



BUYER'S STANDARD TERMS AND CONDITIONS

EFFECTIVE DATE: April 7, 2014

1. **ACCEPTANCE.** This Purchase Order ("**PO**") contains the entirety of the Terms and Conditions ("**Terms**") of Agilex Flavors & Fragrances' ("**Buyer**") offer. Neither Buyer nor Seller ("**Seller**") shall be bound by oral or written agreements not expressly included in this PO. Acceptance of the PO is expressly limited to and made conditional upon the exclusivity of the Terms and Conditions and is expressly made conditional upon Seller's assent to terms and conditions which differ from or are additional to those in Seller's offer. This PO may be amended and altered only by a writing signed by authorized representatives of both Seller and Buyer expressly referencing the terms or conditions being modified, and purporting to constitute an amendment to this PO. The Buyer and Seller may each be referred to herein as a "**Party**" and together as the "**Parties**."

2. **SCOPE.** These Terms and Conditions, as may be amended from time to time, apply to the purchase by Buyer of all Products and/or services ("**Product**") from Seller as described on the face of the PO or other documents referenced on the face of such PO. The term Product throughout these Terms and Conditions includes without limitation, raw materials, supplies, components, tooling equipment and all services. No PO is valid unless issued by Buyer on its official, electronic or otherwise generated, PO to the Seller. If there is an existing agreement executed by both Buyer and Seller, the terms and conditions of the executed agreement will prevail over the Terms hereunder.

3. **PRICING; RISK OF LOSS.** All prices payable by Buyer for the Product are stated in the PO and include the cost of packaging and delivery and shall be on the delivery term specified in the PO to the specified destination. Unless otherwise specified in this PO, title to the Product covered by this PO and all risk of loss or damage to such Product shipped shall be in Seller, irrespective of FOB or other delivery terms, and shall remain in the Seller until the Product have been delivered to Buyer's applicable facility and have been accepted at that facility.

4. **QUALITY.** Seller shall meet all quality requirements of Buyer and all quality requirements of Buyer's customers, including, but not limited to, all applicable plans, specifications, and other contract descriptions, as set forth on the face of the PO. The quality of the Product shall be subject to the satisfaction of the Buyer, who shall be entitled to reject non-conforming Product.

Buyer or its designated representative or government agency shall have the right from time to time during business hours after reasonable notice to the Seller to (i) inspect the Product wherever it is located; (ii) remove samples of the Product for inspection and testing; and (iii) obtain factory site and other information from the Seller to confirm conformance of the Product with agreed specifications. No such inspection, testing or inquiry shall be deemed to be or result in any variation of any of the Seller's obligations or a waiver of Buyer's rights.

5. **PACKAGING; SHIPPING.** All Product covered by this PO, unless otherwise directed on the PO or in a writing signed by Buyer's authorized representative, shall be suitably marked and shipped in accordance with the requirements of common carriers and when transportation costs are payable by the Buyer, in a manner to secure the lowest transportation cost. Seller shall pay all additional costs related to delivery of late shipments.

6. **DELIVERY.** The Seller shall make delivery to the specified destination by the due date stated on the PO or as otherwise agreed in writing by the Parties. Any such stated due date is of the essence and the Seller shall notify Buyer promptly if it reasonably anticipates that delivery will not be on time. Seller shall incur all costs related to unauthorized early delivery. The Seller warrants that upon acceptance of delivery at the destination the Seller will convey to Buyer good and marketable title to all Product free of any liens or encumbrances of any kind. Buyer shall not be obliged to buy or pay for, and Buyer or its designated representative may at any time after delivery reject, all or any part of a given delivery of Product that Buyer or its designated representative determine does not conform with the PO or agreed specifications. The Seller shall retain or reacquire title to, and bear all risks of loss of such non-conforming Product and shall at its own expense be responsible for the return or disposal. Seller shall incur all costs related to Buyer's receiving non-conforming Product which costs include but are not limited handling, storing, and testing.

7. **WARRANTY.** In addition to all other warranties provided by the Seller, Seller warrants from the date of delivery or the appropriate period if contrary to applicable law, that all Product:

- (a) strictly conform with the description contained in the PO, the quality and agreed specifications stated or incorporated as a schedule, by reference or otherwise;

- (b) are merchantable, fit for the purpose intended, and free of defect; and
- (d) are not articles which may not, under the provisions of Sections 404 or 505 of said Act be introduced into interstate commerce.

8. INTELLECTUAL PROPERTY. The Seller shall indemnify and hold Buyer and its customers harmless from all claims, losses, suits, damages, liability, and all expenses, (including but not limited to reasonable attorney's fees) arising out of or related to any such actual patent, copyright, trademark or other property rights infringement or alleged direct or contributory infringement by reason of the manufacture, use or sale of the Product.

9. INDEMNIFICATION. Seller agrees to indemnify and hold Buyer, its employees, directors, representatives, its affiliates and subsidiaries, and agents from and against any and all claims, libels, suits, judgments, fines, penalties, actions and proceedings, damages (including special, consequential, punitive, and exemplary damages), including costs and expenses including reasonable fees for attorneys, experts and consultants, settlement costs, incurred in connection with any claims (including lawsuits, administrative claims, regulatory actions, and other proceedings to recover for personal injury or death, property damage or economic losses) that are related in any way to or arise in any way from the Product, Seller's representations, Seller's performance or failure to perform obligations under any PO, including claims based on Seller's breach or alleged breach of warranty or caused or alleged to have been caused by the consumption or use of such person or persons of any Product as shipped or delivered by Seller to Buyer.

Seller's obligation to indemnify will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability, or otherwise, except to the extent any such liability arises solely out of the gross negligence or willful misconduct of Buyer, its employees or authorized representatives.

10. TERMINATION BY THE BUYER. Buyer reserves the right to terminate all or any part of each PO without liability of Buyer to the Seller, in the event:

- (a) Seller repudiates, breaches, or threatens to breach any of the terms of the PO including without limitation, Seller's warranties;
- (b) Seller fails to perform or deliver Product as specified by Buyer;
- (c) Seller fails to provide Buyer with adequate and reasonable assurances of Seller's ability to perform timely any of Seller's obligations under any PO, including without limitation, delivery of Product;
- (d) Buyer terminates for breach of any other PO issued by Buyer to Seller in accordance with the terms of such PO;
- (e) Seller attempts an assignment or transfer of any interest without prior written approval of Buyer;
- (f) Seller fails to remedy the breach or violation listed above at 10(a)-(e) within thirty (30) days after receipt of written notice from Buyer; or
- (g) Seller makes an assignment for the benefit of its creditors, commits any act of bankruptcy, has a receiver appointed, or otherwise admits of its inability to pay its debts as they mature, and Seller fails to remedy the breach or violation of this Section 10(g) within sixty (60) days after receipt of written notice from Buyer.

11. ASSIGNMENT. The Seller shall not assign, transfer or otherwise dispose of any rights or obligations to any third party without the prior written consent of Buyer. All rights and obligations shall inure to the benefit of and be binding on any permitted assignee or successor of each Party.

12. COMPLIANCE WITH LAWS. Seller agrees to comply with all federal, state, and local laws, executive orders, rules and regulations that may be applicable to Seller's performance of its obligations to under each PO. If requested, Seller shall so certify when and in such form as Buyer or Buyer's customers or suppliers may require, including among other things, a certification that the items were produced in compliance with all applicable requirements of the Fair Labor Standards Act.

13. PAYMENT. Payment terms are stated on the face of the PO.

14. CONFIDENTIALITY. Any specifications, samples, designs, formulations, trade secrets, patents, financial data, or other information that Buyer identifies as or otherwise deems confidential ("**Buyers Confidential Information**") and discloses to the Seller in connection with the PO shall remain the exclusive property of the Buyer and shall, along with any information derived from the same, be kept confidential by the Seller and its employees and

agents and shall not, without Buyer's prior written consent, be disclosed to any third party or used except for purposes of the PO. Notwithstanding the foregoing, such information shall not be deemed confidential to the extent that the Seller can demonstrate by written record that it was previously known by the Seller, became generally available to the public through no fault of the Seller, was disclosed to the Seller by a third party without breach of any confidentiality obligation, or is specifically required to be disclosed by law or legal process.

The Buyer and Seller agree that the covenant of confidentiality and nondisclosure set forth above shall survive termination of this Agreement and shall remain in effect for so long as the Buyer's Confidential Information remains confidential. The Parties agree that this covenant shall supersede any contrary duration term set forth in any previously executed confidentiality agreement.

15. **REMEDIES.** In the event Seller fails to perform in accordance with the PO ("**Breach**"), without limiting the generality of the foregoing, should any Product fail to conform to the warranties, or should Seller or any Product provided by Seller fail to meet any of the conditions or specifications set forth, and without prejudice to any other rights or remedies it may have under applicable law or in equity, Buyer shall have the right, after any applicable cure period, to recover from the Seller any and all mitigated losses and reasonable additional expenses incurred by Buyer arising from Seller's Breach, and at Buyer's option:

- (a) require the Seller promptly cure such Breach with conforming delivery at no additional charge or expense to Buyer; and/or
- (b) reject any non-conforming Product, cancel any and all outstanding deliveries, cover by purchasing replacement Product from one or more other suppliers.

16. **INSURANCE.** The Seller agrees to maintain insurance covering the Product and its performance under the PO in compliance with applicable legal requirements and including but not limited to comprehensive commercial general liability (including products liability completed operations and third party liability coverage) for not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate with an Umbrella Liability policy which incorporates excess Product Liability Insurance of not less than \$25,000,000 per occurrence and \$25,000,000 Annual Aggregate and product recall insurance of \$100,000 per occurrence and \$200,000 Annual Aggregate, with an insurance company that has an A.M. Best rating of not less than A-X. Such insurance shall name the Buyer an Additional Insured. Seller shall furnish Buyer annually with a Certificate evidencing such insurance.

17. **FORCE MAJURE.** Seller's failure to deliver Product as provided in the PO by reason of any of the following and such event shall not constitute an event of default or breach of any Terms: strikes, picket lines, boycott efforts, fires, floods, freeze, accidents, war (whether or not declared), revolution, riots, insurrections, acts of God, acts of government (including without limitation any agency or department of the United States of America or any other country), acts of the public enemy, scarcity or rationing of gasoline or other fuel or vital products, inability to obtain materials or labor, or other causes which are reasonably beyond the control of the defaulting Party. Seller shall promptly notify the Buyer of any such delay and its cause. Provided that if any such cause that continues for more than thirty (30) days the Buyer may at its own option cancel this PO and all its obligations to Seller.

18. **GOVERNING LAW.** Any dispute, claim or controversy arising out of, or between the Parties during the execution of or interpretation of this Agreement shall be resolved by arbitration in accordance with the American Arbitration Association Dispute Resolution Procedures in effect at the time of arbitration. The number of arbitrators shall be one and the place of arbitration shall be Middlesex County, New Jersey. All proceedings will be governed by the laws the State of New Jersey, USA.

19. **INDEPENDENT CONTRACTOR.** Seller is an independent contractor and not an employee or agent of Buyer. Buyer disclaims any right to control the manner of performance by Seller and Buyer will not control the manner of performance by Seller. Seller has no authority to direct or control the performance of any employee of Buyer. As applicable, Seller's role will be that of an adviser and not of master to any Buyer employee. Seller does not have any Buyer title and Seller is not eligible for Buyer benefits or employee plans.

20. **MISCELLANEOUS.**

- (a) Failure of Buyer to insist upon performance of any provisions of these Terms or to exercise any rights hereunder shall not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such right.
- (b) Any enforceable term, provision, undertaking or restriction contained in these Terms are held by a court of competent jurisdiction to be invalid, void or unenforceable (in whole or in part), the

remainder of the terms, provisions, undertakings and restrictions will remain in full force and effect and will in no way be affected, impaired or invalidated.

- (c) Any notice or request required or permitted to be given in connection with these Terms shall be sent by mail, prepaid, return receipt requested, by fax, with receipt confirmed, or by express delivery service to the address set forth on the PO or to any other business address furnished in writing by the intended recipient to the sender. The date of notice shall be deemed to be the date on which such notice has been sent by fax, received by mail, or by express delivery service.
- (d) Section headings are for convenience only and are not to be construed as part of this Agreement.