



TERMS AND CONDITIONS OF PURCHASE OF GOODS AND SERVICES

- 1. FINAL AGREEMENT.** All purchase orders (“**Orders**”) sent by the Neil Jones Food Companies, Inc., its subsidiaries and affiliates (“**Buyer**”) for the purchase of goods identified on the Order (“**Goods**”) and/or the provisions of services requested by the Order (“**Services**”) to the seller or service provider identified on the Order (“**Seller**”) are subject to the following terms and conditions (“**Terms**”), which are considered an integral part of the Order. Any reference to an Order incorporates these Terms entirely. The Order, including any attachments and including these Terms, constitutes the entire agreement of Seller and Buyer concerning the subject matter hereof and supersedes all prior or contemporaneous statements, proposals or agreements, whether oral or written, made by either Buyer or Seller, and supersedes any past course of dealing between the parties or usage of trade and expressly excludes any of Seller’s general terms and conditions of sale or service or any other document issued by Seller in connection with the Order, provided that if Buyer and Seller have separately entered into a services agreement or supply agreement governing ongoing sales of Goods or performance of Services by Seller, then the terms of that agreement will control to the extent they conflict with these Terms. By acknowledging receipt of the Order or by shipping the Goods or performing the Services, Seller agrees to these Terms. The Order may be altered or amended only by a further written agreement signed by both Buyer and Seller.
- 2. ACCEPTANCE OF ORDER.** All Orders must be in writing. Acknowledgement of, performance of Services in relation to, or shipment of Goods against the Order will constitute Seller’s acceptance of the Order, including all instructions, specifications and references contained on the Order and these Terms. No change in the Order, irrespective of the wording of Seller’s acceptance, will be held valid without Buyer’s approval and signature, and any terms proposed in Seller’s acceptance of the Order that add to, vary from, or conflict with the Order, are hereby rejected and are void.
- 3. ACCEPTANCE OF GOODS.** Buyer shall be deemed to have accepted the Goods, and title to the Goods and risk of loss shall pass to Buyer, when the Goods are inspected and accepted by Buyer at the point of delivery indicated in the Order.
- 4. TRANSPORTATION.** Goods shipped under the Order are to be shipped and routed as instructed by Buyer on the Order; if the Order is silent, all Goods shall be delivered (and prices reflect delivery) Ex Works (EXW) Buyer’s designated facility (pursuant to Incoterms 2010). Any excessive freight charges paid by reason of failure of Seller to comply with such instructions shall be charged to and borne by Seller. The Services shall be performed at the location outlined in the Order or, at Buyer’s option, at Seller’s place of business or at another place determined by Buyer.
- 5. PARTIAL SHIPMENTS.** All Goods ordered shall be delivered in one complete shipment, unless otherwise specified in writing by Buyer. Seller agrees to notify Buyer immediately if, for any reason, complete delivery of all Goods ordered herein cannot be made in one shipment. Buyer may reject and return any partial shipment of Goods, unless specifically authorized by Buyer, and assess Seller freight and handling charges incurred. Excessive freight charges as a result of partial shipments will be borne by Seller.



6. DELIVERY; REMEDIES. Time is of the essence. Delivery of Goods or performance of Services must be made within the time limits specified on the Order, otherwise Buyer reserves the right to purchase Goods or obtain Services from a third party and charge Seller with losses incurred as a result thereof, to cancel the Order or any part thereof, and/or to exercise its other legal rights or remedies. Seller acknowledges that Buyer may be purchasing the Goods for resale to Buyer's customers. If for any reason delivery or performance cannot be made on the date specified on the Order, Seller shall immediately (i) notify Buyer of the cause for the non-performance and of the anticipated extent of the delay, (ii) pay for or reimburse Buyer for any excessive freight costs incurred as a result of late shipment, and (iii) reimburse Buyer for any customer charge backs and any additional labor and material costs incurred by Buyer in fulfilling its contract or commitment with its customers.

7. PACKING LIST AND INVOICES. All shipments of Goods shall be invoiced and contain a packing list giving a description of the Goods including material, quantity, part number, certificate of analysis (for ingredients) and Order number. Buyer reserves the right to charge Seller back for all expenses incurred, and/or a handling fee, as a result of improper marking, packing or routing done contrary to the Order or other instructions of Buyer.

8. EXCESS GOODS. Except for customary quantity variation recognized by trade practice, Goods in quantities in excess of those specified in the Order will not be accepted. Buyer may refuse or return such Goods at Seller's risk. Seller shall pay all transportation charges, both to and from the original destination, and handling costs. Buyer's count will be accepted as final and conclusive on all shipments.

9. SELLER'S WARRANTIES (GOODS). Seller represents and warrants that all Goods (i) shall be of the best quality, merchantable, suitable for the intended purpose including, as applicable, human consumption, free from defects in workmanship, material or design, and shall conform to the specification set forth in the Order and/or to any samples supplied to Buyer, (ii) will be free and clear of all liens, security interests or other encumbrances; (iii) will be in compliance with all applicable federal, state and local laws, rules, regulations and requirements including, if applicable, the Federal Food, Drug and Cosmetic Act including FSMA, (iv) if applicable, will not be adulterated or misbranded, (v) if applicable, will be manufactured, produced, stored and/or delivered in accordance with appropriate good manufacturing practices required under applicable laws, (vi) if applicable, may be introduced into interstate commerce, (vii) will not infringe or misappropriate any third party's patent or other intellectual property rights, and (viii) will not contain any of the chemicals known to the State of California to cause cancer or reproductive toxicity unless a chemical is present at levels below the safe harbor levels established by, and is not required to have any warning or other disclosure in accordance with, California's Safe Drinking Water and Toxic Enforcement Act of 1986, as amended (sometimes referred to as Proposition 65). Seller acknowledges that Buyer may use Seller's Goods in the manufacture of other goods sold by Buyer ("**Buyer's Products**").

10. SELLER'S WARRANTIES (SERVICES). Seller represents and warrants to Buyer that (i) Seller will perform the Services in accordance with Seller's best efforts and professional standards of skill, care and diligence, in a timely manner, in compliance with all of the specifications and descriptions set forth in the Order or reasonably inferable therefrom, and in compliance with all applicable laws, (ii) Seller is in compliance with, and shall perform the Services in compliance with, all applicable federal, state and local laws, rules, regulations and requirements, (iii) Seller will ensure that all persons performing Services will have the requisite experience,



training, skill and other qualifications needed to perform such Services, and (iv) no Services or Deliverables will infringe or misappropriate any third party's patent or other intellectual property rights. Seller shall take such action as is permitted or required by law to prevent any lien from attaching to Buyer or Buyer's property arising from the performance of the Services. At the time of each payment to Seller, Seller shall deliver to Buyer releases and/or waivers of all liens arising from material furnished or labor performed up to the time of such payment.

11. REJECTIONS/DEFECTIVES. Buyer reserves the right, in addition to any other rights that Buyer may have, to reject or revoke acceptance of all or a portion of the Goods that do not comply with the Order. Payment for Goods shall not constitute or be evidence of acceptance by Buyer or bar Buyer's right to revoke acceptance of the Goods. If Buyer rejects all or any portion of the Goods, Seller shall, at Buyer's option, either repair or replace defective or nonconforming Goods at no cost to the Buyer, or give Buyer a full cash refund, including shipping and handling incurred by Buyer. If Buyer requires replacement of the Goods, Seller shall, at Seller's expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods to Seller and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with products from a third party, charge Seller the cost of such products, and terminate the Order. Buyer's payment of Seller's invoices shall be subject to adjustment for shortages in or rejection of the Goods covered thereby. Buyer reserves the right to require Seller to reimburse Buyer for any (i) costs incurred by Buyer to avoid a failure of performance by Buyer with its customer, or (ii) damages resulting from Buyer's inability to fulfill its contract or commitment with its customer (as determined by Buyer) in a timely manner.

12. PRICE. Buyer shall be invoiced at the prices stated on the Order. Buyer will only pay accessorial charges that are included in the Order. If the price is omitted from the Order, the price will be the lower of (i) the lowest prevailing market price at the time the Order is received by Seller, or (ii) the price of the most recent previous Order received by the Seller from Buyer for a comparative quantity of Goods.

13. INVOICES AND CASH DISCOUNTS. Seller agrees to provide a separate invoice for each shipment of Goods or when Services are completed (unless otherwise indicated in the Order). Seller will invoice Buyer for the Goods after the Goods are delivered to Buyer and for the Services after the Services are complete (unless otherwise indicated in the Order). Payment terms are Net 60 from date of invoice (unless otherwise indicated in the Order). All payments and cash discount periods will be calculated from the later of (i) the date of receipt and acceptance of the Goods or completion of the Services, or (ii) Buyer's receipt of a correct and proper invoice, whichever occurs later, and not from the date of the invoice. Seller's failure to promptly provide a correct invoice will require Seller to extend the cash discount period without loss of discount. Buyer shall be entitled at all times to set off any amount owing from Seller to Buyer or any of its affiliated companies against any amount due or owing to Seller with respect to the Order.

14. SET-OFFS (DEDUCTIONS). Seller agrees that Buyer shall have the right to set-off any amounts that may become payable by Buyer to Seller under the Order or otherwise against any amounts that Seller may owe to Buyer, whether arising under the Order or otherwise. In particular, invoices received for an Order that do not correctly reflect the provisions of the Order, especially as to the prices, promotional allowances, shortages not



shipped, quantities or freight charges, will be corrected by Buyer's execution of a debit memorandum detailing any overcharges, which will be set-off from the invoice amount or any other amount owing to Seller.

15. WORK MADE FOR HIRE. Any designs, drawings, specifications, or other intellectual property rights provided by Buyer to Seller ("**Buyer IP**") are the sole and exclusive property of Buyer. If Seller contributes any improvement to Buyer IP, Seller hereby assigns all right, title and interest to such improvements to Buyer. Buyer hereby grants to Seller a revocable, royalty-free, non-exclusive, non-transferable license to use the Buyer IP solely for use in connection with manufacturing the Goods for sale to Buyer or for the performance of the Services pursuant to the Order. All information with respect to the Buyer IP shall be confidential and proprietary information of Buyer. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product and other materials that are delivered to Buyer under the Order or prepared by or on behalf of Buyer in the course of performing Services (collectively, the "**Deliverables**") shall be owned exclusively by Buyer. Seller agrees that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for Buyer. To the extent that any of the Deliverables do not constitute a "work made for hire," Seller hereby irrevocably assigns without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. Upon Buyer's request, Seller shall promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist Buyer to prosecute, register, perfect or record its rights in or to any Deliverables.

16. CONFIDENTIALITY. Seller shall keep confidential all non-public, confidential or proprietary information of Buyer, including, but not limited to, trade secrets, technology, specifications, documents, prototypes, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing designs, drawings, specifications, data or other technical or proprietary information furnished by Buyer in connection with the Order whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"), and shall not, without the written consent of Buyer reproduce or disclose such Confidential Information to others, nor use such Confidential Information except in performance of the Order. Upon completion, termination or cancellation of the Order or upon written request by Buyer, Seller shall return all such information to Buyer or make such other disposition thereof as Buyer may direct or approve.

17. INDEMNIFICATION. Seller shall indemnify, defend, and hold harmless Buyer, and Buyer's affiliates, directors, officers, members, shareholders, employees, customers and agents, from any claim, loss, injury, death, damage, liability, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorneys' fees, arising out of, occurring in connection with or resulting from (i) the Goods or Services, (ii) the negligence of Seller or Seller's employees, agents or contractors, (iii) Seller's breach of the Order, (iv) any claim that the Goods, Deliverables or Services infringe the intellectual property rights of a third



party, (v) any actual or alleged injury, illness and/or death or damage to property resulting from performance of the Services by Seller, its employees, agents, or contractors; (vi) any workers' compensation claim or lawsuit arising from a work-related injury sustained by Seller, its employees, agents, or contractors; (vii) any claim or lawsuit for unpaid wages, benefits of any kind, or other compensation by Seller, its employees, agents, or contractors including, but not limited to, claims for unpaid overtime, wage payments of less than minimum wage, wages for missed meal or rest breaks, incorrect pay stubs, penalties, and any other claims arising under federal, state or local laws governing the wages and working conditions; or (viii) any finding that Buyer is a "joint employer" of workers supplied by or through Seller.

18. INSURANCE. Unless otherwise agreed by Buyer in writing, at all times that Seller is providing Goods or Services, Seller will maintain commercial general liability insurance with combined single limits for bodily injury, death, and property damage of not less than \$2,000,000 per occurrence and aggregate. If Seller is providing Goods, Seller shall also obtain recall insurance in the amount of \$2,000,000. If Seller is providing Services, Seller shall also obtain: (i) professional liability (E&O) insurance with limits of not less than \$2,000,000 per occurrence and aggregate, (ii) Crime/Fidelity of at least \$2,000,000, (iii) excess liability of at least \$2,000,000 and (iv) automobile liability insurance with not less than \$2,000,000 limit covering the use of any owned, non-owned, and hired automobile in the rendering of any Services. Seller shall also maintain the statutory requirements for workers' compensation insurance. All insurance required under this paragraph shall be rated "A-X" or better by A.M. Best and, except with respect to E&O insurance shall be endorsed to include a waiver of subrogation in favor of Buyer. All policies except for worker's compensation shall name Buyer as an additional insured. Upon Buyer's request, Seller shall cause certificates evidencing the existence of any insurance required under the Order to be delivered by the applicable insurer to Buyer.

19. CANCELLATION. Buyer may cancel all or any part of the Order, without any liability to Seller, if Seller fails or is unable to comply with the terms and conditions of the Order, time being of the essence of the Order. Buyer also may cancel the Order without any liability to Seller before Seller ships the Goods or commences performance of the Services. Upon such cancellation, all obligations of Buyer with respect to the portion of the Order cancelled shall cease. Seller shall be liable to Buyer for all costs, expenses and damages incurred by Buyer on account of cancellation.

20. CHOICE OF LAW; ARBITRATION. The Order shall be governed by, and construed in accordance with, the laws of the State of Washington without application of the conflict of law principles thereof. Any controversy or claim arising out of or relating to this Order, or the breach thereof, or any rights granted hereunder, shall be settled by binding arbitration in Clark County, Washington. The arbitration shall be conducted by, and in accordance with the rules of, the Judicial Arbitration and Mediation Service ("JAMS"), before a single arbitrator. The arbitration shall be the exclusive forum for resolving such dispute, controversy or claim. The decision of the arbitrator shall be binding upon the parties hereto, and the expense of the arbitration (including, without limitation, the award of attorneys' fees to the prevailing party) shall be paid as the arbitrator determines. The decision of the arbitrator shall be final, and judgment upon the award of the arbitration may be entered in any court where the arbitration takes place or any court having jurisdiction thereof, and application may be made to any court for a judicial acceptance of the award or order of enforcement. Notwithstanding anything to the contrary contained herein, each party shall have the right to institute judicial proceedings against



the other party or anyone acting by, through or under such other party, in order to enforce the instituting party's rights hereunder, including, but not limited to related to rights regarding Confidential Information, through reformation of contract, specific performance, injunction or any similar equitable relief, and each party agrees that it shall not contest or seek to stay such an action. If either party commences any action or proceeding against the other party to enforce this Order, the prevailing party in such action or proceeding shall be entitled to recover from the other party the actual attorneys' fees, costs and expenses incurred by such prevailing party in connection with such action or proceeding and in connection with enforcing any judgment or order thereby obtained.

21. NON-ASSIGNMENT; SUBCONTRACTING. Seller shall not assign or subcontract its rights or obligations under the Order, including any payment due or to become due with respect thereto, without Buyer's prior written consent. Any such consent shall not relieve the Seller of any of Seller's obligations under the Order. In the event Seller uses any approved subcontractors, Seller shall ensure such subcontractor's compliance with the Order and shall be responsible for the subcontractor's performance and any breach of the Order.

22. INDEPENDENT CONTRACTORS. There is no relationship of partnership, joint venture, employment, franchise or agency between Buyer and Seller, and Seller will not have the power to bind Buyer or incur obligations on Buyer's behalf without Buyer's prior written consent.

23. REMEDIES. Each of the rights and remedies reserved to Buyer in the Order shall be cumulative and additional to any other remedies provided in law or equity. No delay or failure by Buyer in the exercise of any right or remedy shall affect any such right or remedy and no action taken or omitted by Buyer shall be deemed to be a waiver of any such right or remedy.