

# GAR LABS: Terms and Conditions of Sale

Any contract for sale, purchase order, or any other writing confirming a business transaction (hereinafter "Contract") between GAR Laboratories, Inc. (hereinafter "GAR") and a Buyer is expressly conditioned upon these Terms and Conditions of Sale. GAR retains the right to change and/or modify these applicable Terms and Conditions at any time unless otherwise agreed in writing between GAR and Buyer. No Contract, purchase order, or other document constituting a contract between GAR and Buyer may be altered or amended, nor its terms be waived, except as modified in writing and signed by an authorized representative of GAR. Acceptance or acknowledgment of purchase order forms or other similar forms containing provisions different from, or deletions or additions to the terms of the Contract offered are hereby rejected and shall not be binding on GAR. Buyer shall not assign its rights or delegate its duties under a Contract, in whole or in part, without prior written consent of GAR. Any terms otherwise proposed by Buyer in any other contract document inconsistent with these Terms and Conditions are void and not enforceable.

- Orders:** All orders placed by Buyer are subject to acceptance by GAR. Orders may not be cancelled or rescheduled without GAR's written consent. All orders must identify the products, unit quantities and applicable prices. All orders cancelled after 2 weeks are subject to 15% restocking fee. All orders cancelled after 4 weeks are subject to 25% restocking fee. The reason for these charges is the order most likely required GAR to acquire, or place an advance order, for general and/or special materials unique to Buyer's specific needs and is otherwise not useable by GAR. Whenever a customer orders a product, that order has an impact on GARS available space. Changed or canceled orders costs GAR money for shipping, handling and storage added expenses.
- Prices:** Prices offered by GAR are for immediate acceptance and are subject to change without notice unless otherwise specifically indicated in the Contract. GAR reserves the right to increase a unit price if Buyer reduces the quantity for which the quoted price was given. If GAR is unable by any reason of any governmental decision, order or law to sell the materials at the quoted prices, GAR may terminate the Contract between the parties. Quoted prices are based on present taxes (other than sales taxes), freight rates, Internal Revenue charges, United States Tariff classifications and import duties. Any increased costs resulting from changes in the aforesaid or from Buyer's selection of means of transportation shall be charged to Buyer. Further, Buyer shall reimburse GAR for all taxes or other charges by any national, state or municipal government upon the sale, use, production, or transportation of materials which GAR shall be required to pay. All war-risk insurance, harbor charges, tolls, wharf age, demurrage, wharf handling or warehousing, together with any increase over current rates on marine or other insurance, shall be charged to Buyer as an addition to prices specified.
- Payment:** Payment terms are fifty percent (50%) of the order as a deposit before any work is commenced and the balance of the agreed price C.O.D., unless otherwise provided in the Contract. Due to the custom nature of GAR formulations, any deposits received are non-refundable. All payments due shall be in lawful money of the United States at the office of GAR. To encourage timely payment and to compensate GAR for possible delays in collection, Buyer agrees to pay a late payment charge equal to 1.5% per month (18% per annum) applied to the amount of any monies not timely paid. Such a charge constitutes an estimated amount to compensate for collection efforts and not as an interest rate imposed upon past due amounts (nor shall include attorney's fees incurred by GAR). As to the past due amount, interest shall accrue at 10% per annum until paid in full. If Buyer shall fail to make payments when due or if GAR shall become dissatisfied, in GAR's sole discretion as to Buyer's financial responsibility, GAR reserves the right to cancel any offer or contract with Buyer or, GAR has the right to decline to deliver any finished product and require a C.O.D. payment. Should it be necessary for GAR to undertake any efforts of collection because any sums owed by Buyer are overdue, all collection charges and pre-litigation legal fees shall be paid by Buyer. In the event that legal action is commenced to enforce the terms of the Contract, including the Terms and Conditions herein, the prevailing party in such litigation shall be entitled to recover reasonable attorney's fees and court costs and any similar expense incurred in an arbitration or any similar fact-finding decision-making process.
- Risk of Loss:** All products purchased by Buyer, and any returns, shall be shipped F.O.B. Origin (GAR's place of business) except as otherwise provided in the Contract. GAR's liability as to delivery ceases, and title and risk of loss for the products supplied hereunder will pass, upon loading the goods upon the

## GAR LABS: Terms and Conditions of Sale

equipment of the carrier (shipper) making delivery of products purchased by Buyer. Title to and risk of loss for all products picked up by Buyer at GAR's designated shipping locations will pass to Buyer at the point the products are deposited by GAR onto Buyer's owned or leased equipment, or Buyer's hired carrier and in the case of bulk liquid or solid products, title and risk of loss shall pass at the point of discharge from GAR's fill nozzle or discharge tube.

5. **Allocation of Materials:** When in the opinion of GAR there is a period of shortage of supply of material for any reason, GAR may allocate its available supply among any or all of its various customers upon such basis as it shall deem fair and practicable with no liability on its part for failure to deliver the quantity or any portion thereof herein specified.
6. **Guarantee:** All FILLED water and oil-based products produced by GAR, except as noted below, will carry a 1 Year Guaranteed shelf life against bacterial contamination and spoilage provided Buyer complies with proper storage requirements for the product delivered. GAR otherwise excludes all warranties of merchantability or fitness for a particular purpose unless specifically stated in the Contract. As allowed by Commercial Code § 2316, which states in part, "to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof." As such, again, there are no warranties which extend beyond the description on the face hereof.

All products provided by GAR are on an "as is" and an "as available" basis unless otherwise specifically agreed to in writing. More often than not, Buyer provides the basic formula or product line required and although such may be modified by GAR, at Buyer's request and consent, the product cannot be warranted for fitness for a particular purpose, merchant ability, or other form or use. Moreover, GAR will not guarantee, nor warrant the appropriateness of any packaging supplied by the Buyer unless GAR is specifically contracted to inspect and approve the packaging, and even then, any guarantee is as to the adequacy of the product's shelf life in the package and not for any other marketing or sales requirements. It is Buyer's responsibility to examine any product delivered by GAR for any damage, defect or shortage. Failure of Buyer to notify GAR within ninety (90) days of any issue in this regard is a waiver by Buyer of any claim related thereto. All claims for any cause whatsoever (whether such shall be based on a contract, negligence, strict liability, customer dissatisfaction and/or any tort or otherwise related thereto) shall be deemed waived unless made in writing and received by GAR within 366 days after Buyer's receipt of the product. Any claim for non-delivery shall be made within ninety (90) days of the date upon which products were agreed to be delivered. Failure of GAR to receive written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim irrespective of whether the facts giving rise to such claim shall have been discovered or whether processing, further manufacture, other use or other resale of the products shall have taken place.

GAR is unable to offer ANY Guarantee or return policy for the following categories of products. These Categories are: Perfumes, Colognes, Polish Removers OR ANY CUSTOMER SUPPLIED FORMULAS, RAW MATERIALS AND/OR FINISHED PRODUCTS.

7. **No Warehousing:** GAR is not a Warehouse or Depositor for Hire as that term is used in Civil Code § 1813, *et seq.* Accordingly any raw materials, components and/or finished product left at GAR's facility, without open orders, in excess of 90 days will be disposed of at the discretion of GAR and at Buyer's expense. Buyer is responsible to pick up and transport Buyer's raw materials, components and/or finished product remaining at GAR's facility. Any such raw materials, components and/or finished product remaining after the 90 days will be assumed to be abandoned by Buyer. GAR is not obligated to, but will endeavor to give Buyer at least 15 days' notice of GAR's intention to remove any such abandoned raw materials, components and/or finished products. If after the 15 days the materials have not been physically removed by Buyer at Buyer's expense, then GAR will dispose of such raw materials, components and/or finished product for which Buyer shall reimburse GAR for the cost to accomplish the same. Said cost may include, but is not necessarily limited to, transportation costs, storage costs, labor and hazardous waste disposal fees.

# GAR LABS: Terms and Conditions of Sale

8. **Indemnity:** Buyer agrees to indemnify, defend and hold GAR harmless from any claim of any type or nature made by any customer of Buyer. GAR has neither the input, opportunity nor control of Buyer's marketing, sales methodology, promises, representations or warranties made by Buyer to its customers and, as such, it is Buyer's duty to indemnify, defend and hold GAR harmless from any such claim.
9. **Limitation of Liability:** REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE, IN NO EVENT WILL WE OR OUR AFFILIATES, INCLUDING, WITHOUT LIMITATION, OUR OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS, CONTENT PROVIDERS, SUCCESSORS AND ASSIGNS, BE LIABLE TO ANY PARTY FOR ANY DAMAGE BE IT DIRECT, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR BUSINESS INTERRUPTION, WASTED EXPENDITURE, LOSS OF BUSINESS AND OTHER PROFITS, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF GOODS OR SERVICES, OR ANY OTHER DAMAGES ARISING IN ANY WAY OUT OF OR RELATED TO GAR PROVIDING A PRODUCT UNDER A CONTRACT FOR SALE, PURCHASE ORDER, OR ANY OTHER WRITING CONFIRMING A BUSINESS TRANSACTION EVEN IF GAR OR ITS AFFILIATES, OR GAR OR ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS, SUCCESSORS AND ASSIGNS ARE AWARE OR SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH JURISDICTIONS, OUR LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW (THEREBY MINIMIZING OUR LIABILITY TO YOU TO THE LOWEST AMOUNT THAT APPLICABLE LAW PERMITS).

No claim of any kind shall be greater in amount than the purchase price of the merchandise in respect of which such damages are claimed, and failure to give notice of claim within 366 days from the date of delivery or 90 days after the date fixed for delivery (in the event of non-delivery), shall constitute a waiver by Buyer of all claims in respect of such merchandise. The remedy hereby provided shall be cancelled without liability, but the contract shall otherwise remain unaffected.

10. **Dispute Resolution; Arbitration:** PLEASE READ THIS ARBITRATION PROVISION CAREFULLY TO UNDERSTAND YOUR RIGHTS.

BUYER AGREES THAT ANY CLAIM THAT IT MAY HAVE IN THE FUTURE MUST BE RESOLVED THROUGH BINDING ARBITRATION. BUYER ACKNOWLEDGES AND AGREES THAT IT IS WAIVING THE RIGHT TO A TRIAL BY JURY. THE RIGHTS THAT BUYER WOULD HAVE IF IT WENT TO COURT, SUCH AS DISCOVERY OR THE RIGHT TO APPEAL, MAY BE MORE LIMITED, OR MAY NOT EXIST.

BUYER AGREES THAT IT MAY ONLY BRING A CLAIM IN ITS SOLE OR INDIVIDUAL CAPACITY, AND NOT AS A CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. BUYER FURTHER AGREES THAT THE ARBITRATOR MAY NOT CONSOLIDATE PROCEEDINGS OR CLAIMS OR OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING.

*A. Generally.* "Claim" means any dispute between you Buyer, GAR and/or any third party relating to Buyer's account, Buyer's use of the product, its relationship with GAR, or these Terms of Use and Conditions of Purchase.

*B. Exceptions to Binding Arbitration.* As an exception to binding arbitration Buyer and GAR both retain the right to pursue, in a small claims court, any claim that is within that court's jurisdiction.

*C. Mandatory Pre-Dispute Procedures.* Buyer acknowledges and agrees that before initiating any Claim (subject to the exceptions above) against GAR, it will first give GAR an opportunity to resolve its problem or dispute. This includes sending a written description of Buyer's problem or dispute to GAR, including, but not

# GAR LABS: Terms and Conditions of Sale

limited to, information or representations related to GAR's products and upon which Buyer relies. You may send the written description by U.S. Mail to GAR Labs, Inc., 1844 Massachusetts Avenue, Riverside, CA 92507. Buyer agrees to negotiate with GAR in good faith about its problem or dispute. If for some reason Buyer's problem or dispute is not resolved to its satisfaction within 60 days after GAR's receipt of its written dispute, Buyer agrees to the dispute resolution provisions herein.

D. *Commencement of Arbitration.* Buyer and GAR agree to commence any arbitration proceeding within 1 year after the Claim arises (including the mandatory pre-dispute procedures outlined above) and that any proceeding commenced after 1 year shall be barred.

E. *Arbitration Location.* The arbitration must be conducted in the County where GAR's primary place of business is located, Riverside, California.

F. *Sponsoring Organization, Rules and the Arbitrator.* Buyer agrees that any Claims shall be resolved by submitting the dispute to final and binding arbitration before a single arbitrator who is a retired judge or an experienced attorney with experience in the subject(s) of the Claim. The arbitrator shall be chosen from a Riverside City area alternative dispute resolution provider and the arbitration rules of the selected organization shall apply.

The arbitrator shall have the exclusive and sole authority to resolve any dispute relating to the interpretation, construction, validity, applicability or enforceability of these Terms and Conditions of Sale and this arbitration provision. The arbitrator shall have the exclusive and sole authority to determine whether this arbitration agreement can be enforced against a non-signatory to this agreement and whether a non-signatory to this agreement can enforce this provision against Buyer or GAR.

G. *Arbitration Fees.* GAR and Buyer shall jointly pay for all filing, administrative and arbitrator fees for an arbitration initiated by either party. The parties shall each pay their own additional fees, costs and expenses, including, but not limited to, those for any attorneys, experts, documents, and witnesses; however, the prevailing party provision contained in these Terms and Conditions of Sale shall apply.

H. *Arbitration Award.* The arbitrator shall follow substantive law and may order any relief if permitted by law. The arbitrator may award any form of individual relief, including injunction and punitive damages, so long as it is in accordance with applicable law. The arbitrator may award costs or fees to a prevailing party, but only if the law expressly allows it. Nothing herein shall be construed to limit the arbitrator's ability to award remedies provided by applicable law. Any award rendered shall include a written opinion and shall be final.

I. *Enforceability.* This Arbitration provision survives termination of Buyer's account or relationship with GAR, bankruptcy, assignment or transfer. If the class action waiver is deemed unenforceable (i.e. unenforceability would allow arbitration to proceed as a class or representative action), then this entire arbitration provision shall be rendered null and void and shall not apply. If a portion of this arbitration provision (other than the class action waiver) is deemed unenforceable, the remaining portions of this arbitration provision shall remain in full force and effect.

J. *Miscellaneous.* Failure or any delay in enforcing this arbitration provision in connection with any particular Claims will not constitute a waiver of any rights to require arbitration at a later time or in connection with any other Claims. This provision is the entire arbitration agreement between Buyer and GAR and shall not be modified except in writing.

K. *Incorporation of Arbitration into Buyers Sales:* BUYER AGREES TO SPECIFICALLY INCORPORATE GAR'S TERMS AND CONDITIONS, INCLUDING THE DISPUTE RESOLUTION/ARBITRATION PROVISIONS IN ANY CONTRACT IT MAY HAVE, BE IT IN WRITING OR ON A WEBSITE, WITH ITS CUSTOMERS. FAILURE OF BUYER TO DO SO IS A MATERIAL BREACH OF THE CONTRACT WITH GAR WHICH INCLUDES THESE TERMS AND CONDITIONS.

11. Technical Advice: It is expressly understood that any technical advice furnished by GAR with reference to the use of its products is given free of charge and only as an accommodation to Buyer. GAR assumes

## GAR LABS: Terms and Conditions of Sale

no obligation or liability for the advice given or results obtained, all such advice being given and accepted at Buyer's risk, unless technical advice is specifically paid for by Buyer. Any such technical advice shall not constitute a representation or warranty. Express or implied.

12. Force Majeure: Performance of GAR will be excused in case of God, war, riots, fire, explosions, floods, strikes, lockouts, injunctions, inability to obtain fuel, power, raw materials, labor, containers or transportation facilities, accidents, breakage of machinery or apparatus, national emergency, including pandemic, or because performance is made impracticable by the occurrence of any other unforeseeable contingency, or because of compliance in good faith with any applicable foreign or domestic governmental statute, regulation, order or other interference whether or not it later provides to be invalid or in any circumstances which are beyond the reasonable control of the parties, to the extent that the same prevent or delay the performance of obligations herein contained. Any delivery so suspended shall be cancelled without liability, but the contract shall otherwise remain unaffected.
13. Applicable Law: This agreement is executed, delivered, and is intended to be performed in the County of Riverside, State of California, and shall be construed and enforced in accordance with the laws of the State of California.
14. Complete Agreement: The Terms and Conditions contained herein will be the complete and exclusive statement of the terms of the agreement between the parties. No addition to, or modification of any of the Terms and Conditions will be effective unless made in writing and signed by the President of GAR.

GAR