

AFF PRODUCT SALES TERMS AND CONDITIONS

1. **SCOPE.** The recipient hereof ("**Buyer**") buys certain products ("**Products**") from American Fruits and Flavors, LLC, a Delaware limited liability company ("**Seller**") from time to time and in accordance with (a) Seller's quotations and/or (b) purchase orders accepted by Seller (each an "**Order**") and (c) these Sales Terms and Conditions ("**Terms**"). Notwithstanding any terms or conditions on an Order, Seller's performance is expressly conditioned on Buyer's acceptance of these Terms. Any terms or conditions in any Order or other communication of Buyer (including, without limitation, any Buyer-provided specifications or other Product performance, composition or quality related information), which are inconsistent with or in addition to these Terms are rejected. Buyer's acceptance of any Product or Seller invoice shall be deemed acceptance of these Terms.

2. **ORDERS.** All Orders shall (a) be in writing and subject to acceptance by Seller, (b) be deemed acceptances by Buyer of Seller's offers to sell Products and (c) limit acceptance by Buyer to the terms and conditions thereof and these Terms. Buyer may not cancel, terminate for convenience, reschedule or suspend delivery of an Order without Seller's prior written consent.

3. **PRICES.** The prices of Products shall be in the Order or Seller's then-current price list, which may be changed by Seller upon written notice to Buyer.

4. **PAYMENT; DEFAULT.** All prices in an Order or Seller's then-current price list are FOB Origin (Incoterms 2020) for shipments to locations within the United States and EXW Manufacturing Site (Incoterms 2020) for shipments to locations outside of the United States, unless otherwise specified in writing, and do not include any customs duties, sales, use, excise or property taxes, shipping, packaging, boxing, crating, labeling, storage, insurance or similar charges, all of which are the responsibility of Buyer. Unless specified in an invoice, all payments will be made in United States Dollars, net 30 days from the date of invoice. Buyer shall promptly pay the prices of Products in full (without deduction or set off for any reason) in accordance with the payment terms in Seller's invoice. If Buyer is delinquent in payment, upon presentation of invoice, Buyer shall reimburse Seller for any costs and expenses incurred by Seller in collecting such delinquent amounts, including, without limitation, legal fees and costs, fees of collection agencies, and interest at the lesser of 1.5% per month or part thereof from the due date(s) or the maximum legally permissible rate. Buyer shall pay all taxes, fees, value added surcharges, import and export duties, and other assessments levied by federal, state, local and other governmental authorities under applicable laws. If Seller or its subcontractors, or the employees of either, must pay any such levies, fines, penalties, or assessments, then Buyer shall reimburse such payor promptly upon submission of the applicable document. Seller may also, at any time, suspend performance of any Order or require advance payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's discretion, the financial condition of Buyer or other grounds for insecurity warrant such action.

5. **TITLE; RISK OF LOSS; DELIVERY.** Title to the Products shall pass to Buyer upon delivery of the Products to Buyer. Unless otherwise specified in an Order, delivery of Products shall mean, and shall be deemed to have occurred upon, delivery by Seller to Buyer or a common carrier. After delivery of Products to Buyer or common carrier, Buyer shall bear the entire risk of the Product's use, loss, theft, damage, storage, destruction, handling and resale. Buyer shall strictly comply with Seller's delivery terms. Buyer acknowledges that delivery dates in Orders accepted by Seller are merely approximate, and Seller shall have no liability for late deliveries. Buyer shall (a) independently determine the suitability of each shipment of the Product for Buyer's use and (b) confirm the accuracy of all shipments as to Product identity, quantity and quality upon receipt. Buyer's failure to reject any Products as non-conforming within 7 days of delivery shall be deemed Buyer's acceptance of such Products. Seller shall not be responsible for any loss or damage caused by Buyer's failure to perform its responsibilities.

6. **SECURITY INTEREST.** Buyer grants Seller a valid and enforceable security interest in the Products until the invoice covering the Products is paid in full. Buyer irrevocably appoints Seller as its lawful attorney-in-fact coupled with an interest with full authority to execute and file financing statements and any other necessary documents and other instruments to perfect, preserve, and enforce its security interest.

7. **PROPRIETARY INFORMATION; IP IMPROVEMENTS.**

7.1. Buyer acknowledges and agrees that all trademarks; service marks; trade dress; logos; distinctive signs; domain names; trade names;

trade secrets and know-how; copyrights and copyrightable material; patents, patent applications and rights in inventions (whether or not patentable); artwork; concepts; recipes; product specifications; formulas; standards; procedures; new product ideas; manufacturing processes; techniques; methods; systems; designs; pricing; sale projections; production volumes; research; computer programs; development or experimental work; clients; suppliers; companies; service providers; and any other intellectual property which Seller and/or its affiliates may have at any time created, adopted, used, registered, and/or been issued in any location in connection with Seller's business or Products (collectively, "**Proprietary Information**") shall be and remain the exclusive property of Seller and these Terms shall not constitute a license of Buyer to use the Proprietary Information, except to the extent required to satisfy its obligations under these Terms. Buyer acknowledges that it has no right, title or interest in the Proprietary Information (except as expressly permitted under these Terms), and that any use by Buyer of the Proprietary Information will inure solely to Seller's benefit. Buyer shall not alter the Proprietary Information or the packaging of Products, or challenge the validity, or do or refrain from doing any act which might result in impairment of the value, of the Proprietary Information. Buyer shall not (a) acquire or attempt to acquire, for itself or for others, any rights in or to the Proprietary Information, either through registration or use or (b) cause or permit its business name to include any of Seller's trademarks or its business to otherwise be operated in any manner which suggests any association with any of Seller's trademarks or with Seller.

7.2. Seller shall, solely and exclusively, own all right, title and interest (including patent, copyrights, trade secret, mask work, trademark, and all other intellectual property rights or other proprietary rights (of every kind and nature), throughout the world and whether patentable or otherwise entitled to legal protection), in and to any and all IP Improvements (as defined below). The parties acknowledge and agree that it is a condition of these Terms that Seller shall hold and own all right, title and interest in and to any IP Improvements. Seller shall be the sole owner, with powers to assign or license on an exclusive basis or otherwise to third parties, of all the IP Improvements, worldwide and for the maximum term of validity of such rights, pursuant to applicable law, without need for the execution of any additional contract, act or transaction. Buyer hereby assigns, transfers and conveys to Seller, free of any encumbrances or proprietary rights of any other party or any other encumbrance whatsoever, exclusively and perpetually, all right, title, and interest throughout the world it may have or acquire in or to the IP Improvements. Buyer further waives all moral rights, and all similar or equivalent rights, whether arising under common law or by statute, in such IP Improvements. To the extent that any intellectual property developed by Buyer prior to the effective date of these Terms is incorporated into the IP Improvements, or desirable or necessary for Seller to fully enjoy and exploit the IP Improvements, Buyer hereby grants to Seller a perpetual, fully paid up, royalty free, worldwide, non-exclusive, transferable and sub-licensable, license to use, make, have made, sell, import, export, modify, prepare derivative works, and otherwise fully exploit all or any portion of such Buyer intellectual property. Buyer shall (a) have no authority to exercise any rights or privileges with respect to the IP Improvements owned by or assigned to Seller under these Terms and (b) not exploit Seller Proprietary Information or IP Improvements for itself or third parties, without express written authorization from Seller. Seller may apply for registration with relevant bodies or registries, or adopt any measures required for the protection and enforceability of the IP Improvements. Buyer irrevocably appoints the Chairman of Seller, or his designee, as Buyer's lawful attorney in fact coupled with an interest and with full power and authority to do all things and to execute all documents as may reasonably be necessary to give effect to this Section. "**IP Improvement(s)**" means any inventions, discoveries, works of authorship, mask works, designations, designs, know-how, ideas, information, products, compilations, programs and methods, upgrades, additions, derivatives, enhancements and/or modifications and all other intellectual property rights (whether patentable or not) made, created, developed, conceived, or reduced to practice, in whole or in part, by either party or jointly by the parties during the term in performance of a party's rights or obligations under, or that relate to the subject matter of, these Terms, including any manufacturing processes, equipment, recipes, formulations or systems, including without limitation the intellectual property arising from the Products.

7.3. The parties acknowledge that (a) the Proprietary Information and any IP Improvements are commercially and competitively valuable, the unauthorized use of which may cause irreparable harm to Seller and (b) notwithstanding anything to the contrary in these Terms, the rights and

obligations of the parties may be enforced by specific enforcement or injunctive relief.

8. **CONFIDENTIALITY.** Buyer agrees not to copy, alter or disclose to any third party, nor use for any purpose: (a) any confidential information provided by Seller including without limitation the Proprietary Information; (b) any information Buyer has received from Seller or others which is confidential or proprietary, whether or not marked as "confidential;" (c) any confidential or Proprietary Information circulated within Buyer or Seller via its internal mail system or otherwise; or (d) the form, substance and/or terms of these Terms (collectively, (a) - (d), the "**Confidential Information**"). Buyer agrees not to use any Confidential Information for its own benefit or the benefit of any third party. Notwithstanding the foregoing, "Confidential Information" does not include information that: (i) is known to, or already in the possession of, the receiving party, other than information it has previously received from the disclosing party; (ii) is or becomes generally known to the public by publication or otherwise through no action or fault of the receiving party; (iii) is disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party; provided that such source is not known by the receiving party to be bound by a confidentiality agreement with or obligations of secrecy to the disclosing party; or (iv) was or is independently developed by the receiving party without reference to or reliance on the Confidential Information of the disclosing party or any disclosure made hereunder.

9. **WARRANTY.**

9.1. Seller warrants that the Products will conform to the description in the Order. Seller's sole liability under this warranty is limited to replacing the Products or, at Seller's discretion, a credit for the price paid by Buyer for such Products. The warranty set forth above may only be asserted by Buyer and not by its customers or any other end-users. Buyer may not make any representations or extend any warranty, express or implied, relating to the use, effectiveness, or safety of the Products, except as expressly set forth above. All sales and other agreements between Buyer and its customers and vendors are the exclusive responsibility of Buyer and any commitment made by Buyer to its customers or vendors regarding the delivery, performance, suitability, or other matters relating to the Products are Buyer's sole responsibility. The limited warranty in this Section 9.1 shall not apply to any Products that have (a) been damaged by or subject to improper handling or storage by Buyer and/or (b) become defective due to their integration with any products not supplied by Seller. Seller reserves the right to investigate any warranty claims to resolve the problem or determine whether such claims are proper.

9.2. BUYER ACKNOWLEDGES AND AGREES THAT THE WARRANTY SET FORTH IN SECTION 9.1 CONSTITUTES THE SOLE AND EXCLUSIVE WARRANTY OF SELLER IN CONNECTION WITH THE PRODUCTS. THE PARTIES EXPRESSLY DISCLAIM, AND BUYER RELEASES SELLER FROM, ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AND ALL OBLIGATIONS AND REPRESENTATIONS AS TO PERFORMANCE, INCLUDING ALL WARRANTIES WHICH MIGHT ARISE FROM COURSE OF DEALING OR CUSTOM OF TRADE AND INCLUDING ALL IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO AGENT, EMPLOYEE OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO BIND SELLER TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY RELATING TO THE PRODUCTS OTHER THAN AS SPECIFICALLY PROVIDED IN THESE TERMS.

10. **LIMITATION OF DAMAGES.**

10.1. Buyer assumes all risks and liability arising out of its use, storage handling and resale of the Products. Seller is not responsible for spoilage and/or Product defects resulting from improper handling, storage or processing.

10.2. NOTWITHSTANDING ANY OTHER TERM OR CONDITION OF THESE TERMS, SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL LOSSES OR DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF BUSINESS OPPORTUNITY, OR ANY OTHER PECUNIARY LOSS) SUFFERED BY BUYER RELATED TO OR ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, THE TRANSACTIONS CONTEMPLATED BY THESE TERMS, AND/OR FROM ANY OTHER CAUSE WHATSOEVER, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER'S LIABILITY FOR ANY CAUSE

OF ACTION RELATING TO THESE TERMS EXCEED AMOUNTS RECEIVED BY SELLER FROM BUYER FOR THE PRODUCT THAT IS THE SUBJECT OF SUCH CLAIM OR DISPUTE. ANY PAYMENT MADE BY SELLER PURSUANT TO THIS SECTION SHALL CONSTITUTE REASONABLE LIQUIDATED DAMAGES AND IS NOT INTENDED AS A FORFEITURE OR PENALTY. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE TOTAL DETRIMENT SUFFERED BY BUYER AS A RESULT OF A BREACH OF THESE TERMS BY SELLER, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THE APPLICABLE ORDER, THE APPLICABLE PAYMENT BY SELLER REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH BUYER WILL INCUR AS A RESULT OF SUCH BREACH. ANY SUCH PAYMENT BY SELLER PURSUANT TO THESE TERMS, IF ANY, SHALL CONSTITUTE BUYER'S SOLE AND EXCLUSIVE REMEDY FOR SELLER'S BREACH OF THESE TERMS AND SHALL BE IN LIEU OF ALL OTHER CLAIMS THAT BUYER MAY HAVE AGAINST SELLER AS A RESULT THEREOF. EACH AND EVERY PROVISION OF THESE TERMS WHICH PROVIDES FOR A LIMITATION OF LIABILITY OR WARRANTIES, DISCLAIMER, OR EXCLUSION OF DAMAGES, IS EXPRESSLY INTENDED TO BE SEVERABLE AND INDEPENDENT FROM ANY OTHER PROVISION, SINCE THOSE PROVISIONS REPRESENT SEPARATE ELEMENTS OF RISK ALLOCATION BETWEEN THE PARTIES, AND SHALL BE SEPARATELY ENFORCED.

11. **REPRESENTATIONS AND WARRANTIES.** Buyer represents and warrants to Seller that: (a) it has all necessary power, authority and capacity and is properly authorized and licensed to enter into these Terms and to perform its obligations hereunder and the entry into and delivery of these Terms and the performance of the transactions contemplated hereby have been duly authorized by it; and (b) the entry into and delivery and performance of these Terms will not cause or require Buyer to breach any obligation to, or agreement or confidence with, any other person or entity.

12. **INDEMNIFICATION.** Buyer will indemnify, defend and hold Seller, its officers, directors, members, managers, subsidiaries, subcontractors, independent contractors, employees, agents and affiliates, harmless from all claims, damages, expenses, liabilities and losses, including without limitation attorney's fees and costs, that in any way arise out of or relate to (a) the manner in which Buyer and/or any of its customers or end users use the Products; (b) any personal injury, property damage or other loss resulting or occurring from the willful or negligent acts or omissions of Buyer, its customers or end users; (c) defects or other problems with other component ingredients or materials produced or supplied by anyone other than Seller and that may be used with the Products; (d) Buyer's transactions with its customers, end users or other parties regarding the Products; (e) Seller's compliance with any Buyer instructions or directions; and/or (f) any breach by Buyer of any provision of these Terms.

13. **GOVERNING LAW.** These Terms shall be governed by and interpreted in accordance with the laws of the State of California (without reference to its law of conflict of laws) and the provisions of the United Nations Convention On Contracts For The International Sale Of Goods will expressly be excluded and not apply.

14. **DISPUTE RESOLUTION.** Any dispute, controversy or claim arising out of or relating to these Terms or the breach or termination hereof shall be settled by binding arbitration conducted by JAMS ("**JAMS**") in accordance with JAMS Comprehensive Arbitration Rules and Procedures (the "**Rules**"). The arbitration shall be heard by one arbitrator to be selected in accordance with the Rules, in Orange County, California. Judgment upon any award rendered may be entered in any court having jurisdiction thereof. Within 7 calendar days after appointment the arbitrator shall set the hearing date, which shall be within 90 days after the filing date of the demand for arbitration unless a later date is required for good cause shown and shall order a mutual exchange of what he/she determines to be relevant documents and the dates thereafter for the taking of up to a maximum of 5 depositions by each party to last no more than 5 days in aggregate for each party. Both parties waive the right, if any, to obtain any award for exemplary or punitive damages or any other amount for the purpose of imposing a penalty from the other in any arbitration or judicial proceeding or other adjudication arising out of or with respect to these Terms, or any breach hereof, including any claim that said Terms, or any part hereof, is invalid, illegal or otherwise voidable or void. In addition to all other relief, the arbitrator shall have the power to award reasonable attorneys' fees and costs to the prevailing party. The arbitrator shall make his or her award no later than 7 calendar days after the close of evidence or the submission of final briefs, whichever occurs later. The decision of the arbitrator shall be final and conclusive upon all parties. Notwithstanding anything to the

contrary, if either party desires to seek injunctive or other provisional relief that does not involve the payment of money, then those claims shall be brought in a state or federal court in Orange County, California, and the parties irrevocably and unconditionally consent to personal jurisdiction of such courts and venue in Orange County, California in any such action for injunctive relief or provisional relief.

15. **ATTORNEYS' FEES.** If any litigation, arbitration, mediation, or other proceeding ("**Proceeding**") is initiated by any party against any other party to enforce, interpret or otherwise obtain judicial or quasi-judicial relief in connection with these Terms, the prevailing party in such Proceeding shall be entitled to recover from the unsuccessful party reasonable attorney's fees and costs directly related to (a) such Proceeding (whether or not such Proceeding proceeds to judgment), and (b) any post-judgment or post-award proceeding including, without limitation, one to enforce any judgment or award resulting from any such Proceeding.

16. **FORCE MAJEURE.** Seller shall not be liable for any delays in delivery or failure to perform or other loss due directly or indirectly to unforeseen circumstances or causes beyond Seller's reasonable control including, without limitation: (a) acts of God, acts (including failure to act) of any governmental authority, wars, governmental priorities, port congestion, riots, revolutions, strikes or other labor disputes, fires, floods, sabotage, nuclear incidents, earthquakes, storms, pandemics or epidemics; or (b) inability to timely obtain either necessary and/or proper labor, materials, ingredients, components, facilities, production facilities, energy, fuel, transportation, governmental authorizations or instructions, material or information.

17. **MERGER.** Buyer agrees to these Terms by submitting Orders. These Terms and any Order contain the entire agreement between the parties regarding the subject matter of these Terms (except for the price or the shipment schedule for the Products in Seller's quotation or Buyer's Order accepted by Seller, which shall be incorporated herein subject to the terms hereof), are intended as a final expression of such parties' agreement regarding such terms as are included in these Terms, are intended as a complete and exclusive statement of the terms of such agreement, and supersede all negotiations, stipulations, understandings, agreements, promises, representations and warranties, whether written or oral, if any, regarding such subject matter, in any Order or other document now or hereafter delivered. No other negotiations, stipulations, understandings, agreements, promises, representations or warranties, whether written or oral, either as an inducement to enter into these Terms or as to its meaning or effect, have been made that are not contained herein. These Terms shall apply to all Orders or requests for Products submitted by Buyer to Seller, without the need for either party to execute these Terms.

18. **THIRD PARTY BENEFICIARIES.** Nothing in these Terms, express or implied, is intended or shall be construed to give any person, other than the parties and their successors and permitted assigns, any legal or equitable right, remedy or claim under or regarding any agreement or any provision in these Terms.

19. **ASSIGNMENT.** Buyer may not assign or otherwise transfer its rights or delegate its obligations under these Terms without the prior written consent of Seller. Seller will have the right, in its sole and absolute discretion, to assign its rights and/or obligations under these Terms.

20. **NON-EXCLUSIVE AGREEMENT.** These Terms are a non-exclusive agreement. Seller may advertise, offer and provide products, including without limitation, the Products to others.

21. **MISCELLANEOUS.** Except to the extent otherwise expressly permitted by these Terms, no amendment of these Terms shall be effective unless reduced to a writing executed by both parties. No waiver of any provision hereof or of any terms or conditions established by Seller will be effective unless in writing and signed by the party against which enforcement of the waiver is sought. Wherever in these Terms reference is made to Seller's consent, acceptance, permission, or exercise of discretion, such discretion shall be deemed to be the sole and absolute discretion of Seller. If any of these Terms' provisions are held by a court of law to be illegal, invalid or unenforceable, the legality, validity, and enforceability of the remaining provisions of these Terms will not be affected or impaired thereby. The parties will replace any invalid and/or unenforceable provision with a valid and enforceable provision that most closely meets the aims and objectives of the invalid and/or unenforceable provision. The relationship between Seller and Buyer is that of a vendor to its vendee, and nothing herein contained shall be construed as constituting either party the employee, agent, independent contractor, franchisor, franchisee, partner or co-venturer of the other party. Neither party shall have any authority to create or assume any obligation binding on the other party. Each party and its legal counsel have reviewed and revised these Terms. The rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of these Terms. Buyer will execute all instruments and documents and take all actions as may be reasonably required to effectuate these Terms upon demand. If a conflict arises between these Terms and an Order, these Terms shall control. Sections 4-10, 12, and 14-21 and any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of these Terms.

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