery by Dumas to common carrier for shipment to Buyer, or to Buyer directly, as the case may be.

#### **7. Changes, Cancellations and Returns**

(a) Dumas reserves the right to change the composition and specifications, and to discontinue product(s) without any notice or liability to Buyer. Statements and information by Dumas concerning contents of products, and compositions of blends, are to be regarded as average or typical values, unless otherwise specifically stipulated.

(b) If Buyer issues a change order or cancels an order, Buyer shall be liable to pay to Dumas the whole cost and loss incurred by Dumas resulting from such change or cancellation, as such is determined by Dumas, which shall include all costs, direct and indirect, plus a pro rata proportion of normal profit.

(c) No credit shall be given for any product returned unless returned with the prior approval of an authorized representative of Dumas authorizing the return by issuing the Buyer a Return Goods Number. Risk of loss or damage in respect of any product returned with Dumas' authorization will remain with Buyer until redelivered to Dumas. A charge of not less than fifteen percent (15%) or such larger amount as Dumas may consider reasonable in the circumstances, with a minimum of € 500, will be charged by Dumas on all products returned to pay for cost of inspection, repacking, handling, credit arrangements, etc. Dumas shall not be responsible for holding or accounting for any products returned without prior authorization by Dumas. If freight and other transportation costs are not prepaid on any returned product, the cost thereof will be deducted from the credit issued.

#### **8. Use of Product**

Buyer warrants, by purchase of the product, that Buyer is familiar with the product and its proper use. Before using any product, Buyer shall perform a reasonable and prudent examination and/or test to determine the suitability of the product for Buyer's intended use.

#### **9. Inspection**

Immediately upon arrival, Buyer shall inspect and check for possible defects in the condition, quality and quantity of the products delivered. Any claims must immediately be forwarded to Dumas in

writing and must be received by Dumas no later than 8 days after the arrival of the products at Buyer's facilities.

## **10. Limited Warranty and Remedy**

(a) Dumas is not liable for incidental, consequential, or special damages.

UNDER NO CIRCUMSTANCES WILL DUMAS BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES WITH RESPECT TO ANY GOODS, SERVICES OR PRODUCTS PROVIDED BY DUMAS TO BUYER OR ANY THIRD PARTIES.

(b) Buyer's remedies are limited to replacement of the products or refund of the purchase price. Buyer's remedies for any and all breaches of any nature, including without limitation breaches of contract and warranty, are limited to the remedies specifically stated in this agreement. The remedies provided herein are the exclusive remedies of Buyer for failure of Dumas to meet its warranty obligations, whether claims of Buyer are based on contract, in tort or otherwise, and upon expiration of the applicable warranty period, all obligations of Dumas for breach of warranty will terminate.

(c) Disclaimer of warranties not expressly stated.

THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED. DUMAS EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

(d) Limited warranty.

Dumas warrants each product/shipment sold by it to Buyer to be free from defects in the ingredients and their composition if, and only if, all of the following conditions are met:

(1) The product claimed to be defective has been exposed only to normal storage and use, has not been subjected to misuse, negligent use, contamination or accident which caused the product to become defective.

(2) The product claimed to be defective has been returned at Buyer's expense to one of Dumas' plants in Denmark (or to such other location as Dumas may designate), within ten (10) days after Buyer first discovers the alleged defect; and

(3) The alleged defect in the product is actually caused by a defect or contamination in ingredients originally supplied by Dumas,

This warranty shall be in effect until 6 months after delivery to Buyer.

(e) Limited remedies available under warranty.

Dumas' liability under the limited warranty described above shall be limited to the replacement of the products sold hereunder. Dumas will replace the product at no cost to Buyer. Replacement products are only warranted for the remaining un-expired portion of the warranty period.

(f) Notice of claims required.

All claims under the warranty set out in this agreement must be made promptly after the alleged defect occurs and must be received by Dumas within the warranty period. The claim must include the product's batch number, date of shipment or delivery and a full description of the circumstances giving rise to the claim. Any product returned under claim of defect shall be sent prepaid by appropriate transportation. Buyer is responsible for all damage or loss resulting from improper packing or handling, and for any loss or damage occurring during the transmission of the product to Dumas. If any product is returned and is found not to be defective, Dumas will notify Buyer and, at Buyer's option, will return the product to Buyer at Buyer's expense. Further, in this event, Buyer will reimburse Dumas for all costs incurred in testing and examining the product.

## **11. Miscellaneous**

(a) All of these General Terms and Conditions shall also apply in favour of all employees, agents, affiliates, and subsidiaries of Dumas.

(b) Order confirmation by Dumas of any product to be supplied by Dumas shall constitute Dumas' offer to sell the product in accordance with the terms, provisions and conditions of this Agreement. Buyer's acceptance of Dumas' offer shall be limited to the terms, provisions and conditions of this Agreement. Any proposed acceptance by Buyer under terms, provisions or conditions that vary from, conflict with, or modify the terms, provisions and conditions of this Agreement shall not be effective. Neither Dumas' commencement of performance under this Agreement nor delivery of any product shall be construed as or deemed to be acceptance by Dumas of any term, provision or condition that varies from, conflicts with, or modifies the terms, provisions and conditions contained in this Agreement.

(c) This Agreement constitutes the entire understanding and agreement of Dumas and Buyer with respect to the sale of the product or products described in this Agreement and contain all of the covenants and agreements of Dumas and Buyer with respect thereto. This Agreement may not be altered, changed or amended except by an instrument in writing signed by Dumas and Buyer.

(d) Failure by Dumas to enforce any or all of these General Terms and Conditions in any case or cases shall not constitute a waiver of or preclude subsequent enforcement of any or all of such General Terms and Conditions.

(e) Any attempted or purported assignment or transfer of any of the rights, duties or obligations herein contained shall render such attempted or purported assignment or transfer null and void, provided that Dumas may perform and fulfil all or any of its obligations hereunder by or through any subsidiary and affiliate. If any provision of these terms and conditions is capable of more than one construction, the provision shall be interpreted in the manner which will render it valid. If any provision is determined to be void, the determination shall not affect any other provision and all other provisions not construed to be void shall remain in full force and effect.

## **12. Arbitration**

ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR WITH REGARD TO ITS INTERPRETATION OR BREACH, SHALL BE SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH THE RULES OF THE COPENHAGEN ARBITRATION ASSOCIATION. Unless otherwise required by applicable law, the parties

hereto agree to arbitrate their differences in Copenhagen. The parties further agree that all claims of any type by either party, including defences and counterclaims, shall be included in the arbitration. Either party may send written notice to (a) the other party, and (b) the Office of the Copenhagen Arbitration Association, invoking the binding arbitration provisions of this paragraph. The parties further consent to the jurisdiction of the courts of Denmark, to enforce the provisions of this paragraph and/or to confirm any award rendered by the arbitrator.

### **13. Limited Statute of Limitations**

THE STATUTE OF LIMITATIONS FOR ANY BREACHES OF CONTRACT AND WARRANTY IS AGREED TO BE ONE YEAR FROM THE DATE THE CAUSE OF ACTION ACCRUES.

### **14. Choice of Law**

ANY AGREEMENT OR TRANSACTION TO WHICH THESE GENERAL TERMS AND CONDITIONS APPLY SHALL BE DEEMED TO HAVE BEEN MADE IN THE KINGDOM OF DENMARK. ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR WITH REGARD TO ITS INTERPRETATION OR BREACH SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED, AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE KINGDOM OF DENMARK. NO DOCTRINE OF CHOICE OF LAW SHALL BE USED TO APPLY THE LAWS OF ANY OTHER STATE, NATION, OR JURISDICTION.

### **15. Use Agreement**

Use of the products supplied or sold by Dumas to Buyer shall constitute agreement of Buyer to these General Terms and Conditions.

## **Contact**

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