

## Preliminaries – Definitions

The capitalised terms used herein have the meaning given to them in this Article.

<b>Buyer:</b>	Any natural person or legal entity working in a professional capacity in the perfume, flavourings, cosmetics and/or pharmaceutical industry, responsible for the production and distribution of semi-finished and/or finished products and ordering Products from the Seller.
<b>Affiliates:</b>	Any entity with legal status or otherwise (i) managed or controlled (as per article L.233-3-1 of the French Commercial Code) by one of the Parties or (ii) managing or having Control of a Party.
<b>ToS:</b>	These terms and conditions of sale.
<b>Property rights:</b>	All technical and/or scientific knowledge and information (including distinctive signs, brand names, patents, logos, know-how, inventions, manufacturing secrets, trade secrets, data, databases, software, files, plans, diagrams, drawings, formulae and/or other types of information, in any form and/or format, patentable or non-patentable) as well as all associated intellectual property rights, whether said Property Rights pre-date or post-date Product orders placed with the Seller.
<b>Information:</b>	Any information, particularly commercial, industrial, financial, technical and/or scientific information, disclosed by the Seller to the Buyer in the context of or with a view to the supply of a Product, irrespective of the medium or method of disclosure (notably oral or written), including without limitation samples, formulae, technical specifications, methods and know-how.
<b>Party(ies):</b>	The Buyer and the Seller collectively and either one of them individually.
<b>Products</b>	All the products and services proposed and/or sold by the Seller to the Buyer.
<b>Third party</b>	Any natural person or legal entity other than a Party.
<b>Seller:</b>	Bontoux SAS (as identified in the footer), in its capacity as producer and distributor of aromatic ingredients and/or herbal products, intended for perfume, flavouring, cosmetics and pharmaceutical manufacturers, both internationally and nationally.

## Article 1 – Sole basis of commercial negotiation

These ToS, with any special terms that might be expressly agreed between the Parties, form the sole basis of commercial negotiation as per article L.441-6 of the French Commercial Code and therefore represent the only contractual documents freely agreed by each of the Parties with a view to the supply of Products by the Seller to the Buyer.

These ToS are deemed to have been sent by the Seller to the Buyer when acknowledging receipt of the Order initially sent by the Buyer (called in practice "*Order Acknowledgement*"). The Buyer confirms having examined these terms when entering into the contract (hereafter the "**Order Confirmation**"), since all such Order Confirmations sent by the Seller shall include them.

The Buyer is deemed to accept them unconditionally and unreservedly according to the terms of article 2 below, on the signature and delivery of the Order Confirmation by the Seller.

## Article 2 – Object and scope of ToS

The purpose of these ToS is to set out the terms and conditions under which the Seller supplies the Products to the Buyer and/or one of its Affiliates. These ToS prevail over any other terms, unless expressly agreed otherwise by the Seller and formally mentioned in the Order Confirmation.

The Buyer is deemed to fully accept the terms and conditions of these ToS, failing a special agreement freely consented by the seller in the Order Confirmation. The Buyer therefore waives the right to rely on any contradictory document, including without limitation, its own purchasing and/or business terms, regardless of the format of such terms.

## Article 3 – Placing orders

The Buyer sends a signed purchase order (manual or digital signature) to the Seller, who confirms receipt.

The purchase order will include the following details:

- (i) The references of the Products ordered from the Seller; and
- (ii) The quantity per reference of Products ordered from the Seller;

(hereafter the "**Order**").

The Buyer is firmly bound by the Order placed via the purchase order, thereby confirming its unconditional and express acceptance of these ToS. The Order is then final and can no longer be cancelled and/or amended.

The Seller reserves the right not to follow up an Order, particularly if the Products are unavailable, if the Orders are made for quantities of Products that are too small or for sums that are too low or if the Order is made by a Buyer whose creditworthiness is insufficient or compromised.

Unless expressly agreed otherwise by the Seller, the minimum amount of an Order is two thousand euros (€2,000) excluding tax, of which one thousand euros (€1,000) excluding tax per Product reference (or equivalent amounts expressed in a foreign currency according to the parity applicable on the date the Order is accepted by the Seller).

By submitting an Order to the Seller, the Buyer represents to the Seller that it has adequate financial guarantees and that it will pay the sums due on their due date, noting that any present or future financial difficulty must have been brought to the attention of the Seller.

The Seller therefore reserves the right, before accepting any Order, as well as during the fulfilment of a delivery, to ask the Buyer to provide any accounting or financial documents and information (including income statements, even estimated) through which it can assess its solvency, to which the Buyer expressly consents.

If the Buyer refuses to pay on cash terms, without offering adequate guarantees, the Seller will be free to refuse to honour the Order(s) placed and deliver the Products concerned. In this case, the Buyer will not be able to claim there has been an unjustified refusal of sale and/or claim any compensation on any basis whatsoever.

The benefit of the Order Confirmation is personal to the Buyer and cannot be assigned to or benefit a Third Party, even an Affiliate, without the Seller's prior written agreement.

## **Article 4 – Delivery – Transfer of title to Products – Transfer of risks**

### **4.1 Delivery and terms of delivery**

Deliveries are only made based on availability and in the order of arrival of Orders. The Seller is duly authorised to make full or part deliveries.

The estimated delivery date is specified by the Seller in the Order Confirmation. Delivery times are only given as a guide with no guarantee and are based on the procurement and shipping capabilities of the Seller and/or its subcontractors and/or service providers. Late deliveries cannot give rise to any damages or retention or the cancellation or amendment of current Orders.

The Seller's liability cannot be incurred due to late delivery or non-delivery. The Seller is released from its obligation to fulfil Orders on the occurrence of a force majeure event, as per the terms set out in article 10 below.

Unless the Seller expressly agrees on a different INCOTERM (Codification of ICC version 2010) in the Order Confirmation and this is accepted in writing by the Seller, Products are delivered under the INCOTERM EXW Saint-Auban sur l'Ouvèze (Version 2010 of the Incoterms of the ICC).

### **4.2 Retention of title clause**

Irrespective of the effective delivery date, title to the Products is transferred to the Buyer on the date of the payment in full of the price mentioned in the Order Confirmation (in principal, interest, penalties, taxes and incidental amounts).

Failing payment in full of said price or if the Buyer is the subject of court-ordered administration or liquidation proceedings, prior to payment in full, the Seller reserves the right to demand the return of the Products, immediately, by registered letter with confirmation of receipt under the conditions set out in articles 1599 and 2279 of the French Civil Code. The Seller and/or its carrier are duly authorised to enter the premises in which the Products are found, during the Buyer's business hours, in order to remove such Products, without any writ of execution being required. The Buyer expressly accepts such action when accepting these ToS.

Consequently, (1) if Products are taken back, down payments paid by the Buyer will be retained by the Seller, (2) the Buyer shall insure the Products delivered for their replacement as new value against risks of loss, damage, destruction or theft and keep the Seller informed of all measures taken by third parties concerning the Products, particularly in the event of attachment, and (3) in the event of the resale and/or processing of the Products delivered, the Seller undertakes, at the Buyer's request, to assign all or part of the claims established against buyers for the sums due. These provisions do not preclude the application of the provisions of article 4.3 below relating to the transfer of risks attached to the Products.

In the event of the attachment of Products and/or any other action by a Third Party, the Seller reserves the right to claim full title to the Products with the Third Party concerned and/or any Third Party to which the Buyer might have had them delivered. The Seller will be required to ensure that the identification of the Products and their recipient is always possible. Finally, in the event of the recovery of Products, the Seller will not be required to return any down payments it might have received for the sale price for these Products when such down payments can be offset with any other sum it might be owed by the Buyer.

### **4.3 Transfer of risks**

By accepting these ToS, the Buyer declares that, from the delivery of the Products by the Seller to the first carrier on exiting the Seller's factory or warehouses, or to any shipper, it assumes all risks of loss

or damage of the Products subject to a retention of title, as well as any damages they might cause.

Without prejudice to the retention of title clause stipulated above, the Products, whether firm sales or on consignment, are shipped at the Buyer's exclusive risk, regardless of the terms of delivery that might have been agreed between the Parties.

The Seller therefore declines all liability for alterations, losses or damage sustained when shipping the Products. Delivery is made either by the Products being directly handed over to the Buyer in the Seller's premises, or by the delivery of the Products to a carrier in the Seller's premises.

If the Buyer does not take delivery within the time agreed or the delivery of the Products is made impossible due to the Buyer (for example, in the event of inaccessible premises), and without the need for prior notice, the Buyer will bear all the costs and risks of storing the Products. The payment dates initially stipulated cannot however be delayed and the Buyer will remain fully bound by its obligations.

## **5. Receipt of Products – claims – warranties**

### **5.1 Receipt of Products and claims**

The receipt of products is confirmed by the signature of the delivery note by the Buyer. The Buyer is required to inspect the Products delivered on their arrival and, where applicable, report any damages, non-compliant Products or missing Products, in the manner and within the timeframe stipulated in article L.133-3 of the French Commercial Code, noting that said provisions are also applicable to both domestic and international transfers of Products, as an exception to article L.133-3 *in fine* of the French Commercial Code.

The Buyer is required to notify the carrier making the delivery and the Seller, by registered letter, of any damage or loss recorded on arrival, within three (3) days after receipt of the Products, in accordance with article L. 133-3 of the French Commercial Code, and shall make any claims against the carrier.

Claims relating to a non-compliance or visible defects, whether this relates to a domestic sale or export sale, shall be made and brought to the attention of the Seller in writing within eight (8) calendar days after the delivery of the Products and, for defective Products which, despite the Buyer's careful inspection, could not be identified as such at the time of the delivery, within thirty (30) days after the delivery date. These provisions do not apply if the Buyer is a subsidiary of the Seller.

If such issues are not reported within the set time, the Seller cannot be held liable; no action under any warranty whatsoever, particularly for non-compliance or defects, will be admissible and the Buyer, in its capacity as a professional, will be deemed to have unconditionally accepted all the Products delivered.

Any claim must be duly justified by the Buyer which must allow the full examination of the Products by the Seller and submit to it any information necessary to verify such a claim. No claim is admissible if the Products are destroyed or damaged by the Buyer, or once the Products are processed, transferred, resold or converted by a Third Party.

Failing any special instructions by the Buyer, the packaging, over-packaging and packing of the Products are prepared by the Seller according to the nature of the Product and its storage, noting that the Seller does not grant the Buyer any warranty in relation to said packaging, over-packing and packing, which the Buyer expressly declares it accepts.

## 5.2 Liability and warranties associated with the Products

### 5.2.1 Liability

As a professional, the Buyer has a detailed knowledge of and expertise in the Products it purchases and their intended use. Consequently, the Buyer expressly recognises that the Seller cannot be held liable for the Buyer's intended use of the Products, irrespective of the information it might have delivered to the Seller; the Seller cannot predict all the conditions and uses for which the Buyer might have purchased the Products.

In any event, the Seller's liability is expressly limited to the sale price of the Products delivered and the quantity of the products sold, irrespective of the grounds of the warranty implemented (and as listed below). Compensation can only be made for direct and certain losses sustained by the Buyer and is limited to the sale price of the Products. The Seller cannot therefore be held liable for any indirect damage, particularly operating losses, that might be sustained by a Third Party and/or the Buyer.

The Seller reserves the right, at its sole discretion, to replace or reimburse Products it has acknowledged to be non-compliant, damaged or defective.

### 5.2.2 Warranties

The Seller warrants that the Products delivered (i) shall comply with the technical features detailed by the Seller in its Order Confirmation, (ii) shall satisfy the French regulations and standards applicable at the time of the Order Confirmation (it being stipulated however that the Seller is not required to inform the Buyer of any change in the regulations or standards that might occur after the Order Confirmation), and (iii) shall be free from any defects making them unfit for the use for which they are intended.

#### 5.2.2.1 Non-compliance

An action for non-compliance (as per article 1603 of the French Civil Code) must be brought by the Buyer against the Seller within thirty (30) calendar days after the delivery of the Products, provided that the Buyer has made the required claims in advance, as per the stipulations of article 5.1 above. If a claim is not made in the times required as mentioned above, no action for non-compliance will be admissible, regardless of whether it has been brought within the thirty (30)-day period mentioned above. These provisions do not apply if the Buyer is a subsidiary of the Seller.

In any event, the Buyer will endeavour to allow the Seller to honour the delivery of the Products in compliance with the requirements of the Order Confirmation, within thirty (30) calendar days after the initial delivery.

In the event of a delivery recognised as non-compliant by the Parties, it is agreed that (i) the Seller shall deliver Products perfectly compliant with the Order Confirmation (unless the Seller opts for the reimbursement of the disputed Order) and (ii) the Buyer shall immediately return the Products recognised as non-compliant in their original packaging/packing.

#### 5.2.2.2 Warranty for latent defects

In accordance with the provisions of article 1625 of the French Civil Code, the Seller warrants that the Products are free from any defect or fault which might not be detected by the Buyer (despite reasonable vigilance and careful inspections in its capacity as a professional buyer) and which makes the Products unfit for the use for which they are intended, such that the Buyer would not have purchased them if it had been aware of this defect or fault.

The warranty for any latent defects or faults is limited to a period of six (6) months from the date of delivery of the Products concerned; said Products being deemed, irrefutably, to have been used by the Buyer within three (3) months after delivery. Such provisions do not

apply if the Buyer is a subsidiary of the Seller.

The Buyer expressly acknowledges that the Seller does not have sufficient knowledge of the use for which the Buyer intends the Product, so the Seller cannot be held liable, under this warranty, if the Product proves to be inappropriate or unfit for the purpose the Buyer intends for it, regardless of the information that might have been provided by the Buyer to the Seller.

#### 5.2.2.3 Exclusions of warranties

The above-mentioned warranties only apply for the Products legitimately purchased by the Buyer from the Seller and are expressly excluded in any one of the following situations:

- (i) the Buyer has not previously notified the Seller of a claim relating to the Products concerned according to the stipulations of article 5.1 above;
- (ii) the disputed Products have been assigned, resold, processed, modified or repackaged by the Buyer or a Third Party;
- (iii) the Products have been used in a way that is not fit for the use for which they are legitimately intended or, where applicable, were used under inappropriate conditions of use or performance;
- (iv) the Products have not been stored, kept or handled under satisfactory conditions, despite the Seller's recommendations.

## 6. Price – Terms of payment

### 6.1 Price

Unless agreed otherwise by the Parties, the price indicated on the Order Confirmation is deemed to be the price freely agreed between the Seller and the Buyer.

Prices related to the purchase of Products are determined on the date of the Order Confirmation issued by the Seller. These prices are always quoted excluding tax, customs duties, delivery costs and insurance, which remain payable by the Buyer, in accordance with French legislation and the legislation of the destination country of the Products and/or transit countries.

Prices are established in Euros on an ex works basis (EXW Saint-Auban-sur-l'Ouvèze), unless previously agreed with the Buyer.

In the case of phased deliveries relating to one single order, or the same price quoted by the Seller subject to a specific validity period, the Seller reserves the right to unilaterally change the prices previously agreed, at any time, in the event of a substantial increase in the price of raw materials, or the cost of labour or significant variations in exchange or currency rates.

### 6.2 Terms of payment of price

Invoices are payable without discount, to the Seller's invoicing address, by bank transfer and in euros (€). The price due must be paid within a period of thirty (30) days from the issue date of the invoice, unless stipulated otherwise on the invoice or accepted in writing by the Seller. Payment is defined as the final receipt of the sums due and not the remittance of the means of payment or the initiation of a bank transfer. No payments can be made by offsetting.

Default penalties will be payable automatically in the event of late payment or non-payment on the due date and will be automatically debited to the Buyer's account. Default penalties are calculated using the interest rate applied by the European Central Bank to its most recent financing operation, plus ten percentage points.

Any claim made by the Buyer under the stipulations of article 5.1 mentioned above cannot under any circumstances have the effect of deferring or suspending payments. In the event of late payment, the Seller can suspend all current Orders until the Buyer has paid all of its outstanding sums in full, without prejudice to any other means of action.

Any late payment results automatically and as of right, by way of a penalty, in the application of the above-mentioned default penalties from the due date on each invoice, in accordance with article L.441-6 para 12 of the French Commercial Code, as well as a fixed charge of €40 for collection costs. In addition to this fixed charge of €40, the Buyer shall pay all costs incurred by the contentious collection of the sums due by the Buyer, on the basis of receipts.

## **7. Purpose and storage of Products**

The Buyer recognises that the Products are exclusively intended to be integrated into or combined with other products and are part of the production chain of the finished product created by the Buyer. The Buyer is not therefore authorised to resell the Products in an identical or quasi-identical condition, or repackage them to distribute them to Third Parties, without the Seller's prior written consent. These provisions do not apply if the Buyer is a subsidiary of the Seller.

The Buyer is required to ensure that the finished products it creates and/or sells are fully compliant with the applicable legislation and regulations in the countries in which they are sold.

As indicated above, the Seller cannot be held liable, individually or jointly and severally, if the Products are not fit for the use for which the Buyer intended them, regardless of any information that might have been given to the Seller in advance.

In its capacity as a professional, the Buyer undertakes to handle, store and keep the Products according to their specific nature and features, taking into account any recommendations of the Seller.

## **8. Protection of Property Rights**

Any Property Right associated with the Products, and/or disclosed by the Seller to the Buyer for the purposes of selling Products to the Buyer, rightfully remains the Seller's exclusive property.

The sale of Products as well as the delivery of any samples of the Products does not entail any assignment or granting of said Property Rights to the Buyer or any Third Party. In selling the products, the Seller limits itself to granting the Buyer a right to use the Products solely for the purposes of making and distributing its own finished products.

Consequently, the Buyer declares it waives claims to any rights in respect of the protection and/or property of the Property Rights and undertakes to ensure that any Third Party, particularly its own customers, respect this same obligation.

The Buyer undertakes not to use any Property Rights in a way that is likely to infringe such rights and undertakes not to disclose them to any Third Party.

## **9. Confidentiality**

All Information and Property Rights disclosed by the Seller to the Buyer, before or after the Order Confirmation, must be considered strictly confidential by the Buyer. The Buyer therefore undertakes to protect such confidentiality and not disclose and/or share such Information and Property Rights with a Third Party.

Information and Property Rights disclosed by the Seller to the Buyer must be used in good faith by the Buyer and for the purposes presented by the Buyer to the Seller.

This confidentiality obligation assumed by the Buyer will remain in effect even after the termination and/or end of commercial relations

between the Buyer and the Seller. The Seller undertakes to return and/or delete any Information and/or Property Rights it might have immediately at the Buyer's request.

The Buyer undertakes that it shall not engage, directly or through a Third Party, in the analysis of any Property Right and/or Information, including specifically any samples provided and generally the Products, in order to determine their composition, chemical structure and/or production methods. Samples are only provided for the purposes of evaluation and testing exclusively and with a view to the sale of the Products and cannot be used for commercial purposes.

## **10. Force majeure**

The Seller cannot be held liable for non-fulfilment of any of its obligations in the event of the occurrence of a force majeure event, which is defined as any event beyond its control, particularly in the case of fire, strike, lockout, machine failure, shortage of raw materials, failure of a subcontractor, supplier or service provider or inability to pass on a substantial increase in the price of raw materials or labour.

The occurrence of such a force majeure event has the effect of suspending the Seller's obligations for the duration of the event. If the force majeure situation lasts for more than one (1) month, each Party can, subject to prior notification, terminate the part of the Order not fulfilled.

## **11. Unforeseeable circumstances**

If an event occurs that was unforeseeable at the time of the confirmation of the Order, is beyond the control of the Parties and compromises the equilibrium of the business relationship to the point that it prejudices the performance of one of the Party's obligations, the Parties agree to negotiate the amendment of the contract in good faith, in order to restore the initially agreed economic equilibrium between them. This includes the following events in particular: substantial increase in the price of raw materials, modification of customs dues or taxes, modification of exchange rates or changes in legislation. Unless expressly agreed by the Parties, they waive the benefit of the provisions of article 1195 *in fine* of the French Civil Code, as amended by the order of 10 February 2016, offering the courts the option to revise the contract or terminate it in the event of the Parties failing to reach an agreement.

## **12. Assignment or transfer**

The Buyer cannot assign or transfer all or some of its rights or obligations under its commercial relationship to a Third Party without the Seller's prior, written consent.

## **13. Miscellaneous**

### **13.1 Language**

These ToS are drafted in French and this French version prevails over any other version of these ToS that might be formalised in another language.

### **13.2 Notices and address for service**

For each of the Parties, the applicable address for service is the Party's registered office and any notice to be delivered under the terms hereof must be sent to said address which is as shown in the Order Confirmation for the Seller.

Any notice or communication, and in particular any claim, made under the terms of this agreement must be sent by one Party to the other Party by registered letter with confirmation of receipt and the date used shall be the date of receipt or first presentation.

Any change in the address for service used by one of the Parties must be notified to the other Party.

### 13.3 Governing law

These ToS are governed and interpreted in accordance with French law, as is any matter and any document or sale associated with and/or resulting from them, to the exclusion of any other law.

### 13.4 Competent court

All disputes to which these ToS might give rise, relating to their validity and their interpretation, performance or termination, as well as all disputes associated with the commercial relationship between the Parties will be submitted solely to the competent court in the jurisdiction of the Grenoble court of appeal, by express agreement.

## 14. Waiver

The failure by the Seller to enforce any of the clauses of these ToS at any time will not be deemed a waiver of such clauses at a subsequent time.

\* \* \* \*  
\* \*  
\*