1. GENERAL
1.1 These General Terms and Conditions of Sale ("Conditions") govern the offering, sale and delivery of all products sold by or on behalf of Pentapharm do Brasil Comércio e Exportação LTDA., and its affiliates ("DSM"); to customer ("Customer") and set forth all terms and conditions between DSM and Customer.
1.2 By contracting on the basis of the Conditions, Customer thereby accepts the applicability of the Conditions in respect of all future dealings, even if this is not explicitly stated.
1.3 DSM explicitly rejects the applicability of any general terms and conditions of Customer.
2. QUOTATIONS, ORDERS AND CONFIRMATION
2.1 Unless stated otherwise by DSM, quotations made by DSM in whatever form are not binding and merely constitute an invitation to Customer to make an offer.
2.2 Any written quotations ("Orders") by DSM are estimates and shall not be the basis of any contract. DSM is entitled to withdraw any of its quotations and to change or cancel any quotations that have been notified to DSM.
2.3 Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for other deliveries.
3. PRICES
3.1 Prices and currencies of DSM’s Products are set forth in the Confirmed Order. Unless otherwise agreed, DSM’s prices include packaging but do not include Value Added Tax or any other similar applicable taxes, duties, or charges. Best efforts shall be made by DSM to keep the product price as stated in the Confirmed Order.
3.2 DSM may at its own option amend the prices stated in the Confirmed Order or, in the case of any delayed delivery, adjust the price for the delivery concerned to account for any change in the cost price of the Products. Unless otherwise agreed, the discount this discount only relates to the delivery specifically mentioned in the Confirmed Order.
3.3 Unless the prices have been indicated as firm by DSM in writing (the "Confirmed Order"), DSM reserves the right 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 DSM from third parties, wages, salaries, social security contributions, freight costs, currency exchange rates, and insurance premiums.
4. PAYMENT AND CUSTOMER’S CREDIT
4.1 Unless stated otherwise in the Confirmed Order, payment terms are net cash, to be received by DSM within 30 (thirty) days following the date of DSM’s invoice. All payments shall be made without any deduction on account of any Taxes or other charges except for set-offs with uncontested and/or enforceable counterclaims.
4.2 With regard to the payment for the Products, the time is of the essence. DSM may, without prejudice to any other rights of DSM, charge interest on any overdue payment at 12% (twelve percent) per annum, starting from the due date stated in DSM’s invoice. Interest until all outstanding amounts are paid in full. All costs and expenses incurred by DSM with respect to the collection of the overdue payments (including without limitation, reasonable attorney’s fees, expert fees, court costs and other expenses of litigation) shall be for Customer’s account.
4.3 Every claim made by Customer against DSM shall be paid within 30 (thirty) days from the assertion or otherwise made by Customer.
5. DELIVERY AND ACCEPTANCE
5.1 Unless stated otherwise in the Confirmed Order, all deliveries of Products shall be CIP (Carriage and Insurance Paid) place of destination. The term CIP 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 conclusion of the Confirmed Order.
5.2 DSM shall not be obligated to accept delivery thereof, unless Customer, DSM will submit representative samples to the International Chamber of Commerce in Paris, France, at the time of conclusion of the Confirmed Order and DSM’s delivered Products shall be agreed upon by the party unable to uphold its position shall bear the related costs of the laboratory.
5.3 Delivery of the Products shall be made by DSM and the risk of loss or damage to the Products shall pass to Customer at the time and place of delivery as described in the Confirmed Order.
5.4 Any electronic communication between DSM and Customer or any other party of the same nature may be considered to be a “writing” between the parties. The electronic communication system used by DSM will provide sole proof for the content and the time of delivery and receipt of such electronic communications.
6. CANCELLATION
6.1 Customer’s wrongful non-acceptance or rejection of the Products shall entitle DSM to rescind the confirmed contract and Customer shall be obligated to return the Products which can be resold by DSM in reasonable condition. Additionally, Customer will have to return all defective parts of the Products. Complaints, if any, do not affect Customer’s obligation to pay as defined in Article 4.
8. TRANSFER OF RISK AND PROPERTY
8.1 The risk of the Products shall pass to Customer according to the applicable Incoterm. (see Article 5.1).
8.2 If the Products are not directly used by any third party, resulting in DSM, damages equal to 50% (fifty percent) of the price of such Products as quoted in the Confirmed Order.
9. LIMITED LIABILITY
9.1 DSM 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 7, DSM may at its own option and within a reasonable time either repair or replace the Products at no charge to Customer, or, if agreed by Customer, DSM shall refund the purchase price for any such Products in the amount of the original invoice price. Accordingly, DSM’s obligation shall be limited solely to repair or replacement of the Products as the exclusive remedy.
9.2 DSM’s obligation to repair, replace, or credit shall be contingent upon receipt by DSM of timely notice of any alleged defect or malfunction. Further, and, if applicable, the return of the Products, in accordance with Article 7. The foregoing warranty is exclusive and in lieu of all other express, implied or statutory warranties, conditions or other terms, express, implied, statutory, contractually or otherwise, including, without limitation, merchantability, suitability for any purpose, or absence of infringement of any claim in any intellectual property right covering the Products.
10.2 DSM shall under no circumstances be liable to Customer or any other person for any kind of special damages – e.g. consequential, punitive damage or loss, cost or expense, including without limitation, damage based upon lost goodwill, lost sales or profit, delay in delivery, work stoppage, product recall, destruction of property, costs of materials, losses, costs, expenses, claims, demands and/or other charges arising out of or in connection with breach of warranty, negligence or otherwise, whether caused by a breach of contract, misrepresentation, misappropriation or otherwise.

11. FORCE MAJEURE
11.1 In no event shall Customer 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 of any legal, regulatory or governmental authority towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, laws and regulations, administrative measures or orders of any governmental, regulatory or administrative body, earthquakes, floods, fire, explosions, war, terrorism, riot, sabotage, accident, epidemic, 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”).

11.2 Upon the occurrence of any event of Force Majeure, the party suffering thereof shall promptly inform the other party by written notice thereof specifying the cause of the event and how it will affect its obligations under the Agreement. Without prejudice to the rights of DSM, such delay in delivery or defects in goods supplied by suppliers or subcontractors shall not be deemed to be a breach of Agreement. 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 Agreement without any liability to the other Party.

12. MODIFICATIONS AND INFORMATION; INDEMNITY
12.1 Unless the Specifications have been agreed to be firm for a certain period of time or quantity of Products, DSM 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. Customer acknowledges that data in DSM’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.

12.2 Customer must utilise and solely rely on its own expertise, know-how and judgment in relation to the Products and Customer’s Use thereof. Consultation provided by DSM shall not give rise to any additional obligations. Customer shall indemnify and hold DSM harmless from and against any and all damages, losses, costs, claims, demands and liabilities (including without limitation product liabilities) arising out of or in connection with the Products and Customer’s Use thereof.

13. COMPLIANCE WITH LAWS AND STANDARDS
13.1 Customer acknowledges that the Use of the Products may be subject to requirements or limitations under any law, statute, ordinance, rule, code, law or standard not listed or described in the Specifications or otherwise. Customer shall be responsible for ensuring compliance with all applicable regulations with respect to any such law, rule or standard not listed or described in the Specifications or otherwise, including without limitation (i) anti-bribriy and anti-corruption, (ii) international trade, as such, but not limited to, embargos, import and export controls and sanctioned parties lists (“Laws and Standards”).

13.2 Customer expressly warrants that employees, agents and subcontractors of the Customer shall not direct, induce, procure, accept any offer to or provide any improper advantage to or (ii) enter into an agreement (a) with any entity or person - including officials or a government controlled entity -, (b) relating to a product, which would constitute an offence or infringement of applicable Laws and Standards.

13.3 Customer shall be indemnified and held harmless by DSM for any breach of Customer’s obligations herein, which breach shall cause DSM to suffer property infringement by reason of the Use of the Products, whether singly or in combination with other materials or in any processing operation.

14. INDEPENDENT CONTRACTORS
14.1 DSM and Customer are independent contractors, and the relationship created hereby shall not be deemed to be that of principal and agent.

15. NON-ASSIGNMENT AND CHANGE OF CONTROL
15.1 Neither party may assign any of the rights or obligations under the Agreement without the prior written consent of the other party, except that either party may assign such rights and obligations to any of its affiliates or to a successor in interest by operation of law, acquisition of all or a substantial part of its assets or business relating to the Products.

15.2 DSM shall have the right to terminate the Agreement if at any time during the term of the Agreement a person or group of persons, who are unconnected to the party controlling Customer as of the date of the Agreement, acquires control, through ownership of voting securities or otherwise, over Customer. Customer shall notify DSM of such acquisition within 10 (ten) days thereof. DSM may exercise its right to terminate the Agreement by giving Customer written notice of such exercise within 10 (ten) days after the date of receipt of such notice.

16. SUSPENSION AND TERMINATION
16.1 DSM in its sole discretion may suspend or terminate the Agreement in the event that Customer fails to: (a) make any payment when due, or (b) become 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 if under the laws of any country in which Customer shall be domiciled a receiver or bankrupt or receiver or administrator is appointed for all or a substantial part of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors; or in case of non-compliance of Customer with Laws and Standards DSM may by notice in writing forthwith, without prejudice to any of its other rights:
(i) demand return and take repossess 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 Customer; and/or
(ii) suspend its performance or terminate the Confirmed Order for pending delivery of Products unless Customer makes such payment for Products on a cash in advance basis or otherwise, convey any license under any intellectual property rights of Customer arising out of or in connection with the Products delivered to Customer and not repossessed by DSM.

17. WAIVER
Failure by DSM to enforce at any time any provision of the Conditions shall not be construed as a waiver of DSM’s right to act or to enforce any such term or condition and DSM’s rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by DSM of any breach of Customer’s obligations shall constitute a waiver of any other prior or subsequent breach.

18. SEVERABILITY AND CONVERSION
In the event that any provision of the Conditions shall be held to be invalid or unenforceable, the remainder of the Conditions shall be held to be valid and enforceable, 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 remaining provisions held to be invalid or unenforceable shall be reformulated to meet the legal and economic intent of the original provisions to the maximum extent permitted by law.

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

20. GOVERNING LAW AND VENUE
20.1 The parties' rights and obligations arising out of or in connection with the Confirmed Order and/or the Conditions shall be governed, construed, interpreted and enforced according to the laws of Brazil, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods dated 1 November 1980 (CISG) shall not apply.

21. SURVIVAL OF RIGHTS
The parties' rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, directors, officers, employees, agents and legal representatives. 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.

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

23. INTELLECTUAL PROPERTY
23.1 All intellectual property rights arising out of or in connection with the Products shall be the exclusive property of DSM.

23.2 DSM 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 DSM shall not be held liable for any loss or damage in that respect.

23.3 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 Customer explicitly assumes all risks of any intellectual property infringement by reason of the Use of the Products, whether singly or in combination with other materials or in any processing operation.

24. LANGUAGE
The original version of the Conditions is made in the English language. In the event of any inconsistency or contradiction between the English version and the Portuguese translation thereof, the Portuguese version shall prevail.