

Axxence Aromatic GmbH

Tackenweide 28 · D-46446 Emmerich (Germany)
Telephone +49 2822 68561 0 · Telefax +49 2822 68561 39
service@axxence.com
www.axxence.com

We bring nature to your flavour



General Terms and Conditions of Sale Axxence Aromatic GmbH

We confirm your order subject to the exclusive application of our general terms and conditions of sale, please see our web page, www.axxence.com.

General Terms and Conditions of Sale

§ 1 Application

(1) These general terms and conditions shall govern all future offers, sales, deliveries and other activities of Axxence Aromatic GmbH (hereinafter: "seller"). They shall also apply without express, repeated agreement for similar and related deals. At the latest with acceptance of the deliveries and other activities of seller these general terms and conditions shall be deemed to be accepted.

(2) These general terms and conditions of sale shall apply exclusively. They shall also apply if the seller performs delivery despite knowledge of differing or contrary terms of purchaser. Differing or contrary terms shall not apply, except if expressly agreed upon by seller in writing.

§ 2 Conclusion of Contract and Delivery

(1) Contracts regarding the sale of goods only become valid by way of a declaration of confirmation of the seller. Modifications of the agreements and of any side-agreements require written form in order to become valid.

(2) Offers of the seller are subject to change without notice and not binding, unless expressly referred to as binding by the seller in the individual case.

(3) Delivery of the goods shall be ex works of the seller (EXW; Incoterms 2010), no matter who bears the costs for the delivery to the purchaser. The passing of risk to the purchaser shall take place as soon as the goods are handed over to the carrier or (in case of self-collection by the purchaser) to the purchaser. In case of delay of the purchaser with the acceptance of the goods, the risk shall pass on the day, on which the purchaser is informed about the readiness for dispatch or handing over.

(4) Unless expressly agreed to the contrary, information regarding the delivery times shall be approximate.

(5) The seller is entitled to part-delivery for reasonable cause, as long as this is reasonable for the purchaser. Each part-delivery leads to part-fulfillment of the delivery duty.

(6) In case the seller is in delay with the delivery, purchaser is only entitled to rescind the contract after having set a reasonable time-limit for delivery. A reasonable time-limit shall regularly be a time-limit of at least four weeks.

§ 3 Prices, Payment

(1) Prices of the seller are ex works, exclusive of the respective statutory VAT and exclusive of costs for packaging, except as otherwise expressly agreed upon.

(2) The prices for the goods shall be the prices valid at the time of conclusion of the contract, if the delivery takes place within four months after the conclusion of the contract and following individual orders. In case the delivery takes place more than four months after the conclusion of the contract or under continuing obligations, the seller shall have the right to fix new prices for future deliveries if market conditions have changed significantly, for instance due to crop results or political developments. Upon information about the future price adjustment by the seller, buyer is entitled to terminate the contract. The termination has to be declared immediately.

(3) The purchase price is due and payable net within 30 days from the date of the invoice. From the due date, default interest in the amount of 9 % above the respective base interest rate p. a. shall accrue. The seller reserves all rights to claim further damages for delay.

(4) In case any taxes or public charges are newly introduced or raised after the contract has been concluded with the purchaser, the seller is authorized to respectively add the cost increase to the price.

(5) In case, after the conclusion of the contract, the seller has reasonable grounds to believe that the purchaser will not be able to fulfill its duties (e.g. if purchaser does not render due payments), the seller shall in its own discretion be authorized to deliver goods only against prepayment or respective securities.

§ 4 Offset, Right to Retain

(1) The purchaser shall be entitled to offset only in and insofar as the purchaser's counterclaim is undisputed or assessed in a legally binding judgement.

(2) The purchaser is entitled to claim retainer rights only to the extent such rights are based on the same contractual relationship.

§ 5 Delivery

(1) Delivery is conditioned upon timely and proper performance of all duties – also from other deals – of the purchaser. Defences based on non-performance of the contract are reserved.

(2) In case of default in acceptance or other breach of duties to cooperate by the purchaser the seller is entitled to claim any resulting damage including but not limited to additional expenses, if any. Further damages are reserved. In this case, the risk of loss or damage to the goods passes to the purchaser at the time of such default or breach of duty to cooperate.

§ 6 Retention of Title

(1) Until full receipt of the payment, the seller shall retain title to goods. In case of breach of contract by the purchaser including, without limitation, default in payment, the seller is entitled to take possession of the goods.

(2) Should the seller rescind the contract, the purchaser is obligated to immediately return the retained goods. In this case, the seller may enter the premises, in which the retained goods are stored, and take possession of them. The costs of the return or the taking back of the retained goods shall be born by the purchaser.

(3) The purchaser shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.

(4) As long as the purchase price has not been completely paid, the purchaser shall immediately inform the seller in writing if the goods become subject to rights of third persons or other encumbrances.

(5) The purchaser may resell goods subject to the above retention of title only in the course of his regular business. For this case, the purchaser hereby assigns all claims arising out of such resale, whether the goods have been processed or not, to the seller. Notwithstanding the seller's right to claim direct payment, the purchaser shall be entitled to receive the payment on the assigned claims. To this end, the seller agrees not to demand payment on the assigned claims to the extent the purchaser complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments.

(6) Upon stay of payments or filing of an application for insolvency, the purchaser is no longer entitled to sale, alteration or processing, combination or intermixture of the retained goods with other goods/things and is required to ensure separate storage or labelling of the retained goods. Furthermore, the purchaser is required to have incoming sums from the assigned claims credited to a separated account or to keep them separated.

§ 7 Warranty

(1) Warranty claims shall be time-barred after 12 months of the passage of risk.

(2) Precondition for any warranty claim of the purchaser is the purchaser's full compliance with all requirements regarding inspection and objection.

(3) Obvious defects (including particularly, but not limited to, obvious deficiencies or damages) shall be reported to the seller in writing immediately, but not later than 10 business days, from receipt of the goods. The timely mailing of the notice of defect shall be sufficient to comply with the time limit.

(4) The purchaser shall be obligated to notify the seller in writing of any non-obvious (hidden) defects immediately after discovery thereof but not later than within the period of limitation pursuant to paragraph 1. The burden of proof regarding all conditions, in particular, the existence of the defect, the time of ascertainment of the defect and the timely notification of the defect rests with the purchaser.

(5) Defects, which do not or only insignificantly impair the value or the fitness of the goods for the use discernible by the seller at the time of the conclusion of the contract shall not give rights to the purchaser.

(6) A non-conformity of the goods may be remedied by the seller in its discretion either in the form of subsequent improvement or in the form of delivery of conforming goods (alternative performance). In case of alternative performance, the seller shall bear all expenses necessary for this purpose, in particular, costs of transport, travel, labour and materials, as far as these costs are not increased as a result of the goods having been transported to a place different from the original place of destination.

(7) Should the alternative performance fail, should it be impossible or rejected by the seller altogether or unacceptable for the purchaser or should a reasonable time limit to be fixed by the purchaser for the alternative performance not be observed by the seller or not required according to the statutory provisions, the purchaser shall be entitled, at its discretion, to reduce the purchase price (purchase price reduction) or to rescind the contract (rescission). Upon declaration of rescission or assertion of the claim for purchase price reduction, the purchaser's claim for delivery of faultless goods shall cease to exist. Claims of the purchaser for damages or fruitless expenditures shall be granted only according to the rules in the following section regarding liability. In all other respects, such claims shall be excluded.

§ 8 Liability

(1) In case of intent or gross negligence on the part of the seller or by the agents or assistants in performance of the seller, the seller is liable according to the provisions of applicable German law; the same applies in case of breach of fundamental contract obligations. To the extent the breach of contract is unintentional, the seller's liability for damages shall be limited to the foreseeable typically occurring damage.

(2) Seller's liability for culpable damage to life, body or health as well as seller's liability under the Product Liability Act shall remain unaffected.

(3) Any liability of the seller not expressly provided for above shall be disclaimed.

§ 9 Force majeure

(1) The seller shall not be responsible for delays in delivery or performance due to force majeure beyond seller'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 seller or on the part of the supplier of the seller.

(2) Events of force majeure entitle the seller, following immediate notification to the purchaser also regarding the expected duration of the hindrance, to delay the delivery insofar as well as for a reasonable, following period of adjustment. Alternatively, the seller 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), the purchaser 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 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 performance for all delivery obligations and for all other contractual obligations of the parties shall be 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 the purchaser 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 seller shall be entitled to bring a claim against the purchaser at any other statutory place of jurisdiction.