



*A Limited Liability Company*

## General Terms and Conditions of Purchase Order

- 1. Definitions; Application:** These General Terms and Conditions of Purchase (“Terms”) apply to all purchases of Products and services (“Products”) by Organic Partners International, LLC (“Buyer”) from the supplier of Products (“Seller”). These Terms are incorporated by reference into each purchase order (“PO”) issued by Buyer to Seller.
- 2. Entire Contract:** These Terms, including the Order-specific descriptive terms (price, quantity, shipment date, etc.) contained in the Purchase Order, set out the entire contract between Buyer and Seller. No terms contained in any prior oral or written communication, including without limitation, any offer by Seller, whether oral, written or electronic, that are different from or in addition to these Terms, apply to the sale of Products pursuant to the PO. Seller specifically rejects any and all such additional or different terms, whether or not they would materially alter these Terms. No alleged oral promises or conditions not set forth in these Terms or in the PO, nor any usage of trade or course of dealing, shall be binding upon Buyer or Seller, and any prior negotiations between the parties are merged into the PO. No changes or additions to these Terms shall be binding on Buyer unless accepted by Buyer in a writing signed by an officer of Buyer.
- 3. Acceptance:** These Terms are the basis for the transaction between Seller and Buyer. Buyer would not be willing to purchase the Products from Seller except on these Terms. ANY ADDITIONAL OR DIFFERENT TERM OR CONDITION STATED BY SELLER IN ANY ACKNOWLEDGMENT FORM, OR IN OTHERWISE ACKNOWLEDGING OR ACCEPTING THE PO, IS DEEMED BY BUYER TO BE A MATERIAL ALTERATION OF THE PO AND IS HEREBY OBJECTED TO BY BUYER UNLESS SPECIFICALLY ACCEPTED BY BUYER IN WRITING. Seller’s offer to purchase the Products is expressly conditioned on (a) Seller’s acceptance of these Terms, and (b) Seller’s acknowledgment that these Terms are the sole and exclusive agreement between Seller and Buyer. Buyer’s acceptance of Products does not constitute an acceptance of provisions of any terms contained in or incorporated by reference into any order confirmation or other purported agreement that are different from or additional to these Terms. Buyer’s failure to enforce any Terms is not a waiver of that or any other provision of these Terms.
- 4. INSPECTION:** Buyer will inspect and accept or reject the Products as promptly as practical after delivery to the ultimate destination, except as otherwise provided in the PO, but failure to inspect and accept or reject the Products or any part thereof, or failure to detect defects by inspection, shall neither relieve Seller from responsibility for such of the Products as are not in accordance with the requirements of the PO, nor impose any liabilities on Buyer. If Buyer makes any inspection or test on Seller’s or its supplier’s premises, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties.

5. **WARRANTIES:** Seller expressly warrants that all Products sold pursuant to the PO (a) will strictly conform to the specifications set forth in the Purchase Order; (b) will be free from defects, liens and patent, trademark, copyright and trade secret infringements; (c) will be of merchantable quality and will be fit for the particular purposes for which they are purchased; (d) will bear all warnings, labels and markings required by applicable laws and regulations; and (e) are certified organic, if applicable, pursuant to USDA National Organic Program standards and/or are certified organic pursuant to such other organic standards as Seller may specify in writing, as applicable.(f) have been produced, sold, delivered or rendered to Buyer in compliance with all laws and regulations. Seller further expressly represents, warrants and covenants that (g) none of the Products is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act (the "Act"); (h) all Products may be introduced into interstate commerce without violation of applicable laws and regulations; and (i) all services have been performed in a good and workmanlike manner. Any attempt by Seller to limit, disclaim, or restrict any warranties or remedies of Buyer, by acknowledgment or otherwise in accepting or performing the Purchase Order shall be null, void and ineffective without Buyer's written consent.
6. **CANCELLATION:** Buyer may cancel all or any portion of the PO at any time prior to shipment of the Products. In such event Seller shall be entitled to a reasonable termination fee reflecting the percentage of the percentage of the work, goods delivered or services properly performed prior to termination, as Seller's sole remedy. In the event of U.S. or foreign government intervention, trade restrictions, and/or quotas which may delay or prevent delivery of the Products or any part thereof, Buyer, at Buyer's option, may cancel the unshipped balance of the Products without liability. In the event any of the Products shall become subject to any governmental fees or duties not now in effect, or to any increase in countervailing duty, Buyer, at Buyer's option, may cancel the unshipped balance of the Products without liability.
7. **DEFAULT; INSOLVENCY:** Time is of the essence. The Products are to be shipped within the shipping period and in the manner stipulated in the PO or as otherwise specified and agreed to by Buyer in writing. In the event Seller fails to make shipment strictly in accordance with the delivery terms of the PO, Buyer, at Buyer's option, may cancel the unshipped balance of the Products without liability, and pursue its remedies for breach of contract against Seller. If Seller ceases to conduct its operation in the normal course of business, including inability to meet its obligations as they mature, or if 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, Buyer may terminate the Purchase order without liability.
8. **INDEMNIFICATION; INSURANCE:** Seller agrees to defend, indemnify and hold harmless Buyer from all claims, losses, damages, costs and legal fees (including those incurred in trial or arbitration and in any appellate proceedings) of any nature whatsoever, including but not limited to lost profits, arising out of or related to the acts or omissions, including but not limited to negligence, of Seller, its agents, employees, subcontractors, or any other persons directly or indirectly acting on behalf of them. Seller shall maintain at all times Commercial General Liability (including Contractual Liability and Products/Completed Operations) insurance policies with combined single limits of \$1,000,000/occurrence and \$2,000,000 aggregate, or such other amounts as Buyer shall agree to in writing from time to time, with insurers acceptable to Buyer in Buyer's reasonable discretion. UNDER NO CIRCUMSTANCES SHALL BUYER BE LIABLE TO SELLER FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, MULTIPLE OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), ARISING FROM OR IN

CONNECTION WITH THE PO OR THE PRODUCTS, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE.

9. **EXTRA CHARGES:** No extra charges of any kind will be allowed for Buyer's account unless specifically agreed to by Buyer in writing.
10. **EQUAL EMPLOYMENT OPPORTUNITY:** By entering into the Purchase Order, the parties agree, to the extent applicable, to comply with Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and the Vocational Rehabilitations Act of 1973, which are incorporated herein by this reference.
11. **MODIFICATION:** The PO and these Terms can be modified only by a writing signed by both of the parties.
12. **ASSIGNMENT; SET-OFF:** Seller shall not assign its rights or delegate its performance, or any interest in the PO, without Buyer's written consent. Any attempted assignment or delegation without such consent shall be void. Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer against any amount payable at any time by Buyer in connection with the PO.
13. **SEVERABILITY; WAIVER:** Any provision of the PO or of these Terms that is unenforceable in any jurisdiction shall be ineffective to the extent of such unenforceability (but shall be enforced to the maximum extent permissible) without invalidating the remaining provisions. No waiver of the breach of any provision of the PO shall be deemed a waiver of any succeeding breach, nor shall be deemed to be a modification of these Terms.
14. **ARBITRATION:** Any controversy or claim arising out of or relating to the PO, or any breach thereof, shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof. Any arbitration proceedings shall be conducted in Portland, Oregon, U.S.A. with a single arbitrator. In connection with any arbitration proceeding, each party shall pay (a) one-half of the arbitrator's fees and any administrative charges associated with the proceeding, and (b) except as provided in Section 8 above, all of its own attorney and other professional fees and costs.
15. **GENERAL:** All agreements, representations and warranties of Seller shall survive delivery, acceptance and final payment under the PO or any earlier termination. All rights and remedies available to Buyer under these Terms are in addition to, and not in limitation, of the rights and remedies otherwise available to Buyer at law or in equity. The rights and obligations of the parties under the Purchase Order shall be governed by the laws of the State of Oregon, U.S.A. in effect as of the date of the Purchase order, including without limitation the provisions of the Oregon Uniform Commercial Code, but without regard to conflicts of law principles. The 1980 United Nations Convention on Contracts for the International Sale of Products, as amended, shall not apply to the Purchase order. If any provision of the Purchase Order is determined by any court or arbitrator to be unenforceable, the provision shall be deleted, and the balance of the Purchase Order shall be binding upon the parties. Any agreement signed and sent by facsimile shall be treated as a binding original.



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## **Organic Partners International, LLC General Terms and Conditions of Sale**

**1. Definitions; Application:** These General Terms and Conditions of Sale (“Terms”) apply to all sales of goods (“Goods”) by Organic Partners International, LLC (“Seller”) pursuant to a purchase order (“Order”) placed by a party (“Buyer”) who desires to purchase Goods. These Terms are incorporated by reference into each acknowledgment (“Order Acknowledgment”) issued by Seller to Buyer.

**2. Entire Contract:** These Terms, including the Order-specific descriptive terms (price, quantity, shipment date, etc.) contained in the Order Acknowledgment, set out the entire contract between Buyer and Seller. No terms contained in any prior oral or written communication, including without limitation, the Order, that are different from or in addition to these Terms, apply to the sale of Goods set out in the Order Acknowledgment. Seller specifically rejects any and all such additional or different terms, whether or not they would materially alter these Terms. No alleged oral promises or conditions not set forth in these Terms or in the Order Acknowledgment, nor any usage of trade or course of dealing, shall be binding upon Buyer or Seller, and any prior negotiations between the parties are merged into the Order Acknowledgment. No changes or additions to these Terms shall be binding on Seller unless accepted by Seller in a writing signed by an officer of Seller.

### **3. Acceptance:**

A. Conditional. These Terms are the basis for the transaction between Seller and Buyer. Seller would not be willing to sell the Goods to Buyer except on these Terms. Seller’s offer to sell the Goods and issuance of the Order Acknowledgment is expressly conditioned on (a) Buyer’s acceptance of these Terms, and (b) Buyer’s acknowledgment that these Terms are the sole and exclusive agreement between Seller and Buyer. Buyer’s acceptance and acknowledgment shall be deemed given unless Buyer notifies Seller in writing of Buyer’s objection to specific terms before the earliest to occur of (i) five (5) days after Seller’s issuance of the Order Acknowledgment, and (ii) Seller’s shipment of the Goods. Buyer’s issuance of an Order with additional or different terms is not an objection to specific terms of these Terms, regardless of any provision in the Order. If Buyer has placed its Order electronically, Buyer’s placement of the Order and actual or deemed acceptance is a writing by which Buyer indicates Buyer’s intention to be bound by these Terms.

B. No Acceptance of Alternate Terms. Seller’s performance under the Order Acknowledgment does not constitute an acceptance of provisions of any Purchase Order that are different from or additional to these Terms. Seller’s failure to enforce any Terms is not a waiver of that or any other provision of these Terms.

**4. Payment and Security:** Buyer agrees to pay for the products according to the Seller's payment terms. Unless otherwise specified in the Order Acknowledgment, payment is due net thirty (30) days from the date of invoice in US dollars in immediately available funds, without setoff or deduction. If Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. All past due amounts are subject to post-maturity charges of 1.5% per month, or, if less, the highest rate not prohibited by law. Buyer grants Seller a lien and a purchase money security interest in the products until such time as Seller is fully paid. Buyer will assist Seller in taking the necessary action to perfect and protect Seller's security interest.

**5. Limitation of Warranty:** Seller warrants that the Goods conform to the grade and quantity specified in the Order Acknowledgment at the time of shipment by Seller. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. If the sale is based upon a sample, the sample shown by Seller to Buyer was for demonstration purposes only, and SELLER MAKES NO WARRANTY THAT THE GOODS DELIVERED SHALL CONFORM TO THE SAMPLE. Conformity of the Goods to the sample is not a part of the basis of the bargain between Seller and Buyer.

**6. Limitation of Liability:** SELLER'S LIABILITY IS SHALL BE LIMITED TO THE COST OF REPLACING PROPERLY REJECTED GOODS AT THE POINT OF DELIVERY AS SPECIFIED IN THE ORDER ACKNOWLEDGMENT WITHIN A REASONABLE PERIOD OF TIME FOLLOWING PROPER AND TIMELY REJECTION BY BUYER, AND IN NO EVENT SHALL EXCEED THE AMOUNT PAID TO OR THAT OTHERWISE WOULD BE DUE SELLER UNDER THE ORDER ACKNOWLEDGMENT HAD CONFORMING GOODS BEEN DELIVERED. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, MULTIPLE OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, ARISING FROM OR IN CONNECTION WITH THE ORDER OR THE ORDER ACKNOWLEDGMENT, WHETHER BASED ON NONCONFORMITY OF GOODS, DELAY IN SHIPMENT, OR ANY OTHER ALLEGED ACT OR OMISSION BY SELLER, AND WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE.

**7. Shortages; Inspection; Rejection of Goods:** All claims for damage, shortage and/or errors in shipping must be reported and supported by written exceptions by Buyer or Buyer's representative on the delivery documents at the time of delivery or pick-up. Failure to take exceptions against the carrier for short delivery and/or damages shall constitute a waiver of such claims by Buyer. Buyer shall have five (5) days after the Goods are delivered by Seller at the destination specified in the Order Acknowledgment to inspect the Goods for defects and non-conformance and to provide written notice thereof to Seller. After that 5-day period, Buyer shall be deemed to have irrevocably accepted the Goods, to the extent not previously accepted, and all claims for defects and non-conformance shall be waived.

**8. Failure to Take Delivery:** If Buyer fails to take delivery of any or all of the Goods, the Goods not taken by Buyer shall be held at Buyer's sole risk in all respects. Nevertheless, Seller, acting as Buyer's agent and at Buyer's expense, may, but shall not be obligated to, store, insure and/or otherwise protect such Goods or may resell them at Buyer's expense and for Buyer's account. If Buyer causes or requests a shipping delay, or if Seller ships or delivers the Goods erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents, all storage and other additional costs and risks shall be borne by Buyer. Delivery dates are Seller's best estimate based on its knowledge on the date of the Order Acknowledgment. Seller will make commercially reasonable efforts to make shipment as scheduled, but failure to make shipment as scheduled does not constitute cause for cancellation by Buyer, is not a breach of contract by Seller, does not permit Buyer to refuse delivery, and does not entitle Buyer to damage of any kind.

**9. Changes in Cost:** Prices for Goods contained in the Order Acknowledgment that include insurance and/or shipping-related charges are based on prices and tariffs in effect on the date of the Order Acknowledgment, and are subject to change through the date of delivery. Any change in insurance premium, destination, or other shipping charges and transportation expenses, including without limitation fluctuations in ocean freight, which arise after the date of the Order Acknowledgment, shall be for Buyer's account, unless otherwise specified in the Order Acknowledgment. In the case of CIF or CFR sales, any import duty, tax, or tariff, or any revenue or other national, Federal, state or municipal tax or taxes now or subsequently imposed in the country of destination, upon the Goods and/or their containers, shall be for Buyer's account, in accordance with the Incoterms 2000 interpretation of CIF and CFR sales, unless specifically otherwise stipulated in the Order Acknowledgment.

**10. Carrier, Title and Risk of Loss:** Unless specified to the contrary in the Order Acknowledgment, all sales of Goods are FOB point of shipment. In the absence of specific instructions from Buyer, Seller will select the carrier for delivery of the Goods. In no event shall Seller be liable for any delay in delivery by the carrier, nor shall the carrier be deemed an agent of Seller. If this contract is an FOB or FAS sale, title and risk of loss pass to Buyer upon delivery of the Goods to the carrier. If this contract is a CIF or CFR sale, title and risk of casualty loss shall be deemed to pass to Buyer upon loading of the Goods on board carrier.

If under the bill of lading the Goods are delivered to Seller or Seller's order, or if Seller retains documents covering the Goods, such acts shall be deemed to be only for the purpose of securing performance by Buyer of its obligations. In the event of loss or damage in transit, Buyer shall nevertheless pay the full invoice price according to the invoice terms.

**11. Trade Terms:** Except to the extent these terms and conditions expressly provide for a different interpretation, trade terms (FOB, FAS, CIF, etc) shall be interpreted as follows: (a) For Goods to be shipped to a destination within the United States, trade terms shall be defined in accordance with the Oregon Uniform Commercial Code. (b) For Goods to be shipped to a destination outside the United States, trade terms shall be defined in accordance with the International Rules for the Interpretation of Trade Terms, as amended ("Incoterms"), as published by the International Chamber of Commerce and in effect as of the date of the Order Acknowledgment.

**12. Equal Employment Opportunity:** By entering into the Order the parties agree, to the extent applicable, to comply with Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and the Vocational Rehabilitation Act of 1973m which are incorporated herein by this reference.

**13. Default:** If Buyer breaches or is otherwise in default under the Order Acknowledgment or under any other contract between the parties hereto, Seller at its option may defer delivery of the Goods until the default is cured, or may treat the default as a repudiation by Buyer of the Order in its entirety, resell the Goods and hold Buyer liable for such damages as Seller may incur, including consequential and incidental damages. Buyer's insolvency shall be a default under the Order Acknowledgment.

**14. Cancellation:** Except as otherwise expressly provided in the Order Acknowledgment, the Order shall be cancelled only by mutual written consent of the parties. Seller will not consent to cancellation if Seller has bound itself to purchase the Goods for resale to Buyer. If Buyer is in default by failure to pay any previous invoice within credit terms at the expected date of shipment of the Goods or any part thereof, or if Seller has received any adverse credit information about Buyer, Seller may delay shipment and/or cancel the unshipped balance of the Goods without liability. In the event of U.S. or foreign government intervention, trade restrictions, and/or quotas, which may delay or prevent delivery of the Goods or any part thereof, Seller, at Seller's option, may cancel the

unshipped balance of the Goods without liability. In the event any of the Goods shall become subject to any governmental fees or duties not currently in effect or to any increase in any existing fee or duty, including any anti-dumping duty or countervailing duty, Seller shall have the right to cancel the unshipped balance of the Goods without liability unless Buyer agrees in writing to pay the full amount of such imposition or increase.

**15. Force Majeure:** Seller shall be free from any liability for delay or failure in shipment arising from strikes, lockouts, labor troubles of any kind, accidents, perils of the sea, fire, earthquake, civil commotion, war or consequences of war, government acts, restrictions or requisitions, failure of manufacturers or suppliers to deliver, bankruptcy or insolvency of manufacturers or suppliers, suspension of shipping facilities, act or default of carrier or any other contingency of whatsoever nature beyond Seller's control affecting production, transportation to boarding point, loading, forwarding or unloading at destination of the Goods, including disturbances existing on the date of the Order Acknowledgment. In such a situation, if shipment or delivery is not made during the period contracted for, Buyer shall accept delivery under the Order Acknowledgment when shipment is made; provided, however, Buyer shall not be obligated to accept delivery if shipment is not made within a reasonable time after the cessation of the aforementioned impediments or causes.

**16. Arbitration:** Any controversy or claim arising out of, or relating to the Order Acknowledgment, or any breach thereof, shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof. The parties hereby agree any arbitration proceedings shall be conducted in Portland, Oregon U.S.A. with a single arbitrator. In connection with any arbitration proceeding, each party shall pay (a) one half of the arbitrator's fees and any administrative charges associated with the proceeding, and (b) all of its own attorney and other professional fees and costs. ANY LEGAL ACTION AGAINST SELLER IN CONNECTION WITH THE GOODS, UNDER ANY THEORY, MUST BE COMMENCED WITHIN ONE (1) YEAR OF THE DATE OF INVOICE. THEREAFTER ALL LEGAL ACTIONS ARE BARRED, REGARDLESS OF THE EXISTENCE OF STATUTES OF LIMITATION PROVIDING LONGER PERIODS.

**17. General:** The rights and obligations of the parties under the Order Acknowledgment shall be governed by the laws of the State of Oregon, U.S.A. in effect as of the date of the Order Acknowledgment, including without limitation the provisions of the Oregon Uniform Commercial Code, but without regard to conflicts of law principles. Neither the 1980 United Nations Convention on Contracts for the International Sale of Goods, as amended, nor the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended, shall apply to the Order Acknowledgment or these Terms. If any provision of the Order Acknowledgment or these Terms is determined by any court or arbitrator to be unenforceable, the provision shall be deleted, and the balance of the Order Acknowledgment and these Terms shall be binding upon the parties. Any agreement signed and sent by facsimile, and any order placed electronically and reflected in the Order Acknowledgment shall be treated as a binding original.

**18. Insurance (CIF, CFR, FOB, Foreign Port Sales and FAS Foreign Port Sales):**

a. CIF – Seller shall obtain Marine insurance at Seller's expense for Buyer's account, evidenced by a policy, certificate, or letter of insurance in the amount of the contract price plus not less than 10% with a recognized company or companies, for whose solvency Seller is not responsible. The price specified in the Order Acknowledgment does not include war risk insurance unless specified in writing in the Order Acknowledgment.

b. CFR, FOB and FAS Foreign Port Terms- Buyer shall obtain Marine insurance and war risk insurance at its expense for the full value of this contract, and shall include standard warehouse-to-warehouse coverage.



If requested by Seller, Buyer shall furnish a binder by the insurance carrier covering shipment under the Order Acknowledgment, all rights under said binder to be assigned to Buyer or Seller or whosoever may appear to be of interest.

**19. Assumption of Liability; Raw Foods Disclaimer:** Buyer assumes all risk and liability resulting from the use of the Goods, including but not limited to all risks and liability resulting from use of the Goods in raw, undercooked or less than fully processed foods. For avoidance of doubt, and without limiting any other disclaimer of warranty, SELLER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY) WITH RESPECT TO THE USE OF THE GOODS, INCLUDING BUT NOT LIMITED TO IN RAW, UNDERCOOKED OR LESS THAN FULLY PROCESSED FOODS. Seller neither assumes nor authorizes any person to assume for Seller any risk or liability in connection with the sale or use of the Goods.