

ARYZTA LLC (US)
PURCHASE ORDER TERMS AND CONDITIONS
Revised: March 2018

The following Terms and Conditions, together with any purchase order form, and all attachments and exhibits attached thereto, and all specifications, instructions and other written materials incorporated therein, constitute the "Purchase Order," and shall apply to the purchase of products and/or services by ARYZTA LLC ("ARYZTA"). The Purchase Order constitutes the entire agreement between ARYZTA and the vendor ("**Vendor**") listed on the Purchase Order and supersedes all communications and agreements relating thereto, except for currently-in-effect written Supply Agreements executed by both ARYZTA and Vendor that are intended to apply generally to the transaction or transactions described in the Purchase Order.

- 1. Acceptance and Precedence of Terms.** Vendor's performance under a Purchase Order shall constitute Vendor's acceptance of all of, and only, these terms and conditions. Any additional or different terms in Vendor's documents are hereby deemed material alterations and notice of objection and rejection of them is hereby given, and acceptance of the products or services delivered under this Purchase Order shall not constitute ARYZTA's acceptance of Vendor's terms and conditions.
- 2. Product Orders; Pricing.** (a) Vendor will confirm the PO (the "PO Confirmation") within 24 hours of receipt. The PO Confirmation will include (1) the Product price, (ii) the quantity of Products, and (iii) any other costs or charges. If Vendor fails to provide a proper PO Confirmation, ARYZTA shall only be responsible for payment of the amount set forth in the PO. Vendor will be allowed no additional charges unless specified in the PO. Unless the Supply Agreement provides for commodity-based price adjustments, no Product price change shall be effective unless Vendor has notified ARYZTA in writing at least 60 days prior to the proposed implementation date.
- 3. Prices and Terms.** The prices and terms for the products and/or services provided hereunder shall be the lowest prices and the best terms for and under which Vendor is selling such products and/or services, taking into account any differences in quantities, schedule, and other material terms.
- 4. Payments.** Unless otherwise agreed in writing between the parties, all payments due hereunder to Vendor shall be paid to Vendor in currency as stated on Purchase Order not later than thirty (30) days following the later of (i) the Delivery Date, (ii) the date of ARYZTA's acceptance of all of the products and/or services hereunder, or (iii) ARYZTA's receipt of a properly prepared invoice and certifications of conformance of the products to the specifications, if applicable.
- 5. Warranty.** Vendor warrants to ARYZTA and its customers for the longer of Vendor's normal warranty period or for one (1) year following the date of ARYZTA's acceptance of the products and/or services that (i) when received by ARYZTA from Vendor, the products shall be free from defects in design, material, workmanship and manufacture, (ii) the products and/or services will conform to the applicable documentation, specifications, drawings, samples, or to other descriptions set forth in this Purchase Order; (iii) the services will be performed in a professional and workmanlike manner; (iv) the products and/or services will be suitable for the purposes for which the products and/or services are intended including without limitation purposes made known to Vendor; (v) Vendor has good, unencumbered title to the products and has conveyed such good, unencumbered title to ARYZTA; and (vi) all products are new and unused, unless otherwise specified by ARYZTA. The foregoing warranties are in addition to all other warranties, whether express or implied, and will survive delivery, inspection, acceptance, or payment by ARYZTA.
- 6. Packing.** Vendor shall, at its own expense, preserve, pack, package, and handle the products to protect them from loss or damage and in accordance with good commercial practice and ARYZTA's specifications. The Purchase Order number shall be plainly visible on every invoice, package, bill of lading, and shipping order provided by Vendor
- 7. Shipment and Delivery.** Time is of the essence. Vendor shall immediately notify ARYZTA in the event that Vendor's timely performance under this Purchase Order is or is likely to be delayed, in whole or in part, and Vendor shall provide ARYZTA with all available information regarding the reasons for such delay. Unless otherwise expressly agreed to in writing, all products delivered to ARYZTA shall be F.O.B. ARYZTA's ship-to address set forth in this Purchase Order without charge to ARYZTA for crating or storage. All costs and expenses relating to such transportation and delivery shall be paid solely by Vendor.
- 8. Shipment; Risk of Loss.** Vendor shall ship only those quantities of Products order by ARYZTA in the PO and shall not make any substitutions without ARYZTA's prior written approval. When Vendor arranges for the transportation of Products to ARYZTA via a carrier of Vendor's choosing, Products will be shipped F.O.B. Destination and the risk of loss shall transfer only upon the acceptance of the Products by ARYZTA at the designated F.O.B. point.
- 9. Acceptance and Rejection of Goods and Services.** ARYZTA may reject any portion or all of any shipment of products that does not conform to the applicable specifications, warranties or descriptions, or products which constitute over-shippments or early shipments by Vendor, within sixty (60) days of receipt and may return such rejected products to Vendor at Vendor's expense, for replacement, refund, or credit at ARYZTA's sole option. ARYZTA's payment to Vendor for products prior to ARYZTA's timely rejection of such products as non-conforming shall not be deemed as acceptance by ARYZTA and shall be subject to adjustment for errors, shortages, defects in the products, or other failure of Vendor.
- 10. Product Recalls.** Vendor shall immediately notify ARYZTA of the initiation of, or any circumstances relating to the necessity to initiate, a Product recall, withdrawal, inventory retrieval, or any other action to remove Products from distribution and sale (a "Recall"). Vendor shall be responsible for, and shall reimburse ARYZTA upon demand, all costs, claims or liabilities incurred by ARYZTA in the event of a Recall.
- 11. Termination.** ARYZTA shall have the unrestricted right, at its option, to cancel and terminate this Purchase Order without cost or liability to ARYZTA in the event of: (a) Vendor's insolvency or inability to meet obligations as they become due; (b) filing of voluntary or involuntary petition of bankruptcy by or against Vendor; (c) institution of legal proceedings against Vendor by creditors or stock holders; or (d) appointment of a receiver for Vendor by any court of competent jurisdiction.
- 12. Proprietary Interest and Confidentiality.** Vendor agrees that any data, designs, specifications and all other business, product, technical and financial information it obtains from ARYZTA, including information relating to any Purchase Order, shall be deemed "**Confidential Information**" and is the sole property of ARYZTA. No Confidential Information may be used by Vendor to compete or assist any person to compete in the business of ARYZTA or its affiliates. Vendor will hold in confidence and will not use or disclose any Confidential Information without ARYZTA's prior written consent and shall similarly bind its employees, consultants and subcontractors in writing.
- 13. Compliance with Laws and Regulations.** Vendor warrants that in performance of all work under this Purchase Order, Vendor and its consultants and subcontractors have complied with or will comply with all applicable federal, state, local and applicable foreign laws and ordinances.
- 14. Indemnification and Insurance.** Vendor represents and warrants to ARYZTA that there are no claims or liabilities for royalties, liens, infringements or any other encumbrances on the products supplied hereunder. Vendor shall indemnify, defend and hold ARYZTA harmless against any and all claims, liabilities, losses, damages, settlements, costs and expenses (including attorneys' fees) made against or sustained by ARYZTA arising from (i) the death of or bodily injury to any person or damage to property on account of any alleged or actual defect in any products provided hereunder, whether latent or patent, including, without limitation, improper construction or design, or failure to warn or caused by the negligence or willful misconduct of Vendor or any subcontractor, agent, employee or consultant of Vendor and (ii) any expense incurred by ARYZTA arising from any breach of the foregoing warranties. Vendor shall secure and maintain such insurance against public liability and property damage and such employee liability and workers compensation insurance as will protect ARYZTA against the aforementioned risks.
- 15. Limited Liability. NOTWITHSTANDING ANYTHING IN THE PURCHASE ORDER AND REGARDLESS OF WHETHER ANY REMEDY UNDER THIS AGREEMENT WOULD FAIL OF ITS ESSENTIAL PURPOSE, ARYZTA WILL NOT BE LIABLE TO VENDOR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY.**
- 16. Attorney's Fees.** In the event of any dispute between the parties arising out of or in connection with this Purchase Order, the prevailing party shall be entitled to recover its costs incurred in connection therewith from the non-prevailing party, including reasonable attorneys fees
- 17. Miscellaneous.** Except as provided herein, any notice, approval or consent required or permitted hereunder shall be (i) in writing; (ii) delivered by hand or by overnight courier service to the respective addresses of the parties as set forth in this Purchase Order (or such other addresses a party may designate in writing); and (iii) effective upon actual delivery. Notices to ARYZTA shall be addressed "Attn: Purchasing." Except as provided herein, the failure to enforce any provision herein or right or remedy on any one occasion shall not be construed as a waiver on any other occasion. No right or obligation under this Purchase Order (including the right to receive monies due) may be assigned by Vendor without the prior written consent of ARYZTA, and any purported assignment without such consent shall be void. This Purchase Order shall be construed in accordance with the laws of the state of California without regard to its principles of conflict of laws. The exclusive jurisdiction and venue of any action relating to this Purchase Order shall be the Superior Court of California for the County of Alameda or the United States District Court for the Northern District of California and each of the parties hereto submits itself to the exclusive jurisdiction of such courts and waives any argument relating to the convenience of forum.