



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

**TERMS AND CONDITIONS OF SALE**

THESE TERMS AND CONDITIONS OF SALE (THESE "TERMS OF SALE") ARE ENTERED INTO BY AND 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 ORDER ("BUYER," "YOU," OR "YOUR"). SOME WORDS IN THESE TERMS OF SALE 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"). Our Products are offered through multiple distribution channels including direct sales to food service establishments and retailers, and via third party distributors and exporters. These Terms of Sale apply to all buyers, whether direct purchasers or distributors/exporters, and whether ordered by phone, via our mobile or Internet web sites or any apps we may make available. These Terms of Sale become binding immediately upon our confirmation of your Order, as defined and described in Section 2, below. You do not need a separate or new set of terms and conditions to for each Order; these Terms of Sale will remain in effect for all confirmed Orders until they are terminated or superseded as described in Section 7.

**2. Ordering; Separate Agreements.** To purchase our Products you must complete and submit an authorized form of ordering document specifying the name, quantity and SKU of the Products desired (each, an "Order"). We will respond to all properly submitted Orders by sending a confirmation of the actual price to be charged for each Product ordered, the quantity we will deliver and any additional amounts we anticipate charging. Confirmations must then be signed by your authorized representative and returned to us within 24 hours of receipt and, if they are not, we reserve the right, in our sole discretion, to cancel or reprice all or part of your Order. Our confirmation and fulfillment of Orders is subject to the availability of the Products requested. These Terms of Sale and each confirmed Order form a separate contractual arrangement between you and Company (each an "Agreement"). You may not change or cancel confirmed Orders. To the extent we permit change or cancellation in our discretion, we reserve the right to charge a re-stocking fee of up to 10% of your original confirmed Order. We reserve the right to change the amount of the cancellation/restocking fees from time to time.



**3. Lead Times and Forecasts.** Unless otherwise noted by us in an Order confirmation, lead times for confirmed Orders will be [30] days or, if shorter, the period consistent with the ordinary course of business between Buyer and Company for previous Orders of the same type. To the extent reasonably known, we request that you provide us with forecasts of your anticipated Product needs based on current market conditions up to 90 days in advance of Orders you expect to submit. If provided, such forecasts will constitute good faith estimates provided solely to assist in meeting or exceeding expected lead times and neither Buyer nor Company is contractually obligated to order or supply the forecasted quantities. Un-forecasted Orders and Orders above forecast may require longer lead-times.

**4. Shipping; Title and Security Interest.** All Products will be shipped FOB shipping point for shipments to international destinations. Risk of loss passes to Buyer at the shipping point. Title to the Products passes to Buyer upon our receipt of full payment therefor. Prior to receipt of such payment, we further reserve and you hereby grant to us a security interest in all Products received. These Terms of Sale are 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. 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, shipping shall be deemed to be FCA INCOTERMS 2015.

**5. Returns and Refunds.**

**(a) Incorrect Shipments.** You will inspect each shipment upon receipt to confirm it contains the Product quantities and brands required by your confirmed Order. If it does not (each an "Incorrect Shipment"), you may advise us in writing and we will, at your election, either: (i) remedy the Incorrect Shipment by delivering the correct quantities or brands at our 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 therefor. Your failure or refusal to accept delivery of a shipment for any reason other than Incorrect Shipment will not relieve you of your obligation to pay.

**(b) Nonconforming Product.** If at any time from completion of the initial inspection described in clause "(a)" up to the end of a Product's specified shelf-life, the Product is reasonably evidently determined to have failed to maintain its quality standard (each a "Non-Conforming Product") you may advise us in writing and we will, at your election, either: (i) remedy the Non-Conforming Product by delivering replacement Product at our cost and expense; or (ii) accept return (or advise and provide you with instructions to dispose) of the applicable portions of the Non-Conforming Product and, upon receipt of the return or confirmation of the disposal, as applicable, credit or refund (in our discretion) the amounts therefor.

**(c) Conditions.** Your right to received credits or refunds is subject to the following conditions: (i) for Incorrect Shipments you must provide us with written notice with three business days of receipt; (ii) for Non-Conforming Products you must provide us with written notice immediately upon becoming aware thereof and in all events within one day of the end of the

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shelf-life of the applicable Product; (iii) you must provide us with reasonable information and cooperation to validate the Incorrect Shipment and/or Non-Conforming Product; (iv) we are not responsible for any Product that is Non-Conforming Product due to the acts or omissions of Buyer or any customer of Buyer including incorrect storage and handling; and (v) nothing in this Section modifies the allocation of the risk of loss and damaged containers or packaging do not constitute Incorrect Shipment or Non-Conforming Product. In addition, for all Product returned pursuant to this Section, you will be required to prepay shipping charges, duties and taxes and we will reimburse you therefor. The credits and refunds described in this Section are Company's only liability and Buyer's sole remedy with respect to Incorrect Shipments, Non-Conforming Products or other defects and deficiencies in the Products including actual or alleged breach of the warranty in Section 8.

**6. Fees, Taxes & Payments; Security Interest.** Unless other payment terms are set forth in our confirmation of your Order or the face of your invoice, upon shipment we will invoice you the amounts indicated on such confirmation and all such invoices shall be payable in U.S. dollars net 30 date of invoice without setoff or deduction of any kind. We use reasonable efforts to identify and invoice for sales tax in applicable U.S. jurisdictions but the amounts specified on a confirmation and subsequent invoice may not include all required sales, use, value-added, withholding, excise, or any other similar taxes or government charges all of which are your responsibility. If we do not receive timely payment of undisputed invoices (including if your financial institution does not honor Your check/cheque or if we receive a chargeback), we reserve the right to charge the maximum monthly interest allowed by law, suspend our performance, and also to seek cost of collection, including reasonable attorneys' fees. If you dispute invoiced amounts, you must submit disputes to us in writing on or before the date the invoice becomes due, otherwise you waive your right to dispute that invoice and all payments under it will be final and non-refundable.

**7. Term and Termination.** These Terms of Sale become effective immediately upon your receipt of our confirmation for your 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 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 immediate termination. All Agreements terminate automatically and immediately upon your insolvency or any attempt by you to obtain protection from creditors or wind down operations. Your right to place Orders under these Terms of Sale may be terminated by us at any time upon 30 days' prior written notice; provided that we will continue to fill all previously confirmed Orders. This version of the Terms of Sale also will terminate upon our informing you it has been superseded by a new version. If these Terms of Sale are superseded by a new version: (a) all confirmed Orders submitted prior to our notifying you of the new version will continue to be governed by the earlier version; and (b) if object to such new version but have submitted unconfirmed Orders to which the new version will apply, you have 1 business day from receipt of the notice from us to advise us in writing of your objection at which time we will either permit you to rescind the then-unconfirmed Orders or fill such Order under the old version, as determined in our sole discretion. Those



portions of the parties' rights and obligations under these Terms of Sale which by their nature should survive, shall survive termination or expiration of these Terms of Sale or any Agreement.

**8. 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. We further represent and warrant that the Products will be representative of the brand and grade specified in each Order confirmation or any applicable bill of lading or similar documentation. Your sole remedy and our only liability with respect to Products that do not conform to such warranty shall be as set forth in Section 5. **EXCEPT FOR THE PRECEDING, THE PRODUCTS ARE SOLD, SHIPPED AND DELIVERED TO YOU AS-IS, WHERE-IS AND All implied terms, conditions and warranties relating to the quality, NON-INFRINGEMENT, MERCHANTABILITY, fitness for purpose and freedom from defects are expressly excluded to the full extent permitted by law.**

**9. Compliance; Export Control.** You will use the Products only for the purpose for which they are manufactured in accordance with all applicable laws and regulations and 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. You acknowledge that as between Buyer and Company you, Buyer, are the exporter 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 Products, or any portion thereof, or to whom export or other transfer of the Products, 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.

**10. Proprietary Rights.** The logos, asset tags, mint marks or brand labels and the like that appear on the Products or any Product literature may contain the proprietary information and trademarks of Buyer or its applicable third party licensors, are subject to our and their rights and may not be reproduced in any manner.

**11. Indemnity and Limitation of Liability.** 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 an Agreement; (b) your negligent or willful acts or omissions in the possession, handling or use of the Products 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. **WITHOUT LIMITING YOUR RIGHT TO REFUNDED AMOUNTS AS EXPRESSLY STATED HEREIN, TO THE MAXIMUM EXTENT ALLOWED BY LAW, WE WILL NOT BE LIABLE to you in TORT, contract or**

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otherwise for any claim, damage, liability or loss (including consequential DAMAGES) or expense of any kind arising directly or indirectly FROM the Products or any defect or deficiency in or inadequacy or suitability of the Products or its use, performance, servicing or repair. Company does not exclude its liability for death or personal injury caused by its: (i) negligence; or (ii) breach of an obligation under these Terms of Sale.

**12. Entire Agreement; Precedence.** Each Agreement is the entire agreement between the parties governing your purchase of the Products, supersedes all previous or contemporaneous written and verbal agreements or proposals relating to the same subject matter, including any quotes we may have provided, and cannot be modified except by written agreement referencing the Sections modified. Conflicts between these Terms of Sale and an Order with respect to amounts or timing of payments will be resolved in favor of our confirmation of the Order as will conflicts between you Order and our confirmation. All other conflicts will be resolved in favor of these Terms of Sale. Purchase orders or similar documents issued by you or your agents are hereby objected to ab initio and are void and of no effect. If your procurement processes require use of an internal purchase order neither it nor its terms shall supersede, replace or amend these Terms of Sale.

**13. Miscellaneous.** You shall not assign an Agreement in whole or in part without our prior written consent. 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 legal costs including attorneys' fees if we prevail in any action to enforce these Terms of Sale. All notices shall be sent by certified mail or reputable overnight courier to the address specified for each party and deemed given three business days after sending. Failures in performance beyond a party's reasonable control are excused. 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. We may issue a press release or make other public announcements concerning these Terms of Sale and may use your name and logo in a manner consistent with your corporate communications policies but in all events reasonably. 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 TERMS AND CONDITIONS OF SALE**

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