

## PURCHASE ORDER TERMS AND CONDITIONS

### 1. BASIS OF AGREEMENT.

1.1 Any of the following acts of the person or entity to whom the Purchase Order is addressed (the "Seller") shall constitute assent to and acceptance of these Purchase Order Terms and Conditions (the "Terms and Conditions"): signing and returning a copy of the Purchase Order, returning Seller's own form of acknowledgement or confirmation, or commencement of performance of services, or shipment of any of the goods ordered. These Terms and Conditions may not be modified, supplemented, or superseded by any Seller document or otherwise except with prior written approval from Casa Grande Dairy Products, LLC f/k/a Ehrmann Arizona Dairy, LLC ("Buyer").

1.2 Wherever in these Terms and Conditions reference is made to a "Purchase Order", it shall mean, collectively, the face of any Buyer Purchase Order and these Terms and Conditions, whether physically attached to the Purchase Order or not. These Terms and Conditions, having been delivered (either through actual delivery, by electronic data interchange or through the Buyer website), shall be deemed to be incorporated into each Purchase Order. By accepting the Purchase Order, Seller agrees to be bound by these Terms and Conditions. Except as otherwise stated herein, the Purchase Order is intended to set forth the entire agreement between Buyer and Seller applicable to purchases of goods and/or services ("Items") made by Buyer from Seller.

1.3 Seller agrees to comply with all requirements of Buyer in respect of delivery, packing, warehousing, invoicing, quality control, packaging, return of returnable packaging or delivery materials, bar coding and other such requirements (including any amendments to the requirements) as may be stated in any specifications by and between Seller and Buyer or of which Seller is otherwise notified by Buyer from time to time. Buyer agrees to give Seller reasonable notice of its requirements.

1.4 In the event that the Purchase Order is issued pursuant to a Supply Agreement by and between Seller and Buyer ("Supply Agreement") the Purchase Order shall be subject to the terms and conditions of the Supply Agreement; (ii) the terms and conditions of the Supply Agreement shall be incorporated into the Purchase Order, and (ii) Seller and Buyer shall be bound by the terms of the Supply Agreement. In the event of a conflict between the Supply Agreement and the terms and conditions of the Purchase Order, the terms and conditions of the Supply Agreement shall govern.

### 2. SELLER'S TERMS AND CONDITIONS.

Reference to Seller's bids or proposals on any Purchase Order issued by Buyer shall not affect the terms and conditions hereof, unless specifically provided to the contrary herein, and no other agreement or quotation in any way modifying any of said terms and conditions will be binding upon Buyer unless made in writing and signed by Buyer's authorized representative. Failure of Buyer to object to terms and conditions contained in any acknowledgement, confirmation or other document provided by Seller shall not be construed as a

waiver of these Terms and Conditions nor an acceptance of any terms and conditions contained in any such acknowledgement, confirmation or other document. Buyer hereby gives notification of objection to and rejection of all terms and conditions proposed by Seller that are different from or additional to those specified in these Terms and Conditions and that are not separately agreed to in writing by Buyer. Notwithstanding any terms or conditions of Seller, the purchase of Items by Buyer is expressly limited to and made conditional upon the terms and conditions contained herein. If these terms and conditions are not acceptable, Seller must immediately notify Buyer.

### 3. DELIVERY TERMS/TRANSFER OF TITLE AND RISK OF LOSS.

3.1 For all Items manufactured in the United States, sales are on a delivered basis and Seller's delivery of the Item will occur and risk of loss will pass only when and to the extent the conforming Item has been received at the "Ship to" address designated in the Purchase Order and a Buyer employee or representative has signed the bill of lading or other shipping document acknowledging receipt by Buyer. Seller and Buyer will work together to minimize surcharges, freight and shipping costs. Buyer shall have the right to change shipping arrangements upon advance notice to Seller to pick up or designate pick up of Items. In such case, title and risk of loss for Items shall transfer from Seller to Buyer at the time of delivery to the Buyer transporter. Trailer spotting fees at the shipping location and dunnage are the responsibility of the party designating the transporter. If excess freight costs are incurred as a result of Seller's failure to meet specified shipping dates, then Seller will pay for such excess freight costs. If excess freight costs are incurred as a result of Buyer's request for early delivery, then Buyer shall pay for such excess freight costs. Buyer reserves the right to change or cancel the Purchase Order, in whole or in part, upon notice to Seller.

3.2 THE TIME SPECIFIED IN THE PURCHASE ORDER FOR SHIPMENT OF ITEMS IS OF THE ESSENCE AND IF SUCH ITEMS ARE NOT SHIPPED WITHIN THE TIME SPECIFIED, STONYFIELD RESERVES THE RIGHT, AT ITS OPTION AND WITHOUT LIMITATION, TO CANCEL THE PURCHASE ORDER (OR ANY PORTION THEREOF) AND/OR REJECT ANY ITEMS DELIVERED AFTER THE TIME SPECIFIED. In addition to the aforementioned remedy, Buyer may exercise any other remedies provided for in these Terms and Conditions and/or applicable law, including but not limited to those remedies provided by the Uniform Commercial Code in effect in the State of Vermont.

3.3 Notwithstanding Buyer's right to cancel shipment, or to reject or revoke acceptance of Items, Seller agrees to inform Buyer immediately of any actual or anticipated failure to ship all or any part of any Purchase Order or the exact Items called for in a Purchase Order on the shipment date specified. Acceptance of any Items shipped after the specified shipment date shall not be construed as a waiver of any of Buyer's rights or remedies resulting from the late shipment.

3.4 Seller shall not reserve a security interest in any Items shipped to Buyer.

#### **4. PAYMENT.**

Payment shall be due only after proper delivery of the Items and undisputed invoices will be paid 45 days from the invoice date, subject to any applicable discounts, setoffs or deductions, or as otherwise stated on the Purchase Order. Buyer is specifically authorized, without limitation, to offset any amounts owed to Buyer by Seller. Buyer's payment shall be subject to reasonable satisfaction with the Items provided. All Items will be invoiced and paid in U.S. dollars.

#### **5. REPRESENTATIONS AND WARRANTIES.**

5.1 Seller represents and warrants that all Items purchased and delivered pursuant to the Purchase Order shall:

5.1.1 Conform to all provided Buyer specifications, shall be manufactured pursuant to and in compliance with the terms hereof and thereof;

5.1.2 Be merchantable and of good material, quality and workmanship, free from defects, latent or patent, and fit for use in or with food products for human consumption and fit for Buyer's intended particular use and purpose;

5.1.3 Be weighed, produced, prepared, delivered, inspected, shipped and in compliance with all federal, state and local food, health, safety and other laws, rules and regulations applicable to the Items, including by way of example, and not limitation all laws and regulations relating to health, safety, environment, labeling and country of origin designation; all FDA, toxic substances, OSHA, CPSC and EPA regulations; Federal Meat Inspection Act or Poultry Products Inspection Act (if applicable), California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) (if applicable) or any other applicable food safety statute - Seller agrees to execute and furnish to Buyer, on reasonable request, all certifications, guaranties and other documents regarding compliance with such laws and regulations, including any Material Safety Data Sheet ("MSDS") as required by OSHA regulations;

5.1.4 Not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, and that the Items will be not be produced or delivered in violation of such act;

5.1.5 If being sold for delivery outside the United States, conform to and comply in every respect to the provisions of the laws and regulations of the countries into which Items are delivered and/or will be used (provided Buyer has advised Seller which countries are involved);

5.1.6 Be free of any and all liens and encumbrances of any kind.

5.2 Seller represents and warrants that neither the manufacture or sale of Items, nor their use, consumption, or sale by Buyer infringes any valid patent, copyright, trade secret

or other intellectual property and/or proprietary rights ("Proprietary Rights") of any third party in the United States, and in any other country as to which Seller has been advised by Buyer that Items will be delivered and/or sold.

5.3 Seller represents and warrants that it has and will maintain sufficient capacity to supply, and will in fact supply, all of Buyer's requirements arising under a Purchase Order on a continuing and uninterrupted basis.

5.4 In addition to any other remedy set forth in these Terms and Conditions, Seller will replace without charge, or make a fair allowance for any noncompliance with the specifications, or any defects in materials or workmanship in such Items demonstrated to have existed at the time of delivery, provided Buyer gives Seller written notice promptly upon discovery thereof. If any Items shipped to Buyer are found by Buyer to be defective, Buyer shall set aside such Items for inspection by Seller and instructions for redelivery to Seller or disposal; provided, however, that Buyer shall not be obligated to hold such Items for inspection and redelivery instructions, if those Items are not received from Seller within ten (10) business days after Seller's receipt of such notice from Buyer. All expenses involving the return or disposal of defective materials shall be at the expense of Seller.

5.5 Nothing contained in any Purchase Order shall be deemed a waiver or limitation of any representations, warranties or guarantees implied by law. Any contrary terms and conditions or other attempts by Seller to disclaim any express or implied warranties available under the Uniform Commercial Code in effect in the State of Vermont or any other warranties stated herein are null and void and of no force and effect whatsoever.

#### **6. INDEMNITY.**

Seller shall defend, indemnify and hold Buyer and its affiliates, and their respective officers, directors, employees, and agents harmless against any and all claims, demands, actions, liabilities, damages, costs, losses, and expenses including, without limitation, reasonable attorneys' fees (collectively "Damages") incurred in connection with a Purchase Order or otherwise arising from (i) the performance or non-performance of Seller's obligations under the Purchase Order, including these Terms and Conditions; (ii) any negligent act or omission of Seller; (iii) any allegation that any Items provided infringe upon a third party's Proprietary Rights; (iv) any actual or alleged manufacturing and/or design defects and/or breach of warranties (including without limitation breach of implied warranties of merchantability and fitness for a particular purpose) for the Items provided under the Purchase Order, and any strict or products liability arising in connection therewith (including but not limited to any third party claims for injury, death or Damages resulting from the ultimate use of such Items); (v) Seller's violation of any applicable laws or regulations; and/or (vi) any ordered or suggested recall by federal, state or local governmental authorities as a result of the Items, whether or not incorporated into Buyer's products. Buyer's rights and remedies shall be deemed non-exclusive and shall include without limitation all rights, remedies and

defenses available to it in any given instance at law or equity, under the Uniform Commercial Code in effect in the State of Vermont or otherwise. This Section 6 shall survive termination of the Purchase Order.

## **7. INSURANCE.**

7.1 Seller shall maintain at its sole cost and expense, insurance with carriers with A.M. Best ratings of not less than A, and with a minimum Financial Rating of Class VII.

7.1.1 For raw material, packaging, equipment, and construction suppliers, Seller shall carry statutory workers compensation, including employers liability insurance with a minimum limit of \$1,000,000, commercial general liability insurance written in occurrence form with a combined single limit of not less than \$5,000,000 per occurrence and in the aggregate. Coverage must include Products/Completed Operations, Personal and Advertising Injury, and Blanket Contractual Liability. Seller shall also carry business auto liability for all owned, hired or non-owned vehicles with a combined single limit of not less than \$2,000,000. Where applicable, Seller shall carry environmental and professional liability policies with a minimum limit of \$1,000,000, respectively. Excess liability policy can be used to satisfy minimum requirements.

7.1.2 For goods and services suppliers, Seller shall carry statutory workers compensation, including employers liability insurance with a minimum limit of \$1,000,000, commercial general liability insurance written in occurrence form with a combined single limit of not less than \$5,000,000 per occurrence and in the aggregate. Coverage must include Products/Completed Operations, Personal and Advertising Injury, and Blanket Contractual Liability. Seller shall also carry business auto liability for all owned, hired or non-owned vehicles with a combined single limit of not less than \$2,000,000. Where applicable, Seller shall carry environmental and professional liability policies with a minimum limit of \$1,000,000, respectively. Excess liability policy can be used to satisfy minimum requirements.

7.2 All liability policies purchased by Seller shall be primary with regard to any liability insurance carried by Buyer, whose policy shall always be excess. Each policy shall contain an endorsement waiving all rights of subrogation against Buyer. All such insurance policies purchased by Seller must be paid and in force. Buyer must be named as an additional insured on general liability and auto policies purchased by Seller. Seller shall provide to Buyer certificates of insurance setting forth the coverage as required above together with the insurance company's name, policy number and expiration dates of the insurance. All such policies shall provide that they shall not be cancelled, non-renewed, or materially altered except upon not less than thirty (30) days written notice to Buyer. Failure of Seller to provide the certificates referenced hereunder, or failure of Buyer to hereafter specifically request such certificates, shall in no way limit or release Seller of its obligations or liabilities under these Terms and Conditions.

7.3 If Seller is not able to meet any of the requirements of this Section 7, Seller should contact Buyer.

## **8. REMEDIES.**

8.1 Seller's failure to comply with any of the terms and conditions of the Purchase Order, these Terms and Conditions, or any other obligation or duty binding on Seller shall be grounds for the exercise by Buyer of any one or more of the following remedies:

8.1.1 Cancellation of all or any part of any undelivered Purchase Order, including but not limited to the balance of any remaining installments on a multiple-shipment Purchase Order.

8.1.2 Rejection (or revocation of acceptance) of all or any part of any delivered shipment. Upon rejection or revocation of acceptance of any part of or all of a shipment, Buyer may return the Items or hold them at Seller's risk and expense. Payment of any invoice shall not limit Buyer's right to reject or revoke acceptance. In respect of any Items rejected (or acceptance revoked) by Buyer, there shall be charged to Seller all expenses incurred by Buyer in (i) unpacking, examining, repacking and storing Items; and (ii) landing and reshipping such Items. Unless Buyer otherwise agrees in writing, Seller shall not have the right to make a conforming delivery within the contract time.

8.1.3 Termination of all current and future business relationships.

8.1.4 Recovery from Seller of any damages sustained by Buyer as a result of Seller's breach or default.

8.1.5 Any and all remedies available to Buyer under the Uniform Commercial Code in effect in the State of Vermont and such other remedies as are provided under applicable law.

8.2 If Seller ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature) or any proceeding under the bankruptcy or insolvency laws is brought by or against Seller or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, or if an action under any law for the relief of debts is taken with respect to Seller, in addition to any other legal or equitable right Buyer may terminate the Purchase Order without liability except for deliveries previously made or for Items covered by the Purchase Order then completed and subsequently delivered in accordance with the terms of such Purchase Order.

8.3 The remedies set forth in this Section 8 are not exclusive and are in addition to all other remedies available to Buyer at law or in equity.

## **9. RECALLS.**

Applicable for raw material and packaging suppliers only.

9.1 If a federal, state or local governmental authority initiates any inquiry or investigation, short of mandating a recall, relating

to the Items or similar goods manufactured or supplied by Seller, Seller shall notify Buyer within twelve (12) hours thereof and take reasonable steps to resolve the matter without exposing Buyer to any liability or risk.

9.2 Seller shall immediately notify Buyer by telephone before the end of the business day, of any recall ordered or suggested by federal, state or local governmental authorities, and shall cooperate with Buyer in implementing such recall. Seller shall immediately notify Buyer by telephone before the end of the business day, of any prospective recall or withdrawal of Items or any Buyer products into which the Items are incorporated, or of the need for any recall or withdrawal of or relating to the Items of which Seller has knowledge.

9.3 In the event that Buyer must initiate a recall or withdrawal of its products as a result of the Items being incorporated into Buyer's products, at Buyer's option, upon providing notice to Seller, Buyer shall be primarily responsible for the implementation and discharge of any recall program, including, but not limited to, handling all inquiries and questions from the media and/or any other individuals, contact with any federal, state or local governmental authorities, and issuance of any press or similar releases. Seller shall furnish Buyer the cell phone of Seller's crisis manager and of a deputy crisis manager in the event that the crisis manager is not available.

9.4 If an Item, whether incorporated into a Buyer product or not, is the subject of a recall (or safety notice) initiated by Buyer, Seller, or a government or consumer protection agency, Seller shall be responsible for all costs and expenses associated with the recall or notice and shall reimburse Buyer for all costs and expenses incurred by Buyer in recalling, publishing notices about, shipping and/or destroying the Items (and where applicable, any products with which the Items has been packaged, consolidated, or commingled), including refunds to customers and Buyer's net landed cost of unsold Items. Notwithstanding the above, whenever feasible, Buyer will use reasonable efforts to notify Seller prior to initiating any recall.

9.5 In the event of a claim, potential claim of any defect, potential recall or recall regarding the Items or of any tampering with any Items, Seller agrees to promptly notify Buyer and immediately conduct at its sole expense a full and complete analysis of said Items upon Seller's receipt of notice of the claim. At Buyer's option, Buyer or its representative(s) shall be allowed to be present during the performance of any tests on the Items, and Seller shall give Buyer reasonable adequate advance notice of any testing so that Buyer or its representatives may be present during said testing.

9.6 Seller and Buyer shall assist each other in all reasonable ways to resolve any claims involving Items subject to a recall or safety notice. To that end, Seller shall make available sufficient representatives who will devote as much time as Buyer reasonably believes is necessary to deal with any recall or safety notice.

9.7 In the event of a recall or otherwise, at the request of Buyer, within twenty four (24) hours of said request, Seller shall cooperate and collaborate with Buyer to issue a joint statement and/or joint press release.

#### **10. NO WAIVER/AMENDMENT.**

No waiver, modification or amendment to the Purchase Order shall be valid unless in writing, signed by Buyer and Seller. No usage of trade or course of dealing between or among any persons having any interest in the Purchase Order will be deemed effective to modify, amend or discharge any part of the Purchase Order or these Terms and Conditions or any rights or obligations of any party hereunder. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege. Payment and/or delivery does not constitute acceptance. Buyer reserves the right to inspect all Items and such inspection does not constitute a waiver by Buyer or relieve Seller of its contractual or other legal obligations.

#### **11. NO ASSIGNMENT.**

Except as otherwise stated herein, the Purchase Order may not be assigned by Seller without the prior written consent of Buyer. Any assignment without such consent shall be void.

#### **12. CONFIDENTIALITY AND OWNERSHIP.**

12.1 Any and all aspects of Buyer's business, including without limitation all non-public information directly or indirectly related to it, that Seller becomes exposed to during the course of providing goods and/or services to Buyer shall be maintained as confidential, and shall not be further disclosed by Seller, or used by Seller (whether directly or indirectly, in a competitive manner or otherwise) except for Buyer-authorized purposes. Buyer shall at all times retain full ownership in all information respecting its business, and shall be the sole and exclusive owner of all materials, items, supplies, work product, designs, drawings, or other deliverables which are provided by Seller, created or developed by Seller, or invoiced by Seller. This Section 12.1 shall survive termination of the Purchase Order.

12.2 Seller shall not refer to Buyer in any advertising or published communication without the prior written approval of Buyer. Seller shall not use, or allow to be used, Buyer's name, logo, trademarks, service marks, patents, copyrights, or trade dress without the prior written approval of Buyer.

#### **13. NOTICES.**

Unless otherwise specifically provided for herein, any notice or demand which under the terms of the Purchase Order or under any statute must or may be given or made shall be in writing and shall be given or made by overnight express service addressed as follows: if to Buyer: Buyer, Attn: Chief Financial Officer, 3 Omega Drive, Brattleboro, VT, 05302. If to Seller: to Seller's address set forth in the Purchase Order. Such notice or demand shall be deemed given on the second (2nd) business day after deposit of such notice or demand with the overnight

express service. The above addresses may be changed at any time by giving prior written notice as provided above.

**14. SEVERABILITY; WAIVER.**

Every provision of these Term and Conditions is intended to be severable. The unenforceability, invalidity, or illegality of any provision, for any reason whatsoever, shall not render the other provisions unenforceable, invalid or illegal. If any provision of these Terms and Conditions is or becomes or is deemed invalid, illegal or unenforceable under the applicable laws or regulations, either such provision will be deemed amended to conform to applicable laws or regulations (and a court of appropriate jurisdiction shall have authority to make such modification) or, if it cannot be so amended, it shall be stricken and the remainder of this Terms and Conditions shall remain in full force and effect. Any waiver by Buyer of any of the terms and conditions of the Purchase Order or these Terms and Conditions must be in writing signed by an authorized representative of Buyer. No delay in exercising, no course of dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof.

**15. GOVERNING LAW/JURISDICTION/VENUE.**

The Purchase Order shall be deemed to have been delivered and accepted by Seller and Buyer in the State of Vermont, and is governed by the laws of the State of Vermont without regard to conflicts of law principles, and shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Seller and Buyer agree that any action between them and their successors in interest shall be maintained in a court of competent jurisdiction located within the State of Vermont, and consent to the jurisdiction and venue of any such Vermont court for all purposes connected herewith.

**16. SURVIVAL.**

Any obligations which either expressly or by their nature are to continue after the termination or expiration of the Purchase Order shall survive and remain in full force and effect.

**17. INDEPENDENT CONTRACTORS.**

It is understood and agreed that Buyer and Seller are, and at all times shall remain, independent contractors and no partnership or joint venture is intended or implied by the undertakings set forth herein. At no time shall either party represent to any third party that it is the agent of the other. Buyer and Seller further covenant that no authorization shall be given to any employee of either of them to act on behalf of the other. In no event shall either party at any time have authority to make any contracts, commitments or undertake any obligations on behalf of the other.

**18. CAPTIONS.**

The captions or headings are for convenience only and are not intended to limit or define the scope or effect of any provision of these Terms and Conditions.