

MILL HAVEN FOODS, LLC
TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE (“**Agreement**”) shall apply to all purchases of Deliverables by the buyer (“**Buyer**”) from MILL HAVEN FOODS, LLC, with offices located at 211 Leer Street, New Lisbon, WI 53950 and 2001 Haven Drive, Tomah, WI 54660 (“**Seller**”). Seller’s agreement to sell and/or perform the Deliverables is expressly conditioned on Buyer’s unqualified acceptance of this Agreement. Unless otherwise agreed to in a written document manually executed by an authorized representative of Seller, any term or condition contained in any purchase order (“**Order**”) or other communication of Buyer that adds to or is inconsistent with this Agreement is expressly rejected. If for any reason this Agreement or any quotation or Order acknowledgement issued by Seller is deemed to be an acceptance of a prior offer made by Buyer, such acceptance is expressly conditioned on Buyer’s assent to only the terms and conditions contained in this Agreement.

1. **DELIVERABLES.** As used in this Agreement, (a) “**Goods**” collectively mean all items being sold by Seller to Buyer, whether finished goods, goods to be manufactured or any combination thereof; and (b) “**Services**” collectively mean the services and labor performed by Seller in connection with the manufacture and sale of Goods. Goods and Services may be collectively referred to in this Agreement as “**Deliverables.**”

2. **ORDER ACCEPTANCE & MODIFICATIONS.** Seller may, in its sole discretion, accept or reject any Order. Seller may accept any Order by written confirmation or by commencing performance of the Order, whichever occurs first. No Order is binding on Seller unless accepted by Seller as provided in this Agreement. If Buyer wishes to make any changes to an accepted Order, it shall notify Seller in writing of such changes, which Seller may accept or reject in its sole discretion. No change to an accepted Order will be binding on Seller until accepted pursuant to a written document manually-executed by an authorized representative of Seller. If a change accepted by Seller causes an increase or decrease in the price, or the time required for performance, an equitable adjustment shall be made to the price or the proposed delivery date for the Deliverables and the applicable Order shall be modified accordingly.

3. **PRICE; TAXES.** Any price quoted by Seller on the face hereof or in any separate document is good for thirty (30) days or such other time period stated in Seller’s quote; *provided, however*, Seller may adjust the price at any time prior to accepting an Order due to changes in the cost of raw materials or other direct costs associated with supplying the Deliverables. After such 30-day period, the price for Deliverables shall be Seller’s price in effect as of the date Seller accepts Buyer’s Order. The price for Deliverables does not include any federal, state or local sales, use, value-added, excise or other similar taxes or any tariffs, duties or other charges imposed on or measured by the use or sale of the Deliverables (collectively, “**Taxes**”). Buyer shall pay, and reimburse Seller if it pays, any and all Taxes, except for those based on Seller’s income.

4. **PAYMENT.** Buyer shall pay each invoice, without deduction or setoff, within thirty (30) days of the invoice date. Interest will be added to all amounts outstanding more than thirty (30) days after the invoice date at the rate of 1.5% per month or the maximum rate of interest allowed by applicable law, whichever is lower. In the event Buyer is in default of any of the terms or conditions of this Agreement, including, without limitation, payment of any amounts owed to Seller in a timely manner, Seller may: (a) defer or suspend further shipments of Goods or performance of Services until Buyer reestablishes satisfactory credit; (b) cancel the unshipped or unperformed portion of any Order and invoice Buyer for incurred costs and reasonable profit and, upon receipt of Buyer’s payment of such invoice, Seller will ship the applicable Goods in their then-current state of

manufacture or development; (c) make shipment of the Goods to Buyer on a C.O.D. or a “cash in advance” basis; or (d) pursue any other remedy available under this Agreement or at law or equity.

5. **DELIVERY OF GOODS.** Seller shall ship all Goods EXW (Ex Works as defined in Incoterms 2010) from Seller’s plant or facility. Title to and all risk of loss or damage to the Goods shall pass to Buyer upon delivery to the carrier at Seller’s plant or facility for shipment. Unless Buyer provides shipping instructions, Seller is authorized to make shipping arrangements on Buyer’s behalf and Buyer shall be responsible for all costs and expenses associated therewith. Notwithstanding anything in this Agreement to the contrary, any timeframe provided by Seller is a good faith estimate of the expected delivery date for the Deliverables. Seller will use commercially reasonable efforts to fill Buyer’s Orders within the time stated but in no event shall Seller be liable for any damages associated with Seller’s inability to meet any such timeframes or deadlines.
6. **IMPORT/EXPORT.** Except as otherwise agreed in writing by the Parties, Buyer shall be responsible for obtaining and maintaining, at its cost, all legally required permits, licenses, documents and custom clearances relating to the importation and/or exportation of the Deliverables. Buyer shall be responsible for all cost and expenses relating to the Deliverables transit across another country’s border. Further, Buyer shall strictly comply with all export controls imposed on the Deliverables and Seller’s intellectual property and confidential information by any country or organization and whose jurisdiction Buyer operates or does business. Buyer shall not knowingly export or re-export any Deliverable to any country prohibited under the United States Export Administration Regulations without first obtaining a valid permit or licenses to so export or re-export the Products.
7. **INSPECTION.** Buyer shall inspect the Goods within five (5) days of receipt (the “**Inspection Period**”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. “**Nonconforming Goods**” means only the following: (a) the product shipped is different than identified in Buyer’s Order; or (b) a product’s label or packaging incorrectly identifies its contents. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller’s designated plant or facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, at Seller’s expense and risk of loss, the replaced Goods to the delivery point identified in the original Order. Buyer acknowledges and agrees that the remedies set forth in the Section are Buyer’s exclusive remedies for the delivery of Nonconforming Goods.
8. **SPECIFICATIONS; TESTING.**
 - (a) If Buyer provides the formulas, formulations and/or specifications for blending or manufacture of the Deliverables (collectively, “**Specifications**”), Buyer represents and warrants to Seller that the Specifications are complete, accurate, and free from any error or defect.
 - (b) Buyer acknowledges that various factors outside of Seller’s control may affect the final content and formulation of the Goods. As a result, Seller reserves the right to test (or have a third-party designated by Seller test) the Goods prior to delivery to determine whether the Goods conform to the Specifications. Seller will provide Buyer with copies of any

Certificates of Analysis generated as a result of such testing. In addition, Seller will notify Buyer in writing if testing reveals any discrepancies between the final formulation of the Goods and the Specifications (each, a “**Deviation**”). Notwithstanding anything in this Agreement to contrary, Seller shall not be deemed in breach of this Agreement in the event of a Deviation unless the Deviation resulted solely from Seller’s reckless or willful misconduct. For the avoidance of doubt, Deviations resulting from naturally occurring variations in raw materials or from new or untested ingredient formulations and/or blending procedures will be considered to be outside of Seller’s reasonable control.

- (c) If, after notification from Seller, Buyer wishes to take delivery of any Goods subject to Deviation, Buyer will notify Seller of such fact in writing and Buyer agrees to defend with counsel acceptable to Seller, indemnify and hold Seller and its owners, members, managers, officers, employees, representatives, successors and assigns harmless from and against all claims, actions, causes of action, proceedings, lawsuits, losses, injuries, damages, liabilities, costs and/or expenses (which include actual attorneys’ fees and other litigation expenses) arising from or connected with the Deviations (individually, a “**Claim**” and collectively, the “**Claims**”), including, without limitation, any Claim for recall, bodily injuries, discrepancies between the Goods and their labels and/or packaging, nutritional content claims, or failure of the Goods and/or their labels or packaging to comply with applicable law as a result of the Deviations. Buyer shall not, in the defense of any Claim, consent to entry of any judgment, award, stipulation or order, or enter into any settlement, except with the prior written consent of Seller. If, upon written notice from Seller, Buyer does not assume the defense of any Claim, Seller may defend, at Buyer’s cost and expense, against the Claim, in such manner as it deems appropriate. IN ADDITION, BUYER HEREBY WAIVES ALL CLAIMS AGAINST SELLER THAT THE DEVIATIONS CONSTITUTE A BREACH OF ANY WARRANTY OR GUARANTEE MADE BY SELLER OR IMPOSED BY APPLICABLE LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR GUARANTY ISSUED UNDER SECTION 303(C)(2) OF THE FEDERAL FOOD, DRUG AND COSMETIC ACT. FURTHER, SUCH WARRANTIES ARE DISCLAIMED BY SELLER WITH RESPECT TO THE PRODUCTS.
- (d) If Seller develops or other provides the Specifications for the Deliverables, Seller shall retain all right, title and interest in and to the Specifications and, unless expressly agreed to by Seller in a written document manually-executed by an authorized representative of Seller, nothing in this Agreement or otherwise shall be deemed or construed to be a transfer or license of the Specifications to Buyer.

9. LIMITED WARRANTY.

- (a) Limited Goods Warranty. Seller warrants to Buyer that, except as set forth in Section 8(c) above with respect to Deviations, the Goods will materially conform to the Specifications as of the date of delivery, provided the Goods are used and maintained by Buyer in accordance with any instructions and technical guidelines supplied by Seller. Buyer may not return any Goods to Seller under this limited Goods warranty without first obtaining a return materials authorization (“**RMA**”). At Seller’s request, Buyer will return the item described in Buyer’s notice to Seller’s factory or such other location as Seller may designate, freight prepaid. Returned Goods must be properly packaged for shipment and Seller is not responsible for any damage or loss in transit. In the event any Good is defective and covered by this limited Goods warranty, Seller will, at its option, repair or replace such defective Good. If Seller reasonably determines that the repair or replacement of a

defective Good is not economically feasible, Seller may refund to Buyer the purchase price paid by Buyer for such defective Good. Buyer acknowledges and agrees that the repair, replace or refund remedies described in this paragraph are the Seller's sole obligation, and Buyer's exclusive remedy, for any defective Goods. Notwithstanding anything in this Agreement to the contrary, this limited Goods warranty shall not apply to: (A) abuse, neglect or other improper use or storage; (C) any unauthorized alteration or modification of the Goods; and (D) any Goods that have not been maintained in accordance with the instruction or technical guidelines provided by Seller; or (E) acts of Gods or other circumstances beyond Seller's control.

- (b) NO OTHER WARRANTIES. EXCEPT AS SET FORTH ABOVE IN SECTION 8(a) ABOVE, SELLER HEREBY DISCLAIMS ALL EXPRESS, IMPLIED AND/OR STATUTORY REPRESENTATIONS OR WARRANTIES REGARDING THE DELIVERABLES, USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.
- (c) ASSUMPTION OF RISK. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY SELLER, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS.

10. LIMITATIONS OF LIABILITY.

- (a) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SELLER OR ANY OF ITS PARENT COMPANY, AFFILIATES OR SUBSIDIARIES BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING ANY LOST PROFITS OR REVENUE, DOWN TIME, LOSS OF BUSINESS OPPORTUNITY OR THEIR ECONOMIC LOSSES), WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, EVEN IF SELLER HAS BEEN SPECIFICALLY ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES.
- (b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER .
- (c) NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE EVENTS WHICH GAVE RISE TO THE CAUSE OF ACTION OCCURRED.

11. **SELLER'S INTELLECTUAL PROPERTY RIGHTS.** Seller shall retain all title to and rights in its intellectual and industrial property, including all rights under any patent, patent application, copyright, trademark, trade dress, trade secret, confidential information, or other intellectual property rights owned by or licensed to Seller which may be protected by state, federal or common law, and nothing in this Agreement shall be deemed or construed to be a transfer or license of any of Seller's intellectual property. Buyer shall obtain rights to such intellectual or industrial property only to the extent that Seller may grant such rights in a written document manually-executed by an authorized representative of Seller.
12. **BUYER'S INDEMNIFICATION.** In addition to the provisions set forth in Section 8(c) above, Buyer shall defend, indemnify and hold Seller and its parent company, affiliates and subsidiaries and their respective officers, directors, owners and agents harmless from and against any and all third-party claims, causes of action, proceedings, losses, damages, liabilities, judgment, settlements, costs and expenses (including, without limitation, reasonable attorneys' fees and other costs and expenses of litigation) resulting from or otherwise connected with any of the following: (a) bodily injury, death or property damage caused by Buyer or its employees' or agents' acts or omissions with respect to their use, marketing, sale or distribution of the Deliverables; or (b) any Specifications, or other design, requirement, material or other component supplied or approved by Buyer for the design and manufacture of any Deliverables, including, without limitation, any claim that such design, requirement, Specification, material or other component infringes upon or misappropriates any patent, patent application, copyright, trademark, trade dress, trade secret or other intellectual property right; and (c) any breach of the terms and conditions of this Agreement by Buyer or its employees or agents.
13. **CONFIDENTIALITY.** All documentation or information provided by Seller to Buyer which is marked as confidential, or which from its nature or the context in which it is given should reasonably be understood to be confidential or of a proprietary nature, shall be held by Buyer in strict confidence. Buyer hereby acknowledges and agrees that Seller's manufacturing processes shall be deemed to be confidential information of Seller. Buyer shall not use or disclose such information to any person or business, other than an employee and agent of Buyer who has a need to know the information to enable Buyer to perform its duties and obligations under this Agreement; provided, however, that such employees and agents be required to maintain the information at all times in strict confidence in accordance with this Agreement. Buyer shall be responsible for any breach of this Section by its employees or agents. In addition, the terms and conditions of any confidentiality or nondisclosure agreement previously entered into by Seller and Buyer that is still in full force and effect shall be incorporated by reference into and made part of this Agreement (the "**Confidentiality Agreement**"). In the event of any conflict between the provisions of this Agreement and the Confidentiality Agreement, the provisions most favorable to Seller shall control.
14. **EXCUSED PERFORMANCE; ALLOCATION.** Seller shall not be liable for any delay in the performance of this Agreement by reason of any of the following: acts of God, acts of war or terrorism, laws, regulations, acts or requests of governmental agencies, strikes, lockouts or other labor conditions, shortages of raw materials, fire, flood, explosion or other damage to plant or facilities, absence of normal transportation, or any other cause which is beyond the reasonable control of Seller. In the event of any such delay, Seller's performance hereunder shall be postponed by such length of time as may be reasonably necessary to compensate for the delay; provided, however, if the excused delay in Seller's performance exceeds sixty (60) consecutive days, Buyer may cancel any Order affected by the delay by serving written notice upon Seller before the cause(s) of the delay abate. Seller reserves the right to allocate its inventory of Goods in any manner and to any person it may determine from time to time, in its sole discretion.

15. **GOVERNING LAW.** The Agreement shall be construed and governed under the laws of the State of Wisconsin, (excluding application of its conflicts of law rules and excluding the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods).
16. **DISPUTE RESOLUTION.** Any dispute, claim or counter-claim arising out of or relating to this Agreement, or the interpretation or breach hereof (collectively, a “**Dispute**”), shall be resolved in accordance with the following:
- (a) **Buyer Located in the United States.** If Buyer’s principal place of business is located in the United States, then any Dispute shall be initiated and prosecuted exclusively in the United States District Court for the Western District of Wisconsin or any state court sitting in Juneau County, Wisconsin, and those courts hearing direct appeals therefrom. Each Party hereto waives any right it may have to assert the doctrine of “forum non conveniens” or to object to venue to the extent any action or proceeding is brought in accordance with this **Section 17(a)**. Seller and Buyer each consents to and waives any objection to the exercise of personal jurisdiction over it by the courts described in this **Section 17(a)**. SELLER AND BUYER VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY WITH RESPECT OF ANY LITIGATION RELATING TO THIS AGREEMENT.
 - (b) **Buyer Located Outside of the United States.** If Buyer’s principal place of business is located outside of the United States, then any Dispute shall be submitted to binding arbitration before a single arbitrator, with such arbitration being conducted in accordance with the Rules of Arbitration and Conciliation of the International Chamber of Commerce (“**ICC**”) then in effect. The place of arbitration shall be Milwaukee, Wisconsin, USA. The arbitration shall be conducted in the English language, including, without limitation, the presentment of all testimony and evidence, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator’s decision shall be in writing. The arbitrator’s decision shall also be final and non-appealable. Unless the arbitrator finds that exceptional circumstances justify delay, the hearing will be completed, and an award rendered, within thirty (30) days after commencement of the hearing. The arbitrator shall have the authority to settle such Dispute by finding that a Party should be enjoined from certain actions or be compelled to undertake certain actions, and in such event a court of competent jurisdiction may enter an order enjoining and/or compelling such actions as found by the arbitrator. However, notwithstanding the foregoing, Buyer and Seller expressly agree that a court of competent jurisdiction may enter a temporary restraining order or an order enjoining a breach of this Agreement pending a final award or further order by the arbitrator. Such remedy, however, shall be cumulative and nonexclusive, and shall be in addition to any other remedy to which the parties may be entitled.
 - (c) In the event Seller is required to retain legal counsel or to initiate litigation or arbitration to enforce or interpret this Agreement or to collect any sums due hereunder, Buyer shall, upon demand, pay or reimburse Seller for all reasonable attorneys’ fees and costs and expenses of litigation or arbitration incurred by Seller.
17. **GENERAL PROVISIONS.** (a) No waiver of this Agreement or any of its provisions is valid unless expressly agreed to in a writing signed by Seller. No waiver by Seller of any default under this Agreement is a waiver of any other or subsequent default. (b) No modification of this Agreement or any of

its provisions by Buyer is valid unless expressly agreed to in a writing manually executed signed by an authorized representative of Seller. (c) Seller shall operate as an independent contractor in supplying any Goods and/or performing any Services under this Agreement. (d) Buyer may not assign any of its rights, duties or obligations under this Agreement without Seller's prior written consent. (e) Each of the rights and remedies of Seller under this Agreement is cumulative and in addition to any other or further remedies provided under this Agreement or at law or in equity.

Date last revised: June 19, 2017

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