

1. GENERAL

- 1.1 These Standard Terms and Conditions (these "T&C's") govern the offering, development, testing, manufacturing sale and delivery of all goods and services (collectively, the "Products") of Flavor Producers, LLC (including its subsidiaries, "FP") to its customers (each, a "Customer") and shall apply to all transactions between FP and Customer.
- 1.2 By doing business with, and accepting Products from, FP, Customer accepts these T&C's and agrees to the applicability hereof in respect of all current and future dealings and transactions with FP, including all Products, unless there shall be a separate written contract between FP and Customer which has been executed by an FP officer.
- 1.3 FP explicitly rejects the applicability of any terms and conditions of Customer. These T&C's expressly supersede and replace any and all prior oral and written quotes, communications, agreements and understandings of the FP and Customer in respect of the terms and conditions of the offering, development, testing, manufacturing, sale and delivery of the Products, and shall apply in preference to and supersede any and all terms and conditions of any order placed by Customer and any other terms and conditions submitted by Customer. Failure by FP to object to any purported terms and conditions of Customer shall in no event be construed as an acceptance of any such terms or conditions of Customer. Neither FP's commencement of performance nor FP's delivery shall be deemed as acceptance of any of Customer's terms or conditions. If these T&C's differ from any of the terms and conditions of Customer, these T&C's and any subsequent communication or conduct by or on behalf of FP, including, without limitation, confirmation of an order and delivery of Products, constitute a counteroffer and not acceptance of Customer's terms and conditions submitted by Customer.
- 1.4 FP reserves the right to amend, supplement and/or otherwise modify these T&C's at any time. FP will notify Customer of any such amendments by including amended T&C's with a Customer order. Any such amended T&C's will take effect on the effective date and shall govern all offering, development, testing, manufacturing, sale and delivery of Products thereafter.
- 1.5 Any telefacsimile or email correspondence between FP and Customer shall be effective as originals and shall be considered to be a "writing" between the parties. The electronic communication system used by FP will serve as sole proof for the content and the time of delivery and receipt of such electronic communications.

2. QUOTES, ORDERS AND ACCEPTED ORDERS

- 2.1 Unless stated otherwise, quotes made by FP in whatever form are not binding on FP and merely constitute an invitation to Customer to place an order. All quotes issued by FP are valid for the time-period specified therein or, if no time-period shall be specified therein, for a period of no more than 30 calendar days from the date of the quote, however, all quotes are revocable and subject to change without notice. Customer submissions of orders, purchase orders, and seeming acceptance of FP quotes are not binding on FP unless and until accepted by FP in writing (each, an "Accepted Order"). FP shall be entitled to refuse any order for any reason or no reason, and without stating the reasons therefor.
- 2.2 Price quotes based on estimated or projected quantities are subject to increase if the actual quantities purchased during the specified period vary from the estimated or projected quantities.
- 2.3 Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for any other deliveries.
- 2.4 Except as provided for in Section 7.3 of these T&C's, all samples supplied to Customer and/or a third party at the request of Customer, are solely for information purposes and in no way obligate FP to any order, purchase order or any terms and conditions related thereto, nor imply any express or implied condition or warranty of any kind, including as to quality, description, merchantability, suitability or fitness for any purpose. Customer shall be deemed to have satisfied itself as to all such matters prior to ordering any Products.

3. PRICES

- 3.1 Prices of FP's Products are as set out in the Accepted Order. All prices are in United States dollars (US\$) unless otherwise indicated by FP. Unless otherwise agreed in writing, FP's prices include standard packaging but do not include shipping, or any sales, use, manufacturing, excise, processing or other taxes, duties, levies or charges in any jurisdiction in relation to the Products or the delivery thereof ("Taxes"). The amount of any Taxes levied in

connection with the sale of Products to Customer shall be Customer's responsibility and shall either be added to each invoice or separately invoiced by FP to Customer. If FP includes a discount to Customer in any Accepted Order, such discount applies only to the delivery specifically listed in the Accepted Order and only for the specific Products listed therein.

4. PAYMENT TERMS

- 4.1 Unless stated otherwise in the Accepted Order, payment shall be made on the basis of net cash, to be received by FP no later than thirty (30) days following the date of FP's invoice. All payments shall be made without any deduction on account of any Taxes, offset, set-off, discount, or counterclaim whatsoever.
- 4.2 With regard to payment for the Products, time is of the essence. FP may, without prejudice to any other rights of FP, charge interest on any past due payment at 1.5% (one and one-half percent) per month from the due date computed on a daily basis until all outstanding amounts are paid in full, or, if less, the maximum lawful interest rate. All costs and expenses incurred by FP with respect to the collection of past due payments (including, without limitation, actual attorney's fees, expert fees, costs and other expenses of collection) shall be Customer's responsibility.
- 4.3 Payments by Customer shall first be applied to collection costs, then to accrued interest charges, and then to outstanding invoices starting with the oldest outstanding invoice regardless of any direction to the contrary from Customer.
- 4.4 All disputes regarding FP invoices must be made in writing to FP within 30 (thirty) days of the date of invoice. Thereafter, Customer shall be deemed to have approved the invoice.

5. DELIVERY AND ACCEPTANCE

- 5.1 In the absence of the receipt of written instructions from Customer, FP will make all shipments of Products via carriers of its selection. Unless stated otherwise in the Accepted Order, all deliveries of Products shall be FOB (Free on Board) FP's shipping dock. The term "FOB" shall have the meaning as defined in the latest version of INCOTERMS published by the International Chamber of Commerce in Paris, France at the time of the Accepted Order.
- 5.2 Unless stated otherwise in the Accepted Order, all proposed manufacturing and development times and proposed delivery and completion dates by FP are estimates only, are not of the essence of the agreement between the parties, and are for guidance only. FP is entitled to deliver the Products as stated in the Accepted Order in parts and to invoice separately. In no event shall FP be liable for any damages and/or costs due to any delay in delivery or performance. Delay in delivery of any Products shall not relieve Customer of its obligation to accept delivery thereof, unless Customer cannot reasonably be expected to accept such late delivery. Customer shall be obliged to accept the Products and pay the rate specified in the Accepted Order for the quantity of Products delivered by FP.
- 5.3 Delivery shall be effected in adequate packaging. Costly and re-usable packaging shall be returned to FP.
- 5.4 Title to the Products shall pass to Customer upon FOB delivery as set forth in Section 5.1.
- 5.5 FP may, in its sole discretion, without liability or penalty, make partial shipments of the Products to Customer, with each shipment constituting a separate sale for which Customer shall pay for the Products shipped whether such shipment is in whole or partial fulfillment of the Accepted Order. The quantity of shipments of Products as recorded by FP as delivered in accordance with Section 5.1 is conclusive evidence of the quantity received by Customer on delivery unless Customer provides conclusive evidence to the contrary.
- 5.6 FP SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY OTHER PARTY FOR ANY DELAY, LOSS OR DAMAGE IN TRANSIT, AND CUSTOMER ACCEPTS TITLE AND ALL RISK OF LOSS AND/OR DAMAGE TO THE PRODUCTS IN TRANSIT. ANY DELAY IN DELIVERY SHALL NOT CONSTITUTE GROUNDS FOR TERMINATION OR CANCELLATION OF ANY ACCEPTED ORDER.**

6. ORDER CANCELLATION

- Customer's wrongful non-acceptance or rejection of Products or cancellation of any Accepted Order shall entitle FP to recover from Customer, in addition to any other damages caused by such action:
- (i) in the case of Products which reasonably cannot be resold by FP to a third party, the price of such Products as quoted in the Accepted Order; or

- (ii) in the case of Products which can be resold by FP, damages equal to the difference between the price for the Products as quoted in the Accepted Order and the price FP is able to resell such Products for.

7. EXAMINATION AND CONFORMITY TO SPECIFICATIONS; DIVERSION

- 7.1 On delivery and during the handling, use, commingling, alteration, adulteration, incorporation, processing, transportation, storage, importation and (re)sale of the Products (the "Use"), Customer shall examine the Products and satisfy itself that the Products delivered meet the specifications for the Products as stated in the Accepted Order or, in the absence of agreed specifications, to the most recent specifications used by FP at the time of delivery of the Products (the "Specifications").
- 7.2 Complaints about the Products shall be made with specificity in writing and must reach FP not later than seven (7) days from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and seven (7) days from the date on which any other claim (e.g. hidden defects) was or ought to have been apparent, but in no event later than the first to occur of (x) three (3) months from the date of delivery of the Products and (y) the expiration date of the Product. Any Use of the Products shall be deemed to be an unconditional acceptance of the Products as of the date of delivery and a waiver of all claims in respect of the Products.
- 7.3 FP shall not be liable for a breach of the warranty set forth in Section 9.1 unless: (i) Customer gives FP written notice in accordance with Section 7.2; (ii) Customer, at Customer's sole cost, has returned such Products to FP and FP is given a reasonable opportunity after receiving such Products to inspect such Products; and (iii) FP verifies Customer's claim that the Products do not conform to the applicable Specifications (in which case FP shall refund Customer's costs of shipping the Product to FP for testing). The warranties provided under Section 9.1 do not apply where the Products have been: (i) subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions, damage in transport, or use contrary to any instructions issued by FP; (ii) altered, adulterated, processed, treated, or tampered with by anyone other than FP; or (iii) mixed, blended or infused with or into any substance(s) which FP has not approved.
- 7.4 A determination of whether or not delivered Products conform to the Specifications shall be done solely by FP analyzing the samples or records retained by FP and taken from the batches in which the Products were produced in accordance with FP's analytical protocols. If FP determines that any Product does not materially meet the Specifications therefor, FP shall, at its sole cost and expense, either (x) issue a credit or refund of the price paid by Customer for such nonconforming Products, or (y) promptly replace such Product with Product that does meet the Specifications therefor. **EXCEPT FOR THE CREDIT/REFUND/REPLACEMENT OBLIGATION IN THE IMMEDIATELY PRECEDING SENTENCE, FP SHALL HAVE NO FURTHER LIABILITY TO ANY PARTY IN CONNECTION WITH ANY PRODUCT THAT DOES NOT MEET THE APPLICABLE SPECIFICATIONS. CLIENT AND FP AGREE THAT FP SHALL HAVE NO OTHER LIABILITY TO ANY PARTY, EITHER EXPRESS OR IMPLIED, FOR THE FOREGOING OCCURRENCES OR FOR THE CONSEQUENCES THEREOF.**
- 7.5 Defects in any portion of a delivery of Products do not, in and of itself, entitle Customer to reject that entire delivery of Products. Complaints, if any, do not affect Customer's obligation to pay as defined in Section 4. Upon receipt of a complaint, FP is entitled to suspend all further deliveries until the complaints are established to be unfounded and/or refuted or until the defect has been totally remedied.
- 7.6 Customer represents that it is purchasing the Products solely for use as raw materials to be used in Customer's finished food, beverage or nutrition products ("Finished Goods"). Customer acknowledges that FP is offering the prices in Accepted Orders on the basis that the Products are used as ingredients contained in Customer's Finished Goods and are not to be sold separately. Customer represents that it shall not resell, repackage, divert, distribute or otherwise offer for sale, any of the Products it purchases from FP. In the event of a breach of this provision FP shall, in addition to any other remedies at law or in equity, be entitled to: (i) cancel any further shipment of Products; (ii) recalculate pricing for the Products diverted in violation of this Section and re-issue any invoices for Products so diverted; and (iii) recover its costs incurred in the recovery

of the diverted Products, including, without limitation, FP's actual attorneys' fees, costs and expenses.

8. TRANSFER OF RISK AND PROPERTY

- 8.1 Risk of the Products shall pass to Customer in accordance with the applicable Incoterm as set forth in Section 5.1.
- 8.2 Title and risk of loss to the Products shall pass to Customer at FP's loading dock in accordance with Section 5.1. Notwithstanding the foregoing, as collateral security for the payment of the Products, Customer hereby grants to FP a lien on and security interest in and to all of Customer's right, title and interest in, to and under the Products, wherever located, and whether existing at the time of FP's delivery or thereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Delaware Uniform Commercial Code.
- 8.3 Products for which delivery is suspended pending payment by Customer, as well as Products of which delivery is wrongfully rejected or not accepted by Customer, shall be held and stored by FP at the risk and expense of Customer.
- 8.4 In the event of termination per Section 16, Customer shall, without prejudice to any other rights of FP, promptly return all of the Products, or, if Customer shall fail to do so timely, FP may repossess the Products, for which it may invoke a retention or reversion, as applicable, of title.
- 8.5 Until payment for the Products has been completed, Customer is entitled to use the Products solely to the extent required in its ordinary course of business, and, to the extent possible, shall:
- (i) store and use the Products strictly in accordance with FP's recommendations therefor (including temperature and light), separate from other products and in the original FP packaging;
 - (ii) notify FP immediately of any ownership or other claim by any third party which relates, or could relate, to any of the Products; and
 - (iii) insure the Products for no less than the purchase price therefor.

- 8.6 Customer assumes all risks and liabilities arising out of: (i) unloading, storage, handling and use of the Product; and (ii) compliance and/or non-compliance with federal, state, provincial, and local laws and regulations governing and/or controlling such activity.

9. LIMITED WARRANTY

- 9.1 FP solely warrants that, on the date of delivery, the Products shall conform to the Specifications. If and to the extent Products are in breach of such warranty, as determined in accordance with Section 7, FP may at its discretion, within a reasonable time, either repair or replace the Products at no charge to Customer or issue a credit for any such Products in the amount of the original invoice price. FP's sole warranty obligation shall be to repair or replace the Products, or issue Customer a credit for the nonconforming Products.
- 9.2 FP's obligations under this Section 9 are contingent upon receipt by FP of timely notice of any alleged non-conformance of Products and, if applicable, the return of the Products, all in accordance with Section 7.
- 9.3 The foregoing warranty is exclusive and in lieu of all other warranties, representations, conditions and/or other terms, express, implied, statutory, contractually or otherwise. **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 9.1, FP MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY WARRANTY: (i) OF MERCHANTABILITY; (ii) OF FITNESS FOR A PARTICULAR PURPOSE; (iii) OF TITLE; OR (iv) AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; ALL WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

10. LIMITATION OF LIABILITY

FP's LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THE PRODUCTS AND THE USE THEREOF SHALL UNDER NO CIRCUMSTANCES EXCEED THE SUM OF CUSTOMER'S PAYMENTS FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE CLAIM. UNDER NO CIRCUMSTANCES SHALL FP BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGE, OR LOSS, COST OR EXPENSE, INCLUDING WITHOUT LIMITATION, DAMAGES BASED UPON: LOST GOODWILL, REVENUE, OPPORTUNITY, OR PROFIT; WORK STOPPAGE; PRODUCTION FAILURE OR DELAY; IMPAIRMENT OF OTHER GOODS; OR OTHERWISE,

AND WHETHER ARISING OUT OF OR IN CONNECTION WITH BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, ANY ERROR IN SHIPMENT OR DAMAGED MATERIALS, ANY OTHER TORT, OR OTHERWISE, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE OR COULD HAVE REASONABLY FORESEEN SUCH, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. The foregoing limitations of liability shall not apply to (i) liability resulting from FP's gross negligence or willful misconduct; and (ii) death or bodily injury resulting from FP's acts or omissions.

11. FORCE MAJEURE

- 11.1 Neither party shall be liable in any way for any damage, loss, cost or expense arising out of or in connection with any delay, restriction, interference or failure in performing any obligation towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, so-called acts of God, laws and regulations, administrative measures, orders or decrees of any court, earthquake, flood, fire, disruption in utilities or means of communication, explosion, war, invasion, terrorism, hostilities, riot, civil unrest, sabotage, accident, epidemic, pandemic, strike, lockout, slowdown, labor disturbances, difficulty in obtaining necessary labor or raw materials, lack of or failure or restraints of transportation or shipping, breakdown of plant or essential machinery, emergency repair or maintenance, delay in delivery or defects in goods supplied by suppliers or subcontractors (each of the foregoing, "Force Majeure").
- 11.2 Upon the occurrence of any event of Force Majeure, the party suffering thereby shall promptly notify the other party in writing specifying the Force Majeure event, how it will affect the performance of its obligations, and, if ascertainable, the anticipated duration. In the event a Force Majeure event shall cause a delivery delay, all delivery obligations affected thereby shall be suspended for a period equal to the duration of the Force Majeure event, plus a reasonable amount of time to resume normal operations thereafter; provided, however, that should a Force Majeure event occur which results in the anticipated delay in delivery of Products by more than sixty (60) past the specified delivery date in an Accepted Order, either Party is entitled to cancel (in writing at the commencement of the Force Majeure event) the affected part of the Accepted Order without any liability to the other Party.

12. MODIFICATIONS, RELIANCE AND INDEMNITY

- 12.1 Unless the Specifications have been agreed to be firm for a set period of time, number of orders, or quantity of Products, FP reserves the right to change or modify the Specifications and/or manufacture of Products and to substitute materials used in the production and/or manufacture of Products from time to time without notice, so long as the Products delivered are generally comparable to the Products initially ordered. Customer acknowledges that data in FP's database, product descriptions and other publications distributed or published on its website may be modified from time to time without notice. Any statement, representation, recommendation, advice, sample or other information of FP in relation to the Specifications, the Products and the Use thereof shall be furnished for the accommodation of Customer only and are only binding upon FP to the extent and duration/quantity of Products set forth in an Accepted Order.
- 12.2 Customer shall solely rely upon its own expertise, experience and judgment in relation to the Products and Customer's Use thereof, as well as in Customer's application of any information obtained from FP for the purposes intended by Customer. Consultation, recommendations, opinions and suggestions of FP shall not give rise to any additional obligations or liability of FP. Customer shall indemnify and hold FP harmless from and against any and all damages, losses, costs, expenses, claims, demands and liabilities (including, without limitation, product liabilities) arising out of or in connection with the Products and Customer's Use thereof or application of any information disclosed or materials provided by or on behalf of FP.

13. COMPLIANCE WITH LEGAL REQUIREMENTS

- 13.1 Customer acknowledges that the Use of the Products may be subject to requirements and/or limitations under applicable law, statute, ordinance, rule, regulation, code, permit, license or standard, including, but not limited to, all applicable regulations relating to (i) anti-bribery and anti-corruption and (ii) international trade, such as, but not limited to, embargos, import and export control and

sanctioned party lists (collectively "Legal Requirements").

- 13.2 Customer expressly warrants that it and its employees, agents and subcontractors shall not directly or indirectly (i) accept, promise, offer or provide any improper advantage to or (ii) enter into an agreement: (x) with any entity or person, including government officials entities; or (y) relating to a product, which, in each case, would constitute an offence or infringement of applicable Legal Requirements.
- 13.3 Customer shall be solely responsible for: (x) ensuring compliance with all applicable Legal Requirements which govern or affect its intended Use of the Products; and (y) obtaining all necessary approvals, permits, licenses, waivers or clearances for such Use.

14. RELATIONSHIP OF PARTIES

FP and Customer agree that FP is not and is not to be deemed an employee, agent, joint venturer or partner of Customer, but is an independent contractor of Customer, and the relationship created hereby shall not be deemed to be that of principal and agent. No sale to, or obligation of, either party towards a third party shall in any way bind the other party.

15. NON-ASSIGNMENT AND CHANGE OF CONTROL

- 15.1 Neither party may assign any of the rights or obligations under any Accepted Order without the prior written consent of the other party, except that FP may assign such rights and obligations to any FP subsidiary or affiliate or to any third party acquiring all or a substantial portion of its assets or business relating to the Products. Nothing contained herein shall serve to limit or prohibit FP's use of subcontractors with regard to Accepted Orders and Products, with FP expressly reserving the right to assign or subcontract all or part of any Accepted Order.
- 15.2 FP shall have the right to terminate and not process any Accepted Order if, at any time prior to final delivery as set forth in the Accepted Order, a so-called 'change of control' of Customer shall occur. Customer shall notify FP of any 'change of control' within 10 (ten) days thereof. FP may exercise its right to terminate any open Accepted Order by giving Customer written notice within 10 (ten) days after receipt of such notice. Notwithstanding Section 4.1, all outstanding FP invoices shall become immediately due and payable upon a 'change of control' of Customer.

16. SUSPENSION AND TERMINATION

- 16.1 If: (i) Customer is in default in the performance of its obligations to FP hereunder and fails to provide adequate assurance of Customer's performance before the date of scheduled delivery; (ii) FP has reasonable doubts with respect to Customer's performance of its obligations and Customer fails to provide to FP adequate assurance of Customer's performance before the date of scheduled delivery and in any case within ten (10) days of FP's demand for such assurance; (iii) Customer becomes insolvent or unable to pay its debts as they mature, or voluntarily or involuntarily commences any liquidation, bankruptcy, receivership, reorganization or assignment for the benefit of creditors; (iv) a trustee or receiver or administrator is appointed for all or a substantial portion of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors; or (v) Customer shall not comply with Legal Requirements, then in each instance, FP may by notice to Customer in writing and without prejudice to any of its other rights:
- (i) demand return, and take repossession, of all delivered Products which have not yet been paid for, or for which payment is subject to recovery as a 'preference payment,' and all costs relating to the return of the Products shall be at the sole cost and expense of Customer; and/or
 - (ii) suspend its performance or terminate all pending Accepted Orders unless Customer makes payment for such Accepted Orders on a cash in advance basis and provides adequate assurance that such payment will not be subject to recovery as a 'preference payment' in any bankruptcy proceeding.
- 16.2 In any event set out in Section 16.1 all outstanding claims of FP shall become due and payable immediately with respect to the Products delivered to Customer and not repossessed by FP.

17. Recall

In the event of a recall, market withdrawal or recovery (a "Recall") of Products or goods containing Products deemed necessary by Customer, FP, or any governmental authority, each party agrees that it shall promptly notify the other, assist the other in executing a Recall strategy for all goods subject to Recall, work with each other and applicable governmental agencies in monitoring the Recall operation, and cooperate in preparing such reports as may be required. No press releases respecting the Recall shall be made by either party without

- the other party's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. FP's liability with respect to any Recall due to any Products shall be limited to the aggregate amounts paid by Customer to FP for the affected Products.
- 18. NO WAIVER**
The failure of FP to insist upon Customer's performance of any of Customer's obligations hereunder shall not be construed as a waiver of the breach of any other obligation of Customer or of any subsequent breach of such obligation. The failure of FP to exercise any right or remedy which FP may have hereunder or under the law shall not be construed as a waiver of any other right or remedy which FP may have hereunder or under the law.
- 19. PARTIAL INVALIDITY**
In the event that any portion of these T&C's shall be held to be invalid or unenforceable, the provision(s) affected will be curtailed, limited or eliminated to the extent, but only to the extent, necessary of such invalidity and/or unenforceability and the remaining terms and conditions shall nevertheless remain in full force and effect as though the invalid or unenforceable portions were not included.
- 20. LIMITATION OF ACTION**
Unless otherwise stated hereunder, no action by Customer shall be brought unless Customer first provides written notice to FP of any claim alleged to exist against FP within 30 (thirty) days after the event complained of first becomes known to Customer and an action is commenced by Customer within twelve (12) months after such notice.
- 21. GOVERNING LAW AND VENUE**
21.1 These T&C's and all matters relating to FP's provision of the Products to Customer shall be governed by, and its provisions construed in accordance with, the laws of the State of Ohio, without regard to its choice of law principles. Notwithstanding the domicile or business qualification of any party, any and all disputes and legal proceedings to enforce or otherwise pertaining to these T&C's and all matters relating to FP's provision of the Products to Customer, whether in contract, tort, equity or otherwise, shall be brought in the state or federal courts sitting in Cincinnati, Ohio, with Client (on behalf of itself and its designees) hereby waiving any claim or defense that such forum is not convenient or proper. Client (on behalf of itself and its designees) hereby agrees that any such court shall have *in personam* jurisdiction over it and agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner specified by law. Each of FP and Customer irrevocably and unconditionally waives, to the maximum extent of the law, any right each may have to a trial by jury in respect of any legal action arising out of or relating to any matter addressed by these T&C's.
- 21.2** The United Nations Convention on Contracts of the International Sale of Goods (CISG) shall not apply.
- 22. SURVIVAL**
The parties' rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The parties shall ensure that their respective directors, officers, managers, employees, agents and legal representatives comply with these T&C's. Termination of one or more of the parties' rights and obligations, for whatever reason, shall not affect those provisions of these T&C's which are intended to remain in effect after such termination.
- 23. WAIVER OF SUBROGATION**
Customer releases and relieves FP, and waives and shall cause its insurance carriers to waive, any and all rights of recovery, claim, action or causes of action against FP and its members, managers, officers, parent entities, affiliates, subsidiaries, agents and employees, for any loss or damage that may occur to Customer or any party claiming by, through or under Customer, as the case may be, with respect to Products, any service or good provided by FP or any portion thereof, including all rights of recovery, claims, actions or causes of action arising out of the negligence of FP, which loss or damage is covered by insurance. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable thereto.
- 24. CAPTIONS FOR CONVENIENCE**
All headings and captions used in these T&C's are for convenient reference only and shall not be used in any way in any connection with the interpretation, construction or enforcement of these T&C's.
- 25. INTELLECTUAL PROPERTY & CONFIDENTIALITY**
25.1 All intellectual property rights arising out of or in connection with the Products shall be the exclusive property of FP.
25.2 FP has not verified the possible existence of third-party intellectual property rights which might be infringed as a consequence of the sale and/or delivery of Products, and FP shall not be liable for any related loss or damage.
25.3 The sale of Products shall not, by implication or otherwise, convey any license under any intellectual property right relating to the compositions, formulae and/or applications of Products, and Customer explicitly assumes all risks of intellectual property infringement by reason of its purchase and/or Use of Products, whether singly or in combination with other materials or in any processing operation.
25.4 Any and all information provided by or on behalf of FP, including, without limitation, Specifications, samples, formulae, raw materials, plans, drawings, documents, data, business operations, pricing, discounts and rebates, whether or not such is marked as "confidential," shall be treated as confidential and shall only be used by Customer for the purpose of its dealings with FP. Disclosing such information is only allowed to any of Customer's employees on a strict need-to-know basis, except where Customer is legally required to disclose information by a court or similar order, provided that Customer shall first inform FP and reasonably cooperate with FP to obtain a protective order or otherwise limit such disclosure. Customer shall upon demand promptly return to FP all such information. Customer shall treat the existence of the Agreement as confidential. Customer or its employees will sign a confidentiality agreement upon request.
25.5 Upon FP's request, Customer shall promptly return all documents and other materials received from FP containing confidential information. FP shall be entitled to injunctive relief for any violation of this Section, without the need to post a bond or prove that monetary damages would not afford a sufficient remedy. This Section does not apply to information that is: (i) in the public domain; (ii) rightfully obtained by Customer on a non-confidential basis from a third party; or (iii) independently developed by Customer without the use of any of FP's confidential information.
- 26. CUMULATIVE REMEDIES**
Any right and remedy belonging to FP hereunder or under the law shall be deemed cumulative and not exclusive of one another and the exercise by FP of any such right or remedy shall not preclude FP from exercising or enforcing any other right or remedy it may have.
- 27. MODIFICATION**
These T&C's can only be modified by an instrument in writing signed by an authorized officer of FP.
- 28. NO OTHER PROVISIONS**
Except as Customer and FP may have set forth in one or more separate agreements covering the Products, these T&C's constitute all of the terms and conditions agreed upon by Customer and FP in connection with the furnishing of the Products to Customer. There are no agreements, terms, conditions, representations or warranties, either oral or written, between FP and Customer, except as contained herein or as may be set forth in a written agreement executed by Customer and an authorized officer of FP. In addition, these T&C's supersede any prior terms and conditions, any provisions contained in or accompanying any purchase order previously or hereinafter submitted by Customer, and prior general agreement (except any separate security agreement) inconsistent with these T&C's.
- 29. NOTICES**
All notices or communications to Customer by FP shall be deemed to have been duly given when deposited in the United States mail with postage prepaid to Customer at the address shown as Customer's address in FP's records, or on the date sent by e-mail if sent during normal business hours of Customer, and on the next business day if sent after normal business hours of the Customer. Customer may change the address at which it desires to receive such notices by giving written notice of such change to FP. Any such change of address shall only be effective upon FP's receipt of such written change of address and it is the Customer's obligation to confirm that such change of address was received by FP. All notices to FP shall be effective when actually received by FP and shall be sent to: **Flavor Producers, LLC, 2429 E.**