



CHEFLER FOODS WOULD NOT BE ENGAGING IN BUSINESS WITH YOU BUT FOR THE USE OF PURCHASE TERMS AND CONDITIONS AND WOULD NEITHER MAKE NOR ACCEPT ANY OFFER BASED ON ANY OTHER TERMS OR CONDITIONS ALL OF WHICH ARE EXPRESSLY OBJECTED TO AND REJECTED.

PURCHASE TERMS AND CONDITIONS

THESE PURCHASE TERMS AND CONDITIONS (THESE "PURCHASE TERMS") ARE ENTERED INTO BETWEEN CHEFLER FOODS, LLC OR ONE OF ITS AFFILIATED COMPANIES ("COMPANY" "WE," "US," OR "OUR") AND THE ENTITY IDENTIFIED BY NAME, CORPORATE DOMICILE AND PRINCIPAL ADDRESS ON EACH APPLICABLE ORDERING DOCUMENT, BILL OF LADING OR SIMILAR INSTRUMENT ("SELLER," "YOU," OR "YOUR"). SOME WORDS IN THESE TERMS OF PURCHASE ARE CAPITALIZED WHERE GRAMMATICAL RULES WOULD NOT REQUIRE. THESE WORDS ARE DEFINED IN THE SECTION IN WHICH THEY FIRST APPEAR. THE ENGLISH LANGUAGE VERSION OF THESE TERMS ARE THE CONTROLLING VERSION REGARDLESS OF ANY ATTEMPTED TRANSLATION

1. Our Business; Applicability of Terms. We are in the business of manufacturing, packaging and delivering vegetable oil-related products for the food services industry under both our own, and certain private label brands ("Products"). We procure certain raw and manufactured goods for use in our Product and also act as the consignee for the finished products of others (collectively, the "Goods"). These Purchase Terms apply to all orders we place for Goods, whether by email, facsimile, phone, via your mobile or Internet web sites or any apps you may make available and whether or not we agree to use your form of purchase order, a bill of lading or similar document.

2. Ordering; Separate Agreements. To purchase Seller's Goods, we will complete and submit an authorized form of ordering document specifying the name, quantity, and SKU of the Goods desired as well as any other reasonable details you may require (each a "Purchase Order" or "Order"). We will use your form of Order if desired so long as you make it available to us. Company reserves the right to cancel any Order without penalty by notice to Seller: (a) at any time for any reason on or before the date of shipment; and (b) at any time after the shipping date if the delivery date is not met. These Purchase Terms and each Purchase Order form a separate contractual arrangement between Seller and Company (each an "Agreement"). Unless the Goods' purchases are exchange traded commodities, you will provide us with thirty (30) days written notice in advance of any price increase becoming effective, and all such increases must be agreed upon in writing by the Company.

3. Shipping; Title. Unless otherwise set forth on a Purchase Order, all Goods will be shipped DDP INCOTERMS 2015 to the destination we specify. Title passes FOB Seller's shipping point except where we are acting as consignee in which case Seller retains title to such Goods. For Goods with title passing FOB Seller's shipping point, the Agreement is deemed a security agreement a copy of which, or a financing statement in lieu thereof, we may file with the appropriate public authorities in order to perfect our security interest in the Goods. To the



extent FOB shipping point is no longer recognized or if any law other than that of the United States or its several states is deemed to apply, title shall be deemed to have passed Ex Works INCOTERMS 2015.

4. Returns and Refunds.

(a) **Incorrect Shipments.** We have the right to inspect the Goods reasonably promptly following receipt. If our inspection indicates that the Goods shipped do not satisfy the quantities, types, brands, SKUs or requirements of the applicable Purchase Order (each an "Incorrect Shipment"), we will advise you in writing and you will, at our election, either: (i) remedy the Incorrect Shipment by delivering the correct Goods at your cost and expense; or (b) accept return of the applicable portions of the Incorrect Shipment and, upon receipt of the return, credit or refund (in our discretion) the amounts we paid therefor.

(b) **Nonconforming Product.** If at any time from completion of the initial inspection described in clause "(a)" up to the end of a Goods' specified shelf-life, the Goods are reasonably evidently determined to have failed to maintain their applicable quality standard (each a "Nonconforming Good") we will advise you in writing and you will, at our election, either: (i) remedy the Nonconforming Good by delivering replacement Goods at your cost and expense; or (ii) accept return (or advise and provide us with instructions to dispose) of the applicable portions of the Nonconforming Goods and, upon receipt of the return or confirmation of the disposal, as applicable, credit or refund (in our discretion) the amounts therefor. Our payment for, and/or decision to proceed with the use of any Goods found to be Nonconforming Goods shall not act as waiver of our right to seek remedy for breach of Section 9(a) hereof with respect to such Goods.

(c) **Conditions.** For all Goods returned pursuant to this Section, you will prepay shipping charges, duties and taxes on our behalf, or reimburse us where pre-payment is infeasible.

5. Fees, Taxes & Payments. Unless other payment terms are agreed or stated on the applicable Order, upon shipment you will invoice us the amounts indicated on the applicable Order and all such invoices shall be payable by us in U.S. dollars within forty-five (45) days of our receipt of invoice. You will use reasonable efforts to identify and invoice us as a separate line item for applicable sales and value added tax and remit our payment therefor to the appropriate taxing authority. To the extent you fail to invoice us for applicable taxes or timely remit our payment thereof, you agree to indemnify, defend and hold us harmless from any penalties or interest assessed by the taxing authority; provided that we will remain responsible for the principal tax amount.

6. Term and Termination. These Purchase Terms become effective immediately upon your receipt of our first order and remain in force until terminated or superseded as provided in this Section. If an obligation under an Agreement is materially breached, the non-breaching party may provide written notice specifying the nature of the breach and the breaching party will have ten (10) business days from receipt of notice to cure. If not so cured, the non-breaching party may terminate the Agreement by providing a second written notice of

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immediate termination. All Agreements terminate automatically and immediately upon your insolvency or any attempt by Seller to obtain protection from creditors or wind down operations. Upon termination or expiration of these Purchase Terms by either party for any reason, you will, unless otherwise instructed by us, continue to fill all previously submitted Orders. This version of the Purchase Terms also will terminate upon our informing you it has been superseded by a new version. If these Purchase Terms are superseded by a new version all Orders submitted prior to our notifying you of the new version will continue to be governed by the earlier version. Those portions of the parties' rights and obligations under these Purchase Terms which by their nature should survive, shall survive termination or expiration of these Purchase Terms or any Agreement.

7. Product Recall Policy. If Goods are subject to a recall that is either: (a) agreed upon between Seller and Company; (b) required by law; or (c) because Seller has reason to believe the Goods are defective, dangerous, incomplete, infringe upon intellectual property rights, or are not in compliance with applicable laws or regulations, then the Goods in our inventory will be returned to you at your expense, and Goods we have shipped to retailers or distributors will be disposed of by them. All costs associated with the recall, including the retail cost of disposed finished goods and labor costs, will be paid by Seller. The Purchase Terms continue to apply to Goods that have been recalled.

8. Bill of Lading. For all goods shipped, you will be required to prepare all necessary waybills/bills of lading to include the Purchase Order number, Seller style/stock number, quantity ordered, quantity shipped, and destination address. All such documents are subject to Section 12, below.

9. Warranties. Each party expressly represents and warrants that it has the power and authority to enter into each Agreement and that each Agreement is a legal, binding and enforceable obligation on it. Seller further represents and warrants: (a) that the Goods will be representative of the brand and grade specified in each Purchase Order or any applicable bill of lading or similar documentation and be manufactured in accordance with and, for their applicable shelf-life maintain, their respective quality standards; and (b) the Goods shipped, as of the shipment date, comply with, and are not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended including the Food Additives Amendment or any state food and drug law. In all events, the Goods will comply in all material respects with all applicable Federal and State product safety laws and regulations and all applicable and mandatory product safety rules, bans and standards that are enforced by the U.S. Consumer Product Safety Commission; (c) the Goods, including the packaging, advertising, labels and other materials contained on, with, or relating to the Goods, do not infringe any intellectual property right of Company or any third party and comply with the Federal Trade Commission Act and all other applicable laws, rules and regulations. For Goods that do not conform to the warranties in clause "(a)" or "(b)", you will promptly replace the Goods on the same terms as Section 4(b).

10. Compliance: Export Control. Without limiting Sellers warranty in Section 9(c), each party shall be responsible for its own compliance with local, state, provincial and federal laws and



regulations applicable to each party as buyer and seller hereunder. We acknowledge that as between Seller and Company you, Seller, are the importer of record under the Export Administration Regulations, the International Traffic in Arms Regulations and the regulations administered by the Office of Foreign Assets Control of the United States Department of the Treasury (collectively, the "Export Control Laws"). You will comply with all obligations under the Export Control Laws. You further confirm that neither You, nor any of Your parent or affiliate entities, nor any of your or their officers, directors, employees, agents and contractors including all those who are allowed access to the Goods, or any portion thereof, or to whom export or other transfer of the Goods, or any portion thereof, may be made whether actual or constructive, are named as a "debarred" party, "denied person or entity," "embargoed entity," or otherwise sanctioned under, or prohibited from engaging in activities subject to the Export Control Laws.

11. Indemnity; Liability and Insurance. You will indemnify, defend and hold us and all of our affiliates and our and their officers, directors, members, employees, agents and insurers harmless from any claim or and all amounts, including damages and legal costs, arising from: (a) your breach of any warranty hereunder; (b) your negligent or willful acts or omissions in the possession, handling or use of the Goods including any actual or alleged violation of the Export Control Laws; and/or (c) your submission to us of any materials or information that violate the intellectual property, privacy or other rights of any third party. We agree that you have no obligation under this Section to the extent an indemnifiable claim is caused solely by our negligence or willful misconduct. Our maximum liability under an Agreement will be limited to direct damages in the amount equivalent to the fees paid for Goods thereunder and in all events expressly excludes incidental, special, consequential, reliance and other types of indirect damages (including costs of enforcement or collection such as legal fees). Seller will obtain and keep in force during the term and for a period of one (1) year thereafter (whether by purchase of tail coverage or otherwise), insurance coverage for the benefit of Seller and Company issued by reputable national insurance carriers under types of policies and having coverage limits customary in the industry and reasonably sufficient to protect Seller and Company against risks reasonably known to arise from Seller's performance or failure to perform under these Purchase Terms. Upon Company's request, Seller shall provide valid certificates evidencing its insurance. Seller's insurance shall not affect liability hereunder. Such insurance shall be primary to any other insurance owned, secured or placed on behalf of Company for claims related to Seller's negligence. To the maximum extent permitted for each coverage type, the certificates and endorsements therefor shall name Company as an additional insured and shall be signed by a person authorized by that insurer to bind coverage on its behalf. The presence or absence of insurance does not affect a parties indemnification obligations or liability hereunder.

12. Contract Formation; Entire Agreement and Precedence. Whether construed as an offer, acceptance or confirmation, these Purchase Terms, govern all documents, Purchase Orders, and exhibits relating to the contract for the purchase and sale of Goods. Each Agreement formed by these Purchase Terms constitutes the final, complete and exclusive statement of this contract and may not be modified or rescinded except by express written agreement of the parties referencing this Section. If these Purchase Terms constitute an offer by the



Company to purchase the Goods and/or services specified upon the terms and conditions and at the price(s) and with the delivery date(s) specified herein, your unconditional acceptance of these Purchase Terms shall be indicated and evidenced by verbal acceptance communicated to the Company, by written acceptance on the face of the Order submitted by the Company, by other written confirmation received by the Company, by commencing work on the Order in any manner, or by the shipment of the Goods or services specified on the Purchase Order. As an offer, our submission of a Purchase Order expressly limits acceptance to these Purchase Terms, and notification by the Company of its objection to any different or additional terms in any of your responses to this offer is hereby given. If our submission of a Purchase Order or acceptance of Goods is construed as an acceptance of your offer, this acceptance is expressly conditioned on the offeror's assent to any additional or different terms contained in these Purchase Terms. If a Purchase Order is construed as or made subject to a confirmation of an existing contract or so-called sales confirmation, the parties agree that these Purchase Terms constitute the final, complete and exclusive terms and conditions of the contract between the parties. If the parties have otherwise completed a signed, written contract, the parties agree that the issuance of a Purchase Order under these Purchase Terms pursuant to such a contract shall be construed to supplement the terms of such written contract only to the extent that such contract is not inconsistent with these Purchase Terms. Regardless of its construction as an offer, acceptance, confirmation or use to place orders for goods or services pursuant to an earlier contract, Purchase Order hereunder are governed by the Uniform Commercial Code to the degree not inconsistent with these Purchase Terms, including providing any protection for the Company, including all express and implied warranty protection and all buyer remedies (including cover) under the Uniform Commercial Code. SELLER'S USE OF THESE PURCHASE TERMS SERVED AS A MATERIAL INDUCEMENT TO COMPANY ENTERING INTO ORDERS AND COMPANY WOULD NOT HAVE AGREED TO MAKE PURCHASES ON ANY OTHER TERMS.

13. **Force Majeure.** Failures in performance beyond a party's reasonable control are excused; provided, however, that where you seek to have your non-performance so excused, relief is conditioned on you: (a) providing us with written notice promptly upon becoming actually aware of event causing your non-performance; (b) continuing to use commercially reasonable efforts to perform or recommence performance whenever and to whatever extent reasonably possible without delay, including through the use of alternate sources, workaround plans or other means; (c) the inability to fully perform could not have been prevented by reasonable precautions including implementation of a reasonable business continuity plan; (d) if the event causes you to allocate limited resources or ration Goods between or among your customers, we will receive at least the same treatment as your most valued customers; and (e) if the event continues to prevent your performance for more than five (5) days beyond a previously anticipated delivery date, we may terminate all affected Orders.

14. **Miscellaneous.** Neither party will assign an Agreement in whole or in part without the prior written consent of the other except in the case of the sale of all or substantially all of the assigning party's assets or the controlling portion of its equity interests. The laws of the State of New Jersey and the federal laws of the United States will govern each Agreement



without regard to the principles of conflicts of laws. All disputes shall be brought in the courts of Bergen County, State of New Jersey or the Federal District Courts sitting in the District of New Jersey and such courts shall have exclusive substantive and procedural jurisdiction. We will be entitled to collect statutory interest and legal costs including attorneys' fees if we prevail in any action to enforce these Purchase Terms. All notices shall be sent by certified mail or reputable overnight courier to the address specified for each party on the face of the applicable Purchase Order and deemed given three business days after sending. Unenforceable provisions shall be reformed to permit enforceability with maximum effect to the original intent. Waiver of a breach is not waiver of other or later breaches. You may not issue a press release or make other public announcements without our prior written consent. You acknowledge that no person not actually employed by Company is or is to be deemed the agent of the Company or entitled to make any representation binding on Company. The United Nations Conventions on Contracts for the International Sales of Goods shall not apply to this Agreement. Section headings are used for convenience of reference only and do not affect the interpretation of any Agreement. References to days are references to calendar days unless otherwise specified. The words "shall", "will" and "must" are each intended to be obligatory and to require performance of the stated action, compliance with the stated condition, etc., while the word "may" is intended to be permissive, imparting a right, but not an obligation, to perform the stated action. The word "including" is exemplary and non-exhaustive meaning "including, without limitation" or "but not limited to" unless otherwise specifically indicated.

END OF PURCHASE TERMS AND CONDITIONS