

Ajinomoto Health and Nutrition North America, Inc.
Regenerative Medicine Sales Terms and Conditions
05-10-22

The sale of goods and/or services (“Goods”) by Ajinomoto Health and Nutrition North America, Inc. (“Seller”) to a purchaser (“Buyer”) are subject to these terms and conditions (“Terms”) regardless of other terms or conditions in any purchase order, document or other communication of Buyer (“Order”) or Seller’s failure to object to such other terms. These Terms may only be modified in writing signed by authorized representatives of both Seller and Buyer.

These Terms constitute an offer to the customer (“Buyer”) for the sale of all goods and/ or services (“Goods”) by Ajinomoto Health and Nutrition North America, Inc. (“Seller”). Buyer’s acceptance of this offer is expressly limited to and conditional upon these Terms. Any different or additional terms proposed by Buyer, whether in Buyer’s purchase order, confirmation or otherwise, are expressly rejected by Seller, and will not become part of these Terms.

Seller shall be entitled to update and/or amend these Terms by notifying Buyer of such update or amendment or by sending Buyer the updated or amended Terms.

1. PRICE AND PAYMENT.

1.1 Prices charged for Goods shall be FOR THE VALIDITY PERIOD OF THE QUOTE TO WHICH THESE TERMS APPLY the prices in effect at the time of shipment in accordance with Seller’s then current price list. All invoices shall be due and payable within 30 days from the date of invoice and may be subject to additional payment terms as specified on product quotes. All invoices must be paid without deductions, set offs, counterclaims, or any other charges. If, in Seller’s judgment, the financial responsibility of Buyer shall at any time become impaired, then, in addition to any other remedy available to Seller, Seller may decline to make further deliveries under this Agreement, except upon receipt, before shipment, of payment in cash or satisfactory security for such payment.

1.2 Buyer shall pay interest on any invoice not paid when due from the due date to the date of payment at the rate of 1.5% per month or such lower rate as may be the maximum allowable by law. If Buyer fails to make payment when due, Seller may pursue any legal or equitable remedies, in which event Seller shall be entitled to reimbursement for all fees and costs of collection and reasonable attorney fees.

2. TAXES.

Buyer shall be responsible for the payment of all sales, use, excise, or similar taxes, export charges or other charges now or hereafter imposed by any governmental authority in connection with the production, sale, delivery, or use of the Goods (collectively “Taxes”), except for taxes on seller’s net income. The amount of Taxes shall be added to and become part of the price payable by Buyer hereunder, unless Buyer provides Seller with a valid tax exemption certificate.

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3. DELIVERY.

3.1 All shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Seller shall not be liable for failure to deliver at the specified time or on the specified date, nor shall such failure on the part of the Seller be deemed to be a breach of this Agreement.

3.2 Delivery of Goods shall be Ex Works Seller's facility, and title to and risk of loss of all Goods will pass to Buyer upon Seller making the Goods available for pickup at its facility. Buyer shall be responsible for filing and pursuing claims with carriers for loss or damage in transit. Buyer shall be responsible to obtain import license when applicable.

3.3 In the absence of shipping and packing instructions, Seller shall use its own discretion in choice of carrier and method of packing. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expenses and valuation.

4. PACKAGING.

Prices stated are based on Seller's standard packaging. Seller reserves the right to package the Goods in pallets, bulk or individual cartons. Packaging will be standard commercial package and acceptable to commercial carrier. Special customer packaging will be furnished only when specified and so stated herein, and the cost thereof shall be borne by Buyer.

5. INSPECTION AND ACCEPTANCE OF GOODS.

Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods. Unless Buyer provides Seller with written notice of any shortages of or damage to the Goods within 14 calendar days after receipt of shipment, and any defect of the Goods within 30 calendar days after receipt, such Goods shall be deemed finally inspected, checked and accepted by Buyer.

6. LIMITED WARRANTIES/REMEDY.

6.1 Seller warrants that the Goods will be free from defects in material and will comply with the results reported in the certificate of analysis ("COA") accompanying such Goods at the time of shipment by Seller and for the shelf life specified in the COA.

6.2 THE FOREGOING WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. Seller's warranty does not apply to any Goods which have been subjected to misuse, incorrect storage conditions, mishandling, misapplication, neglect, accident, or modification.

6.3 If any of the Goods are found by Seller to fail to meet the foregoing warranties, such Goods will, at Seller's option, be replaced at Seller's cost or Seller will refund the purchase price or give Buyer a reasonable allowance thereof. The foregoing is Buyer's sole and exclusive remedy for Seller's breach of the warranty. Buyer hereby agrees that this exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to replace the defective Goods in the prescribed manner or refund the purchase price or give Buyer an allowance thereof.

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6.4 Any cause of action for breach of the foregoing warranty shall be brought within one year from the date of alleged breach was discovered or should have been discovered, whichever occurs first.

7. RETURNED GOODS.

Only those Goods which fail to meet the requirements of Paragraphs 5 or 6 may be returned to Seller. Such Goods require prior written approval from Seller before their return will be accepted. Handling, inspection, restocking and invoicing charges will be assessed, if applicable, plus any outgoing packing and freight expenditures paid by Seller. All returns allowed must be shipped to Seller prepaid and must be in excellent resale condition. Goods processed to Purchaser's specifications are not returnable. Buyer shall have no other right to return Goods which have been delivered.

8. USE OF INDEPENDENT TEST LABORATORY

If Seller does not agree that any Goods failed to meet the warranties set forth in Paragraph 6 and Seller and Buyer cannot reach agreement with respect to such Good, Supplier will submit the question of whether the Goods failed to meet the warranties to an independent laboratory selected by Seller and approved by Buyer for determination. The findings of the laboratory shall be binding upon both parties, and the cost of such determination shall be paid by the party in error. Pending resolution of the dispute, there will be no payment due for the product invoice. Upon resolution of any such dispute in favor of Seller, Buyer shall pay the invoice amount due within 15 business days after such resolution, and shipment will not be considered late. Upon resolution of any such dispute in favor of the Buyer, if applicable, Supplier shall refund the invoice amount of Product within 15 business days after such resolution.

9. LIMITATION OF LIABILITY.

SELLER'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OR STRICT LIABILITY) FOR ITS GOODS SHALL BE LIMITED TO THE PRICE OF THE GOODS GIVING RISE TO THE CLAIM. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER AND BUYER SHALL NOT BE ENTITLED TO ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, BREACH OF ANY OBLIGATION IMPOSED ON SELLER HEREUNDER OR IN CONNECTION WITH THIS AGREEMENT.

For purposes hereof, such damages shall include, without limitation, loss of use, income or profit or losses, manufacturing expense, costs of product recall, injury to reputation or loss of customers.

10. DELAYS.

Seller will not be liable for any damage, loss, fault, or expenses arising out of delays in shipment or other nonperformance of this Agreement caused by or imposed by: (a) strikes, fires, disasters, pandemics, epidemics, riots, acts of God, (b) acts of Buyer, (c) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental action, (e) subcontractor or supplier delay including, but not limited to failure by subcontractor or supplier to make timely delivery, or (f) any other cause of condition beyond Seller's reasonable control.

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In the event of any such delay or nonperformance, Seller may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.

11. TERMINATION, CANCELLATION AND CHANGES.

Orders cannot be terminated, cancelled or modified, or shipment deferred after acceptance of Buyer's Order by Seller, except with Seller's written consent and subject to reasonable charges for expenses incurred and work executed by Seller or its suppliers. Buyer shall be obligated to accept any portion of the Goods shipped or delivered by Seller pending Seller's written approval of cancellation. Orders for custom made Goods may not be cancelled after Seller has been in production unless Seller agrees in writing.

12. NO WAIVER.

The failure of Seller to enforce any of the terms of this Agreement, or to exercise any right accruing from default of Buyer, shall not affect or impair Seller's rights arising from such defaults; nor shall failure be deemed a waiver of Seller's rights in case of any subsequent default of Buyer.

13. SEVERABILITY.

If any provision of this Agreement is unenforceable or invalid, this Agreement shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

14. ASSIGNMENT.

This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Buyer and Seller provided, however, that Buyer may not assign or transfer this Agreement, in whole or in part, except upon the prior written consent of Seller.

15. GOVERNING LAW/ VENUE.

This Agreement shall be construed in accordance with and governed by the laws of the State of North Carolina without regard to its conflict of law provisions. All actions or proceedings arising directly or indirectly herefrom shall be litigated only in the courts of the State of North Carolina or United States federal courts located therein and the parties hereby consent to the jurisdiction and venue of such courts.

16. ENTIRE CONTRACT.

This Agreement constitutes the entire agreement between Buyer and Seller and supersedes all prior and contemporaneous statements, correspondences, samples and other understandings.

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