



*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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