



## **General Terms and Conditions of Purchase**

### **Axxence Aromatic GmbH**

Our orders are subject to the exclusive application of our General Terms and Conditions of Purchase, please see our web page, [www.axxence.com](http://www.axxence.com).

#### **General Terms and Conditions of Purchase**

##### **§ 1 Application**

(1) The following General Terms and Conditions of purchase shall apply to all commercial relations of Axxence Aromatic (hereinafter: „purchaser“) and its sellers (hereinafter: „seller“), under which seller delivers goods or performs other services. They shall also apply without express, repeated agreement for similar and related deals.

(2) These General Terms and Conditions of purchase shall apply exclusively. Deviating, contradicting or supplementary General Terms and Conditions of seller shall only become part of the contract insofar as purchaser expressly agrees to them in writing. This requirement of express written agreement shall also apply in case of unconditional acceptance of seller’s goods even in case purchaser is aware of seller’s General Terms and Conditions. Upon the submittance of an offer or the acceptance of an order, seller recognizes these General Terms and Conditions of purchase as solely binding, waiving later revocation. At the latest with delivery or other contractual performance by the purchaser these General Terms and Conditions shall be deemed to be accepted.

(3) Any rights of purchaser against seller according to statutory law that go beyond these General Terms and Conditions of purchase shall remain unaffected.

##### **§ 2 Conclusion of Contract and Delivery**

(1) A contract with purchaser shall only be concluded if the order is issued by purchaser in writing. Unless expressly specified by seller in the individual case, seller’s offer shall be binding for a period of four weeks after receipt of the offer by purchaser. Silence of purchaser following an offer of seller shall not be considered as approval or acceptance.

(2) In case purchaser issues an order without prior offer of seller, the contract shall be concluded by written acceptance of the offer by seller. Seller shall declare written acceptance within a week following receipt of the order. Otherwise the purchaser shall no longer be bound by such order.

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(3) In case seller intends to change or to stop the production of contractual goods, seller shall notify purchaser immediately and in writing, provided that the last order does not date back more than 6 months. Seller shall ensure that the contractual goods are deliverable for a period of at least 6 months after the notice to purchaser.

(4) The agreed time or period for delivery or service shall be binding. The goods need to arrive at the place of fulfilment within the agreed period of time. Seller shall be obliged to immediately notify purchaser in writing and to state the reasons and duration of delay if seller cannot meet the agreed time of delivery/performance. Purchaser's acceptance of a new delivery date shall not constitute a prolongation of the contractually agreed time of delivery or performance. Any rights to rescission and damages, in particular damages for default of performance, shall remain unaffected.

(5) In case of default of performance and after prior written warning, purchaser shall be entitled to claim a contractual penalty fine of 0.2 % of the net price per working day, but not exceeding a total of 5% of the net price of each delivery/service. Purchaser shall be entitled to claim this contractual penalty fine alongside or instead of the fulfilment of the contract and as a minimum sum of the damages seller has to pay according to statutory law; rights to further compensation for damages and a potential right to rescind the contract shall remain unaffected. The contractual penalty fine has to be deducted from other claims for damages. In case purchaser accepts the delayed performance, the contractual penalty fine will be claimed with the last payment rate at the latest.

(6) In case seller does not fulfil an essential delivery/performance under a multi-delivery contract or a partial delivery contract at all or not at the right time, purchaser shall be entitled, following fruitless expiration of a reasonable time limit, to rescind the whole contract and to claim damages instead of performance.

(7) The delivery/performance of parts of the contractual goods or of a higher or reduced quantity of goods shall not be permitted if purchaser has not given explicit written approval.

(8) Without prior written approval by purchaser, seller shall not be entitled to let performance be rendered by a third party. Suppliers of seller shall be regarded as seller's vicarious agents.

(9) Seller shall bear the risk of procurement with regard to its own supply by its partners.

(10) Unless expressly agreed to the contrary, the delivery shall be conducted at costs and at risk of seller to the place of performance stated in the order. In case no place of performance is indicated the delivery/performance shall be rendered at the place of business of purchaser, Tackenweide 28, 46446 Emmerich am Rhein, Germany.

(11) For each delivery a delivery note including date, content of the delivery, order number of purchaser and date of the order as well as the type of packaging and the weight shall be attached. Also a dispatch note with the same content and – where applicable – a Form A shall be sent to the purchaser. In case any of the documents is missing or incomplete, the purchaser shall not be liable for any delay in the process or the payment resulting thereof.

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(12) Seller guarantees that he fulfills all relevant provisions on delivery and declaration as well as any relevant export and import provisions.

(13) The risk of accidental loss or accidental damage to the goods shall only be transferred to purchaser if and when the goods are handed over to purchaser at the place of fulfilment or when they are accepted by purchaser.

### **§ 3 Prices, Payment**

(1) The price stated in the order shall be binding and shall include all performances and supplementary performances as well as all supplementary costs of seller. Prices shall generally be in US \$ and shall include statutory VAT, unless VAT is stated separately.

(2) The agreed price shall be due for payment within 60 calendar days after complete delivery and performance as well as the receipt of a correct invoice. The payment shall be deemed in time if purchaser instructs its bank to transfer the payment at the last day of the time limit.

(3) Each invoice shall include the purchaser's order number and the date of order. In case of an incorrect invoice or in case of non-performance or malperformance purchaser shall be entitled to delay the payment until due fulfilment of the contract/receipt of a correct invoice.

### **§ 4 Warranty**

(1) Seller guarantees that the goods/services are free of material defects and defects in title/legal defects. In particular, but not limited to this, seller guarantees that the goods/services comply with the agreed quality/condition as well as with the description of the product and other samples and specifications provided.

(2) Seller further guarantees that the goods/services are in conformity with the contract in every respect, in particular regarding the composition and labelling, and that they may be placed on the market in the EU unconditionally.

(3) Regarding the delivery of packaging material seller also guarantees that the packaging is well-suited for the contact with foodstuff and that such contact does not lead to negative effects on the foodstuff. All packaging material fulfills the requirements under Reg. 1935/2004 and the specific measures on the basis of this regulation.

(4) Alongside these guarantees purchaser shall be entitled to its statutory rights. Deviating from sec. 442 para. 1 s. 2 BGB (German Civil Code) purchaser is entitled to its statutory rights without restriction also if purchaser was not aware of the lack of conformity of the goods/services at the time of the conclusion of the contract due to gross negligence.

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(5) Purchaser shall be entitled at its choice to claim either repair or replacement of the goods/rendering of due performance. In case seller does not fulfil the aforementioned obligation within a reasonable time limit set by purchaser, purchaser shall be entitled to repair or replace the defective goods on its own at the supplier's expense. If purchaser uses its own workforce to repair the goods, this can be invoiced at common market prices. Further statutory claims for defects remain unaffected.

(6) If it is unreasonable for purchaser to wait, in particular due to special urgency or imminent danger of disproportionate damages, no time limit for the right to repair or replacement shall be needed. Purchaser will immediately notify seller in case of such unacceptable circumstances.

(7) In case the goods are not in conformity with the contract, seller shall bear all costs incurred for the detection of the defect as well as for the repair or replacement of the defective goods irrespective of its fault, also including, but not limited to, the costs arising for purchaser, in particular costs of analysis, improper packaging or transport, storage and labour as well as the costs for commissioning a laboratory. These rules shall also apply in case it turns out that the goods were not defective. Purchaser's liability for unjustified claims for remedies is reduced to cases in which purchaser was either aware of the conformity or not aware due to gross negligence.

(8) In case of a wholesaler-to-client sale at the retailer's (which is in this case the purchaser) request it shall be deemed sufficient within the meaning of § 377 para. 1 HGB, if the inspection of the goods occurs at the place of business of the client.

(9) Complaints about defective goods, that seller receives within a period of 5 working days after delivery of the goods or in case of hidden defects after they have been detected, shall always be deemed to be immediately within the meaning of § 377 HGB.

Defects which can only be detected by laboratory examination are always considered to be hidden defects.

### **§ 5 Limitation**

(1) The period of limitation for claims for defective goods or defect of title is 36 months after passing of the risk. Insofar an acceptance was agreed upon, the limitation period starts with the acceptance.

(2) If seller replaces the defective goods or repairs them, the limitation period for the repaired or replaced goods shall begin anew after the goods are repaired or replaced. In case of repair, this shall only apply to claims following from the same defect or resulting from a defective repair.



## **§ 6 Compliance with Food Law Regulations**

(1) Seller shall be obliged to comply with the relevant national and European legal regulations (in particular, but not limited to food and food contact material law. This obligation also covers the compliance with non-binding guidelines which reflect customary usage in the trade.

(2) Seller shall indemnify purchaser and hold purchaser harmless from and against any and all claims by third parties arising out of breach of the provisions in clause 7.1 at first request and shall reimburse purchaser for all necessary costs (including, but not limited to, legal costs and court fees) that might arise in this context.

## **§ 7 Product liability**

(1) Seller shall indemnify purchaser and hold purchaser harmless from and against any and all claims of third parties that relate to personal injuries or damages of goods caused by a defective product delivered by seller. Seller shall reimburse purchaser for all costs and expenses caused by or in relation with claims of third parties, including, but not limited to, those of product recalls carried out by purchaser or its costumer. The purchaser will notify seller about the content and the extent of the product recall – insofar as possible and reasonable – in advance and will give seller an opportunity to state its point of view. Further statutory rights remain unaffected.

(2) Seller shall maintain a product liability insurance for all damages resulting from defective products including, but not limited to, the risk of product recalls for its own account with sufficient coverage for personal injuries, damages to goods and financial losses (in principal at least € 5 million for each case of personal injury or financial loss) until the limitation period for all claims that may result from the contractual relationship elapses.

## **§ 8 Regress against suppliers**

(1) In addition to the warranty claims, purchaser shall have unrestricted entitlement to his legally determined rights of recourse within a supply chain (regress against suppliers according to §§ 445a, 445 b, 478 BGB). In particular, he shall be entitled to demand exactly the type of supplementary performance from seller (subsequent improvement or replacement delivery) that he owes to his costumer in an individual case. The legal option (§ 439 para. 1 BGB) shall not be restricted by this.

(2) Before purchaser recognises or satisfies a warranty claim asserted by his costumer (including reimbursement of expenses according to §§ 445 a para. 1, 439 para. 2 and 3 BGB), he shall inform seller and provide a short statement of the facts. In the event that seller does not provide written comments within a reasonable time-limit and if an amicable solution is not reached, the warranty claim the purchaser actually concedes shall be regarded as owed to his costumer; counter evidence in this case shall be incumbent upon seller.

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(3) Purchaser's claims arising from regress against suppliers shall also then apply in addition to the legal regulation if the goods were not delivered until after alteration or subsequent processing by him or further buyers.

### **§ 9 Force Majeure**

(1) The purchaser shall not be responsible for the impediment of the receipt of goods or acceptance of the goods/performance due to force majeure beyond purchaser's control. Cases of force majeure shall be inter alia, but not restricted to these examples, strike, lock-out, mobilisation, war, blockade, export and import bans and other state intervention regardless of whether they occur on the part of the purchaser or on the part of purchaser's vicarious agents.

(2) Events of force majeure entitle the purchaser, following immediate notification to seller also regarding the expected duration of the hindrance, to delay the receipt of goods or acceptance of the goods/performance insofar as well as for a reasonable, following period of adjustment. Alternatively, the purchaser may in such cases rescind the contract, partially or wholly, because of the part not fulfilled. In case the hindrance persists for an unreasonable period of time (usually more than two months), seller may, after setting a reasonable additional period of time, rescind the contract with respect to the yet unfulfilled part of the delivery. In such case, any amounts paid in advance shall be reimbursed to the purchaser without delay.

### **§ 10 Retention of title, Assignment Right to summation and right to retain**

(1) The transfer of property of the goods to purchaser shall in principal be unconditional and without respect to the payment of the price. If in individual cases purchaser accepts an offer of seller to transfer the property on the condition of payment of the price, the retention of title lapses at the latest with the payment of the price for the delivered goods. In such case purchaser shall remain entitled also before payment of the price to resell the goods and to receive the due payment in its own name in good business practice while assigning the claims resulting thereof to the seller. All other forms of retention of title, in particular an extended retention of title and a retention of title referring to the processing of goods, are explicitly excluded.

(2) Assignments without prior written approval by purchaser are invalid. § 354a HGB remains unaffected.

(3) Seller shall be entitled to offset only in and insofar as seller's counterclaim is undisputed or assessed in a legally binding judgement.

(4) Seller is entitled to claim retainer rights only to the extent such rights are based on the same contractual relationship.



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### **§ 11 Secrecy**

(1) Seller shall be obliged to keep all confident information originating from the cooperation strictly confidential and to process this information solely for the purposes of the contractual relationship. This includes in particular requests for information and offers, technical data, the amount of contractual goods, prices, information about products and product development, information about science and development activities, all business data and all working material provided by purchaser. This confidentiality agreement shall continue to apply for five more years after termination of the contractual relationship.

### **§ 12 Written form requirement**

(1) All modifications and amendments to the contract must be in writing in order to be valid. This agreement on written form may only be set aside by written agreement.

(2) Insofar these General Terms and Conditions of purchase require written form, the transfer via email or fax is sufficient.

### **§ 13 Applicable law, Jurisdiction**

(1) All contracts with the seller shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods), unless explicitly agreed upon to the contrary in writing between the parties.

(2) Place of fulfilment for delivery or performance shall be the place of performance indicated by purchaser. Place of payment for the payment duties of purchaser is Emmerich.

(3) Exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Emmerich. This shall also apply in case seller has no general place of jurisdiction in the Federal Republic of Germany or moved its domicile abroad after the conclusion of the contract. Nonetheless, the purchaser shall be entitled to bring a claim against seller at any other statutory place of jurisdiction.