

## Terms and Conditions Aroma Innovation & Creation

### Definitions

- 1.1 "Agreed order" : the agreement in writing between the seller and the buyer.
- 1.2 "Application" : the end product.
- 1.3 "Aroma" : an intermediate product.
- 1.4 "Buyer" : the person, firm or company whom agreed the quotation.
- 1.5 "Flavour documents" : stands for specification, safety data sheet and certificate of analysis. Other documents can be requested.
- 1.6 "Products" : means the products or any part thereof agreed to be sold or to be developed.
- 1.7 "Seller" : Aroma Uden B.V..
- 1.8 "Works" : includes consultancy, services, R&D (including nutritional value calculation, application formula, administration) .
- 1.9 "Writing": : includes by e-mail.
- 1.10 The headings in these conditions are for convenience only and shall not affect their interpretation.

### Terms, quotations and cancellations

- 2.1 All the agreed orders, works and quotations of the seller are subject to these terms and conditions.
- 2.2 Any quotation issued by the seller may be withdrawn at any time by the seller.
- 2.3 For the purchase of flavours the buyer needs to send the seller a purchase order with company details, flavour codes, exact quantities and price as offered. When the buyer doesn't have a standard purchase order available the seller agrees a dated and signed version of the sellers offer.
- 2.4 The seller may assume that the flavour codes, exact quantities and other information or specifications given by the buyer are to be correct. No liability shall result in the event that incorrect information has been provided by the buyer.
- 2.5 For works the buyer will sign the quotation and will send a copy to the seller. In event of works buyer shall not bind seller until confirmed by seller in writing.
- 2.6 No agreed order which has been accepted by the seller can be cancelled by the buyer except with the agreement in writing of the seller and on terms that the buyer shall indemnify the seller in full against all loss (including loss of profit) costs (including the cost of labour and materials used) damages, charges and expenses incurred by the seller as a result of the cancellation.
- 2.7 With every by the buyer agreed order, seller will produce all flavours as buyer-specific products. Therefore buyer agrees a deviation of +/- 10% (in relation to the ordered amount) per produced batch of the individual product(s) mentioned in the agreed order. Buyer agrees this deviation will be passed on as such accordingly on the final invoice.
- 2.8 Works offers reflects estimated hours. So it is possible more hours will be charged.
- 2.9 The seller handles her own standard documents for the performance of the agreed work of agreed products (aroma's). These standard documents includes specification, SDS (safety datasheet) and CoA (Certificate of Analyse). In the case of buyer wants that the seller completes the particular specifications of the buyer then this implies additional works. For this the seller will charge the buyer for performing activities. The seller will send an offer with the estimated costs. The buyer needs to agree with a signed offer.
- 2.10 All descriptions, dimensions, illustrations, particulars of performance, specifications (not flavour specifications) and statements made to the buyer by the seller are approximate only and intended as a general description.

### Price

- 3.1 All prices (unless agreed in written otherwise) in the agreed order are exclusive of value added tax. Any such tax shall be payable by the buyer in addition to the purchase price of the products/flavours and any other sums due to the seller from the buyer. This also applies for offers for works.
- 3.2 The goods shall be delivered ex works. Transport of goods can be a service, but the risk of transport and the costs of transport will be at all times on behalf of the buyer.
- 3.3 The seller may vary the price expressed in the agreed order to the extent that the cost of the seller for producing, transporting or insuring the products is increased between the date of the agreed order and the date of delivery.
- 3.4 The currency in which the seller uses to invoice the buyer must be used for payment. Any decrease in the value as compared to such currency used by the buyer will be repaid by the buyer immediately on receipt of written notice.

### Payment

- 4.1 The buyer shall pay for the products within 14 days of the invoice date in the currency, and manner specified in the agreed order unless otherwise specified.
- 4.2 If payment is not made upon the due date the seller at its absolute discretion may cancel the agreed order and/or withhold further deliveries. If payment is delayed, the buyer will owe interest on that sum to the seller with effect from the day following the day agreed as the final day of payment up to and including the day on which the buyer settles the amount in question. The interest is 12 % per year, but is equal to the statutory interest if this is higher.

For the interest calculation, a part of a month is considered to be a full month. At the end of a year, the amount on which the interest is calculated will be increased by the interest due that year.

- 4.3 For late payments, the buyer owes the seller all extrajudicial costs with a minimum of € 75,00. These costs are calculated on the basis of the following table, i.e., the principal sum plus interest:
- |                     |                     |      |
|---------------------|---------------------|------|
| On the first        | € 3.000,00          | 15 % |
| On the excess up to | € 6.000,00          | 10 % |
| On the excess up to | € 15.000,00         | 8 %  |
| On the excess up to | € 60.000,00         | 5 %  |
| On the excess from  | € 60.000,00 or more | 3 %  |

The extrajudicial costs actually incurred are due if they are higher than the calculation above.

- 4.4 Payment shall be made whether or not the buyer has any complaint in respect of defective products.
- 4.5 Where products are to be delivered by instalments each instalment shall be deemed to be sold under a separate agreed order and shall be invoiced separately. In the event of default in respect of any instalment the seller shall be entitled to determine the agreed order with respect to any undelivered instalments.
- 4.6 It is possible seller is asking for a prepayment for the order.

### Receipt of Goods & complaints

- 5.1 The buyer shall promptly accept the products when they are delivered or tendered for delivery as agreed. In the event of the buyer wrongly failing to so accept the products the buyer shall be fully liable for costs, charges and expenses including but not limited to storage insurance and handling expenses incurred as a result directly or indirectly of it failing to accept the products.
- 5.2 Any claims by the buyer in relation to the products damaged, for example concerning shortage or poor quality must be made in writing to the seller and must be within three working days of the date the products were delivered to the buyer, on penalty of the loss of rights. Any damages or defective products or shortages must be entered on the delivery receipt accordingly.
- 5.3 No claim can be made in respect of any products which have undergone any process or treatment or in case they shall have been resold.
- 5.4 The seller will include a reference sample of the batch of the delivered product. At the production facility a sample need to be prepared to check quality, taste, recipe and specifications by the buyer. This check is an obligation of the buyer. The liability from the buyer for the production is a part of the production facility. If the buyer uses the product in their production, the quality of the product was approved by the buyer. If buyer doesn't agree with the quality of the reference sample the buyer need to inform seller if quality of the reference is not improved within three working days of the date the products were delivered to the buyer, on penalty of the loss of rights. At all times cans/packaging needs stay to be sealed.
- 5.5 The seller can calculate the nutritional values of the application to the best of her knowledge. This is not a standard document. At all times the buyer is responsible for the end product en the nutritional value of the end product. For this reason at all times the buyer is obliged to check the calculated nutritional values of the application derived from the seller.
- 5.6 If required, the seller can deliver the nutritional value of an aroma.
- 5.7 End product recipe/application formula will be shared after all the agreed work is done and the seller has received the payment of all her invoices.

### Expiration date

- 6.1 On request of the buyer the seller can mention an indication of the expiration date of the aroma. This is only an indication and does not represent any kind of guarantee. The expiration date does not belong to the responsibility of the seller.
- 6.2 When the buyer after delivery opens the cans or when the storage of the products after delivery is improper, this can affect the (keeping) quality of the products. The seller has no liability for deterioration of the products due to circumstances after delivery.
- 6.3 The (quality of the) reference sample of the batch of the delivered product shall at all times be binding upon the parties. This reference sample is stored at the seller under the right conditions.

### Delivery

- 7.1 The seller may effect delivery of the products whatever means the seller deems most appropriate.
- 7.2 Any stated delivery date period or rate is given as a guide only and the seller accepts no responsibility for loss or damage resulting from delay howsoever arising.
- 7.3 In the event that a delivery schedule has been agreed then such schedule shall also be as a guide only, but the seller reserves the right to delivery and require payment for the products in accordance with such schedule in the event that delay is requested by the buyer.

### Risk transfer and retention of title

- 8.1 Risk for the products shall be deemed to have been passed to the buyer at the time of

- delivery.
- 8.2 Notwithstanding delivery to the buyer legal and beneficial ownership in the products shall remain with the seller until the buyer has paid the whole price and any ancillary sums in respect of the products.
- 8.3 Until such payment the buyer shall take all necessary measures for the protection of the products from loss or damage including insurance thereof. In the event of any loss or damage of the products the buyer will make a claim under the policy of insurance.

### **Warranty and Limitation of Liability**

- 9.1 The seller is committed to applying that the goods will be of merchantable quality when delivered. The goods need to pass the incoming control of the buyer. This means that the buyer accepted the quality of the product if the products are used in the production of the buyer. In that case the seller isn't liable anymore.
- 9.2 The buyer is required to provide for adequate (product) liability insurance. At first request of the seller, the buyer shall transmit a copy of the insurance certificate.
- 9.3 The sellers liability for breach of contract shall be limited solely to replacing without charge, the defective products or part thereof, or at the sellers option refunding the price of the products provided that all of the following conditions have been met:
- a) the buyer shall have notified the seller of the defect(s) in writing within the period as mentioned in article 5;
  - b) if requested by the seller, the buyer shall have returned such defective goods or part thereof;
  - c) such defect shall have been proved by the buyer to be attributed to the seller and not to any defect in design or application in the products manufactured by the buyer;
  - d) the warranty shall not extend to products which become defective resulting from damage in transportation, handling or storage or environment not conforming to the instructions or specifications of the seller.
- 9.4 At all times the liability of the seller shall be expressly limited to the price for the contract in question, except in a case of deliberate act or omission or gross negligence on the part of the seller.
- 9.5 The buyer has an own responsibility to check the applicable (nutrition) laws and regulations according to the requested aroma. The seller is under no circumstances liable for any damage of the buyer because the delivered aroma or application does not comply with the applicable laws and regulations.

### **Force Majeure**

10. The seller shall not be liable for delay or failure in performing her obligations under the agreed order to the extent that such failure or delay is caused or contributed to by circumstances beyond her control, including, without limitation, any war, fire, explosions, machinery breakages, Government actions or prohibitions, civil commotion, riot, strike, lock-out, trade dispute, breakdown, accident or any other happening or event whatsoever (whether or not of a kind similar to those aforementioned) beyond the reasonable control of the seller. Should any such event occur, the seller may at her own option suspend and or cancel the agreed order without incurring any liability whatsoever for any loss or damage thereby occasioned.

### **Assignment and Delegation**

11. The agreed order is personal to the buyer who may not assign it nor transfer it to a third party without the sellers written consent.

### **Default**

12. The seller reserves the right either to terminate the agreed order between the parties or to suspend further deliveries if the buyer, being a company or an individual, goes into liquidation or has a receiver appointed.

### **Confidentiality**

- 13.1 The buyer shall at all times keep confidential any information concerning the business of the seller or the products (including all technical designs and specifications and details thereof) and shall on demand return any papers relating to the same to the seller.
- 13.2 All information and materials (including the goods, samples thereof or ingredient lists) provided by seller to buyer are confidential and may not be disclosed by buyer to any third party without the prior written consent of the seller.

### **Jurisdiction**

- 14.1 This agreement shall be governed exclusively by Dutch law.
- 14.2 All disputes arising out of or in connection with this agreement or further agreements resulting therefrom shall be exclusively settled by the competent Court in 's-Hertogenbosch (Rechtbank Oost-Brabant).