

# GENERAL TERMS OF SALE AND DELIVERY

## SYMRISE (Pty) Ltd.

### 1 Scope

- (1) These terms of sale and delivery shall exclusively apply to Symrise deliveries unless different terms and conditions have been expressly approved by Symrise in writing. These terms of sale and delivery shall also apply in case Symrise delivers the goods without any reservations and/or accepts the order without any reservation, in spite of being aware of any purchaser's conditions that are in conflict with or deviate from these terms of sale and delivery.
- (2) These terms of sale and delivery shall also apply to any future business transactions with the purchaser.
- (3) Any agreements or side letters deviating from these terms shall not be effective unless approved in writing by Symrise. Approved deviations shall only apply to a certain individual case and shall have no effect in future.

### 2 Offer, Conclusion of Contract

- (1) Symrise's offers are without engagement and may be accepted within a period of ten (10) days.
- (2) An order placed by the purchaser shall be deemed to be a legally binding offer to conclude a contract.
- (3) A supply agreement shall only enter into effect upon a written confirmation of order by Symrise. The contents of such confirmation shall be decisive for the contents of the agreement. In case the purchaser does not object thereto immediately, such contents shall form the basis for the agreement.

### 3 Terms of Payment

- (1) All prices quoted are ex works and net of the statutory VAT valid at the time. Taxes, surcharges, import and export fees as well as customs fees may arise in addition thereto.
- (2) Invoices are due and payable within ten (10) days upon receipt of such invoice without any deductions. The legal provisions concerning the consequences of delays in payment shall apply.
- (3) All prices are subject to change without notice.
- (4) Symrise reserves the right, by giving to the purchaser at least 14 days' notice, before delivery to increase the price of the goods in order to reflect any increase in the cost to Symrise which is due. This increase will be due to factors including but not limited to; factors arising after conclusion of the agreement which are beyond the reasonable control of Symrise, foreign exchange fluctuations, taxes, duties, and the cost of labour, materials and other manufacturing costs.

### 4 Warranty / Damages / Liability

- (1) Symrise warrants that the goods purchased are free of any defects in materials and/or workmanship within the stated shelf-life of the goods. Such verification shall include a valid proof of purchase by the purchaser.
- (2) The purchaser has the obligation to inspect the goods received for defects immediately upon receipt. The purchaser must inform Symrise in writing of obvious defects immediately but no later than seven (7) business days upon receipt of the delivery; in case of hidden defects, within seven (7) business days upon detection. Otherwise, the delivery shall be deemed to have been accepted.
- (3) The purchaser must grant Symrise the opportunity to verify the complaint, and must above all provide Symrise with the defective goods and the associated packaging for inspection.
- (4) In case a rectification of defects or a substitute delivery is not possible or in the event of Symrise not being able to either rectify the defects or substitute delivery within a reasonable period of time, then in that event the purchase price in respect of the affected goods shall be reduced accordingly.
- (5) The following provisions set out the entire financial liability of Symrise (including any liability for the acts or omissions of its employees, agents and subcontractors) to the purchaser in respect of:
  - a) any breach of these terms and conditions, including any deliberate breach of these conditions by a party, or its employees, agents or subcontractors;
  - b) any use made or resale by the purchaser of any of the goods, or of any product incorporating any of the goods; and
  - c) any representation, statement or delictual act or omission including negligence arising under or in connection with these terms and conditions.
- (6) Nothing in these terms and conditions excludes or limits liability of Symrise:
  - a) for death or personal injury caused by Symrise's negligence; or
  - b) for any matter which it would be illegal for Symrise to exclude or attempt to exclude its liability.
  - c) for fraud or fraudulent misrepresentation.
- (7) Subject to clause 4 (5) and (6):
  - a) Symrise's total liability in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the terms and conditions shall be limited to the price of the goods; and
  - b) Symrise shall not be liable to the purchaser for loss of profits, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the terms and conditions.

### 5 Third Party Suppliers

- (1) In the event of a defective item being delivered which is not a product manufactured by Symrise but has been purchased from a third party supplier, Symrise shall endeavor to transfer to the purchaser the benefit of any warranty or guarantee given by such third party supplier.
- (2) Symrise is entitled to assign its rights concerning any claims it may have in law against any third party suppliers to the purchaser.
- (3) The purchaser shall have no claims against Symrise in respect of defective goods purchased by Symrise from third party suppliers.

### 6 Retention of Title

- (1) Risk transfers to the purchaser upon delivery of the goods to the purchaser or in the event of the purchaser for any reason failing to accept delivery of any of the goods when they are ready for delivery, or Symrise is unable to deliver the goods on time because the purchaser has not provided appropriate instructions, documents, licences or authorization.
- (2) Symrise reserves the right to retention of title to the delivered items until receipt of full payment for the respective shipment.

- (3) Until ownership of the goods has passed to the purchaser, the purchaser shall maintain the goods in a satisfactory condition and keep them insured on Symrise's behalf for the full price against all risks to the reasonable satisfaction of Symrise. The purchaser shall keep the policy of insurance and be able to produce such a copy to Symrise on demand.
- (4) The purchaser shall be entitled to resell the goods subject to retention of title in its ordinary course of business. Already now, the purchaser assigns to Symrise its claims resulting from the resale of the goods subject to retention of title. Symrise accepts such assignment. The purchaser shall be entitled to collect the assigned sum due as long as it fulfills its own payment obligations. In case of any delay in payment on the part of the purchaser, Symrise shall be entitled to withdraw such collection authorization. In such a case, the purchaser shall be obliged, upon Symrise's request, to provide Symrise with all the information necessary for collection and to allow a Symrise representative to verify the valid existence of the assigned claim based on the purchaser's accounting documents and the purchaser shall be obliged to inform its debtors of such assignment.
- (5) If the goods to which Symrise holds ownership are incorporated, mixed or blended with other goods to which the purchaser becomes the owner of the delivered item, then the purchaser hereby assigns to Symrise in advance a portion of the value of the item which is equal to and does not exceed the amount outstanding for the goods before incorporation. Symrise accepts such assignment.
- (6) The purchaser must inform Symrise immediately of any third party claims to Symrise's property and, upon agreement with Symrise, the purchaser shall be obliged to take appropriate legal steps against such claims at its own expense.
- (7) a) The purchaser's right to possession of the goods shall terminate immediately if the purchaser (i) fails to make payment as set out in clause 3 (2) above; (ii) assigns the contingent right to third parties; (iii) transfers its business to a third party; (iv) commits an act of insolvency; (v) takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors; (vi) entered into liquidation (whether voluntary or compulsory) except in circumstances of a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation; (vii) a resolution is passed or a petition presented to any court for the winding up of the purchaser or for the granting of an administration order in respect of the purchaser; (viii) any proceedings are commenced relating to the insolvency or possibly insolvency of the purchaser and/or business rescue proceedings are instituted; (ix) the purchaser suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of the obligations under the contract or any other contract between Symrise and the purchaser.
  - b) Symrise shall be entitled to recover payment of the goods notwithstanding the fact that ownership of the goods has not passed the purchaser.
  - c) The purchaser grants Symrise, its agents and employees permission to enter, at any reasonable time any premises where the goods are or may be stored in order to inspect them, or, where the purchaser's right to possession is terminated, to recover them.
  - d) Where Symrise is unable to identify whether any goods are the goods in respect of which the purchaser's right to possession is terminated, the purchaser shall be deemed to have sold those goods in the amount in which they were invoiced to the purchaser. Symrise shall then be entitled to recover the remainder of the purchase price outstanding in respect of those goods which are unidentifiable.
  - e) The purchaser shall not pledge nor in any way charge, by way of security for any indebtedness any of the goods which are the property of Symrise, if the purchaser does so, all amounts whatsoever owing by the purchaser to Symrise shall forthwith become due and payable within 30 days of Symrise becoming aware of such a pledge or security.
- (8) Upon the purchaser's request, Symrise undertakes to release any collateral securities to the extent the value of these collateral securities exceeds the value of the as of yet unfulfilled claims to be secured by such collateral securities by more than 10 percent. Symrise shall be entitled to freely select the collateral securities to be so released.

### 7 Packaging

- (1) Unless otherwise stated in the order confirmation, the packaging shall be non-returnable packaging. If the parties agreed on using returnable packaging, such packaging must be returned free of charge in good, serviceable, clean and washed condition to the Symrise plant from where it was delivered; otherwise, such packaging shall be deemed to have been purchased by the purchaser at replacement value. In case of any returns, the customer number, invoice number and the batch number of the container must be stated.

### 8 Shipment

- (1) Shipment and transport shall be effected at the purchaser's risk and expense. Upon the purchaser's request and at its expense, Symrise shall obtain transport insurance covering the usual transport risks.
- (2) Should shipment be delayed due to the purchaser's fault, the goods shall be deposited or stored in Symrise's premises at the purchaser's risk and expense.

### 9 Delivery / Delivery Date

- (1) Delivery dates shall be agreed upon by the parties. If the parties agreed on a delivery period, such period shall begin as of the date of the order confirmation.
- (2) The compliance with dates for delivery and service shall be subject to a timely receipt of any and all documents to be procured by the purchaser as well as to a timely provision of information and fulfillment of any other obligations by the purchaser. If these pre-conditions are not fulfilled in due time, the delivery periods shall be extended accordingly. However, this shall not apply if Symrise is responsible for such delay.
- (3) In addition, Symrise's compliance with agreed upon delivery periods and dates shall be subject to a delivery in due time by its own subcontractors. Should Symrise, due to any delay in delivery by one of its subcontractors, not be able to comply with agreed upon delivery periods and dates due to circumstances beyond its control and despite having observed all commercial duties of care, Symrise shall not be liable for delays in delivery. In such case, Symrise undertakes to assign to the purchaser any claims for damages it may have against such subcontractors.
- (4) In cases of Force Majeure Symrise reserves the right to either: (i) defer the date of delivery; (ii) cancel the contract; or (iii) reduce the volume of the goods ordered by the purchaser (without liability to the purchaser) if it is prevented from or delayed

in the carrying on of its business due to circumstances beyond its reasonable control.

Circumstances beyond the reasonable control of Symrise include but are not limited to: acts of God, governmental actions (both internationally and domestically), war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, pandemics, lockouts, strikes or other labour disputes (whether or not related to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials for whatever reason.

(5) If Symrise becomes aware of the fact that it will not be able to comply with an agreed upon date, it shall inform the purchaser thereof as soon as practicable.

#### **10 Reservation of the Right to Rescind the Contract**

(1) Symrise shall be entitled to rescind the contract if delivery is materially impeded or rendered impossible due to force majeure, strikes or natural disasters or any failure to deliver or to deliver in due time or correctly on the part of any subcontractor and if such event is continuing and not within Symrise's control.

#### **11 Use of the Products**

(1) To the extent the use of the products delivered by Symrise, e.g. for cosmetic or pharmaceutical products, food, semi-luxury and luxury foodstuff or animal food is subject to legal regulations, it shall be the purchaser's responsibility to verify whether the delivered products are suitable for such use and whether the final product complies with the applicable legal regulations. Any deviating provisions must be agreed upon in writing in the individual case.

(2) Symrise shall not assign any intellectual property rights to the purchaser with the sale of the products. The same shall apply if the purchaser wishes to subject Symrise to any deviating conditions by means of separate documents.

#### **12 Place of Performance, Place of Venue, Applicable Law, Miscellaneous**

(1) Unless otherwise expressly agreed upon, the seat of Symrise shall be the place of performance.

(2) Each right or remedy of Symrise under these terms and conditions is without prejudice to any other right or remedy it may have whether in terms of the agreement or not.

(3) If any provision of these terms and conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, void ability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the agreement and the remainder of such provision shall continue in full force and effect.

(4) Failure or delay by Symrise in enforcing or partially enforcing any provision of these terms and conditions shall not be construed as a waiver of any of its rights under the agreement.

(5) Any waiver by Symrise of any breach of, or any default under, any provision of these terms and conditions by the purchaser shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the agreement.

(6) This terms and conditions and any dispute or claim arising out of or in connection with it or its subject matter or formulation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of the Republic of South Africa by excluding the CISG, and the parties submit to the exclusive jurisdiction of the South African courts.

(7) Acceptance by the purchaser of these terms and conditions shall be deemed to have taken place in the event that the purchaser places an order for the goods with Symrise.

(8) Symrise reserves the right in its sole discretion to vary these terms and conditions.

(9) Nothing contained in these terms and conditions is intended to prevent the purchaser from exercising any rights it may have under the Consumer Protection Act 2008.

(10) These terms and conditions constitute the whole agreement between the parties and no representations or warranties other than those set out herein shall be binding on the parties unless varied in terms of clause (11) below.

(11) Save as otherwise expressly provided, no addition to, variation, consequential cancellation or novation of these terms and conditions and no waiver of any rights arising out of these terms and conditions or its breach or termination shall be of any force or effect unless reduced to writing and signed by or on behalf of the duly authorised representatives of the parties.

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