



## SUPPLIER'S STANDARD TERMS AND CONDITIONS

EFFECTIVE DATE: April 7, 2014

1. **THE AGREEMENT.** The Agreement between Agilex Flavors & Fragrances, Inc. ("**Supplier**") and Buyer with respect to the sale of Product (the "**Product**") shall consist only of these terms or any terms mutually agreed to in writing hereafter by Supplier and Buyer. Supplier objects to and shall not otherwise be bound by any additional or different terms, whether printed or otherwise, in Buyer's Purchase Order (the "**PO**") or in any other communication from Buyer to Supplier. The Agreement shall be for the benefit of Supplier and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Supplier, to the extent they differ from, modify, add to or detract from the Agreement, shall not be binding on Supplier. There are no agreements, promises or understandings, either verbal or written that are not fully expressed herein. No statements, recommendations, or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions. The Buyer and Supplier may each be referred to herein as a "**Party**" and together as the "**Parties**."

2. **MODIFICATION OR TERMINATION.** The Agreement may be modified or terminated only upon Supplier's written consent. If all or part of the Agreement is terminated, Buyer, in the absence of contrary written agreement with Supplier, shall pay termination charges based upon actual expenses and costs incurred in the production of the Product to the date such termination is accepted by Supplier plus a reasonable profit, except that any Product completed on or prior to Supplier's acceptance of such termination shall be accepted and paid for in full by Buyer.

3. **TERMS OF PAYMENT.** Payment terms are those set forth on a PO that is expressly accepted by Supplier. Any balances unpaid after sixty (60) days will be charged interest of 1.5% per month from the date such payment was due. If a shipment is delayed by Supplier at request of Buyer, payment therefore shall become due on the date when Supplier is prepared to make shipment thereof. Prices are F.O.B. or EXW Supplier's shipping point unless otherwise agreed upon specified on the PO or in a writing related to a particular purchase of Product. Supplier is entitled to perform periodic credit reviews of Buyer. Whenever, in the sole judgment of Supplier, the financial condition of the Buyer does not justify the continuation of production or shipment on the specified terms of payment, the Supplier may require full or partial payment in advance.

4. **DELIVERY.** Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by Supplier of all information to be furnished by Buyer and the absence of delays, direct or indirect, resulting from or contributed to by circumstances beyond Supplier's reasonable control. Supplier shall in good faith endeavor to meet estimated delivery dates. Supplier reserves the right to withhold delivery of the Product if, for any reason, Buyer fails to pay to Supplier any portion of the purchase price for the Product(s) in the amount(s) and at the time(s) specified in the Agreement.

Supplier shall not be responsible for claims for error in quantity, weight or number not made within ten (10) days after Buyer's receipt of Product. Under no circumstances shall Supplier be liable for any damages or losses arising out of or resulting from any delay of any kind whatsoever, unless there is specific written agreement between the Supplier and the Buyer to the contrary.

5. **RISK OF LOSS.** Unless other terms are expressly agreed to by Supplier upon acceptance of Buyer's PO, Buyer assumes all risk of loss of Product upon delivery of Product by Supplier to carrier.

6. **LIMITED WARRANTY.** The Supplier warrants from the date of delivery or the appropriate period if contrary to applicable law, that all Product conforms to Supplier's specifications for that Product that are in effect on the date of shipment or conforms with the description contained in an expressly accepted Buyer's PO, the quality and agreed to specifications stated or incorporated as a schedule, by reference or otherwise.

**THIS WARRANTY IS THE EXCLUSIVE WARRANTY. SUPPLIER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, OR FITNESS FOR A PARTICULAR PURPOSE.**

If Buyer believes any Product is non-conforming or was shipped to Buyer in error, then Buyer shall give Supplier prompt written notice of the alleged defect or error. Supplier's sole obligation under the foregoing warranty will be limited to either, at Supplier's option, (i) replacing non-conforming Product or (ii) refunding the purchase price for such Product paid by Buyer. Further, at Supplier's election, Buyer shall either (x) return the Product to Supplier (at Supplier's expense), (y) make the Product available for inspection by Supplier or its agents at Buyer's place of

business or (z) destroy the Product (before or after the date of any inspection). Buyer's exclusive remedy for breach of the warranty will be enforcement of such obligation of Supplier. In no event shall Supplier's liability for non-conforming Product exceed the price of the Product. Supplier shall not be responsible for any defect in Product that is created after the Product is shipped from Supplier, including Product subjected to misuse, neglect, accident or improper handling or storage or which has been altered or misbranded by anyone other than Supplier or its authorized representative or modifications to or adaptations of the Product made by Buyer or others. Supplier shall not be liable on any claim for non-conforming Product which is not made within thirty (30) days after such Product has been received by Buyer.

7. **SUPPLIER'S INDEMNIFICATION.** Supplier agrees to indemnify and hold Buyer, its employees, directors, its affiliates and subsidiaries, from and against any and all claims, or liabilities arising out of Supplier's material breach of this Agreement or the Product. Supplier's obligation to indemnify the Buyer for the Product is limited to the state and condition of the Product when delivered and accepted by the Buyer. In addition, Supplier's obligation to indemnify the Buyer as to the Product will apply, except to the extent any such liability arises out of or is related to the negligence or willful misconduct of Buyer, its employees or authorized representative. Supplier shall not be liable for any claim for damages or alleged claims for damages that arise from changes or modifications made to the Product by Buyer or Buyer's representatives. In no event shall Supplier be liable for loss of profits or business, consequential, special, and indirect or punitive damages, nor for claims resulting directly or indirectly from circumstances beyond Supplier's reasonable control.

8. **BUYER'S INDEMNIFICATION.** Buyer shall indemnify, defend and hold Supplier and its respective officers, directors, employees, representatives and agents harmless from and against all damages arising out of, in connection with or resulting from any claim or allegations with respect to the (i) written and graphic content of any product labels, inserts or slickers, promotional materials, advertisements, and or websites, except to the extent caused by or attributable to the acts of Supplier; (ii) sales of Product sold by Buyer after their guaranteed freshness date; (iii) Buyer's failure to warehouse and distribute Product as per the shipping and storage conditions specified in writing by Supplier for the Product; (iv) damaging or tampering with the Product by anyone other than Supplier, its employees, agents, contractors, licensees, or invitees; (v) any material breach of this Agreement by Buyer; (vi) the negligence or willful misconduct of Buyer or its agents or employees; and (vii) any claim of infringement by the Product or the trademarks or any intellectual property rights or trade secrets of a third party other than those arising from the portions of the Product created solely by Supplier.

9. **INSURANCE.** The Supplier agrees to maintain insurance covering the Product and its performance under the Agreement in compliance with applicable legal requirements and including but not limited to commercial general liability (including products liability, completed operations and third party liability coverage) at no less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate, with a reputable insurance company.

10. **FORCE MAJURE.** Supplier's failure to deliver Product 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. Supplier shall promptly notify the Buyer of any such delay and its cause.

11. **CONFIDENTIALITY.** Any specifications, samples, designs, formulations, trade secrets, patents, financial data, or other information that Buyer or Seller (the "**Disclosing Party**") identifies as or otherwise deems confidential (the "**Confidential Information**") and discloses to the other Party (the "**Receiving Party**") in connection with this Agreement or any PO shall remain the exclusive property of the Disclosing Party and shall, along with any information derived from the same, be kept confidential by the Receiving Party and its employees and agents and shall not, without the Disclosing Party's prior written consent, be disclosed to any third party or used except for purposes of the PO. The Receiving Party agrees not to chemically analyze or reverse engineer any sample or to assist and/or allow any third party to do so without the express written consent of the Disclosing Party.

Notwithstanding the foregoing, such information shall not be deemed confidential to the extent that the Receiving Party can demonstrate by written record that it was previously known by the Receiving Party, became generally available to the public through no fault of the Receiving Party, was disclosed to the Receiving Party 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 Confidential Information remains



confidential. The Parties agree that this covenant shall supersede any contrary duration term set forth in any previously executed Confidentiality Disclosure Agreement.

12. 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.

13. MISCELLANEOUS.

- (a) Failure of Supplier 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.