



MICHIGAN MILK PRODUCERS ASSOCIATION
MIDDLEBURY CHEESE COMPANY, LLC
SALES TERMS AND CONDITIONS

1. **Applicability.** These terms and conditions of sale (these “**Terms**”) apply to the sale of all goods (“**Goods**”) by Seller to the buyer named on Seller’s Sales Confirmation (“**Buyer**”). “**Seller**” shall mean Michigan Milk Producers Association or Middlebury Cheese Company, LLC, as applicable. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, then the terms and conditions of that contract shall prevail to the extent they are inconsistent with these Terms. If Buyer has executed a Commercial Application for Credit with Michigan Milk Producers Association or Middlebury Cheese Company, LLC, then the credit application and the Terms and Conditions of Credit incorporated in it (the “**Credit Application**”) are incorporated by reference. Seller’s Sales Confirmation, these Terms, and the Credit Application (collectively, the “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms. For the avoidance of doubt, Seller will not be bound by any additional or different terms or conditions contained in any purchase order, correspondence, or other documents or records referencing any order or transaction (and this shall constitute Seller’s objection to any such terms and conditions under Section 2-207(2)(c) of the Michigan Uniform Commercial Code). Any such additional or different terms or conditions shall be deemed mere surplusage and shall not alter these Terms.
2. **Delivery of Goods.** All delivery dates are approximate only. The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order. Seller shall not be liable for any delays, loss or damage in transit. Unless otherwise specified in Seller’s sales confirmation, delivery shall be FOB Seller’s designated facility (the “**Seller’s Facility**”). Seller will make the Goods available for shipment at the Seller’s Facility using Seller’s standard methods for packaging and shipping such Goods. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Seller’s Facility. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the quantity or units of Goods shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order. Seller shall use reasonable efforts to meet any performance or delivery dates specified in the Sales Confirmation, but any such dates shall be estimates only. Any additional amounts payable to the shipping carrier, including, but not limited to, charges for demurrage, detention, redelivery, unloading, sorting, stop-off, excess freight, switching or other accessorial charges, will be Buyer’s responsibility and Buyer shall reimburse Seller for such amounts upon receipt of proper documentation. Buyer undertakes to take delivery of the Goods at the agreed date and at the agreed upon quantity and price during the terms of this Agreement and agrees to indemnify the Seller against any costs or losses incurred by the Seller as a result of any failure to do so. In such circumstances, the Seller may terminate the Agreement, without liability, and sell the Goods and charge the Buyer for any shortfall below the Agreement price. Seller shall have no liability for any loss or damage arising as a result of Buyer’s breach of its obligations in these Terms.
3. **Non-Delivery.** The quantity of any installment of Goods as recorded by Seller on shipment at the Seller’s Facility is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of Goods (even if caused by Seller’s negligence) unless Buyer gives written notice to Seller of the non-delivery within seven days of the date when the Goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the Goods shall be limited to delivering the shortfall in Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. Buyer shall not have the right to reject partial shipments. Buyer acknowledges and agrees that the remedies set forth in this Section 3 are Buyer’s exclusive remedies for the non-delivery or partial delivery of Goods.
4. **Title; Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter 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 Michigan Uniform Commercial Code.
5. **Price.** As orders are placed by Buyer, and accepted by Seller in a written confirmation (“**Sales Confirmation**”), Seller will sell Goods to Buyer, and Buyer agrees to pay for the Goods, at the prices stated in Seller’s Sales Confirmation. These Terms do not

obligate Seller to accept any additional or future orders. All prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personal or real property, or other assets.

6. **Payment Terms.** Buyer shall pay all invoiced amounts: (a) within 10 days from the date of invoice for Goods or Services purchased from Michigan Milk Producers Association, or (b) within 14 days from the date of invoice for Goods or Services purchased from Middlebury Cheese Company, LLC, unless otherwise provided on Seller's Sales Confirmation. Buyer shall make all payments hereunder by wire transfer or check and in US dollars. Buyer shall pay a time-price differential on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

7. **Limited Warranties.**

a. Seller expressly warrants that: (i) at the time of delivery, the Goods will substantially and materially conform to Seller's product specifications, (ii) at the time of delivery, the Goods will not be adulterated or misbranded within the meaning of the U.S. Food, Drug & Cosmetic Act, as amended ("**FDCA**"), or any other food or drug laws under which the adulteration and misbranding provisions are substantially the same as those found in the FDCA ("**Pure Food Laws**"); or (iii) at the time of delivery, the Goods will not be or contain an article that may not be introduced into interstate commerce under the FDCA.

b. **EXCEPT FOR THE FOREGOING LIMITED WARRANTIES, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; OR (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH HEREIN.**

c. If Buyer has reason to believe any Goods do not comply with the limited warranties, Buyer shall not use or resell such Goods without prior written approval of Seller. Seller shall not be liable for a breach of the limited warranties set forth in this Section if: (i) Buyer makes any further use of such Goods after it discovers or ought to have discovered a defect in the Goods; or (ii) the defect arises from or relates to Buyer or its agents or carriers failing to handle and store the Goods properly and in accordance with Seller's oral or written instructions.

8. **Inspection.**

a. Buyer shall inspect all Goods immediately upon receipt, which may include, without limitation, examining, sampling, and testing the Goods for compliance with the limited warranties in Section 7, above.

b. Buyer will be deemed to have accepted the Goods, and Seller shall not be liable for a breach of the limited warranties set forth in Section 7 or any other liability arising from or related to the quality or condition of the Goods unless: (i) within as short a period as practicable after receipt, but in no event later than thirty (30) days after delivery, Buyer notifies Seller that the Goods are Non-Conforming Goods and furnishes Seller such written evidence or other documentation as Seller reasonably requests to verify Buyer's claim; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's designated facility at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are Non-Conforming Goods. "**Non-Conforming Goods**" means the following: (i) Goods of a quality or condition that do not comply with the limited warranties in Section 7, above, (ii) Goods shipped that are different than identified in Buyer's purchase order; or (iii) Goods bearing a label or packaging that incorrectly identifies its contents.

9. **Remedies and Limitation of Liability.**

a. If any Goods are Non-Conforming Goods and Buyer timely notifies Seller of its claim related thereto, Seller shall: (i) in its sole discretion, either replace such Non-Conforming Goods with conforming Goods, or credit or refund the price for such Non-Conforming Goods, and (ii) pay any reasonable expenses of return shipping or disposal of the Non-Conforming Goods in accordance with Seller's instructions. Buyer acknowledges and agrees that the remedies set forth in this Section are Buyer's exclusive remedies for claims arising from or related to any Goods being Non-Conforming Goods. Except as otherwise provided in this Agreement, Buyer has no right to return Goods purchased under this Agreement to Seller.

- b. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. 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 AND SERVICES SOLD HEREUNDER. THE LIABILITY LIMITATION SET FORTH IN THIS SECTION SHALL NOT APPLY TO LIABILITY RESULTING FROM SELLER'S FRAUD OR WILLFUL MISCONDUCT.**
10. **Buyer Indemnification.** Subject to the terms and conditions of this Agreement, Buyer shall indemnify, defend and hold harmless Seller and its members, officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party (collectively, "**Losses**"), arising from or relating to: (i) Buyer's handling, storage, marketing, or distribution of the Goods; (ii) the use of the Goods by Buyer or its employees, agents, contractors, successors, assigns, or customers, including without limitation, as an ingredient or component of any other item or otherwise, in their respective manufacturing, production, labeling, marketing or distribution processes and the subsequent marketing and/or sale of products which used or contained the Goods into the retail or wholesale marketing or distribution channels; (iii) any negligent or more culpable act or omission of Buyer or its personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement; (iv) any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent acts or omissions of Buyer or its personnel; (v) any packaging, formulas, or labeling supplied by or obtained at the direction of Buyer, including without limitation, any nutrition facts labeling; (vi) any allegation that the Goods or the use thereof by Buyer or its employees, agents, contractors, successors, assigns, or customers infringes any intellectual property right of a third party; or (vii) any failure of Buyer to comply with any applicable laws. Notwithstanding the foregoing, Buyer is not obligated to indemnify or defend Indemnified Party against any claim (direct or indirect) to the extent such claim or corresponding Losses arise out of or result from Indemnified Party's or its personnel's: (x) gross negligence or more culpable act or omission (including recklessness or willful misconduct); (y) bad faith failure to materially comply with any of its material obligations set forth in this Agreement; or (z) Seller's breach of its limited warranties in these Terms regarding compliance with Pure Food Laws.
11. **Confidential Information.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.
12. **Compliance with Laws.** Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.
13. **Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement ; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.
14. **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15. **Force Majeure.** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond Seller's reasonable control, including, without limitation, acts of God, war, civil insurrection, fire, flood, storm, wind, rain, hail, disease, agricultural shortage or failure, strike, lockout, action or inaction by supplier, or any law, regulation or order of any federal, state or municipal authority. **Events described in this paragraph shall not constitute breach of contract by Seller and shall not result in liability of Seller or a claim for damages against Seller.**
16. **Notices.** Notice of any claims, including, but not limited to claims for discounts, adjustments and allowances, must be given in writing within seven calendar (7) days of invoice date.
17. **Solvency.** Buyer warrants that Buyer is from the date of this agreement, solvent within the meaning of the Michigan Uniform Commercial Code, MCLA 440.1101, et seq.
18. **Governing Law.** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Michigan.
19. **Venue.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be brought in the state courts in Oakland County, Michigan, or in the federal courts in the Eastern District of Michigan, Southern Division, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
20. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
21. **Relationship.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
22. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
23. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Remedies and Limitation of Liability, Confidential Information, Compliance with Laws, Governing Law, Venue, Survival, and Statute of Limitations.
24. **Statute of Limitations.** Notwithstanding any right under any applicable statute of limitations to bring a claim, no legal suit, action or proceeding based upon or arising in any way out of this Agreement may be brought by either party more than 12 months after the date of Seller's Confirmation, and the parties waive the right to file any such action after such period; provided, however, that the foregoing waiver and limitation do not apply to the collection of any amounts due to Seller or to claims arising from Buyer's disclosure of Seller's Confidential Information.
25. **Amendment.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized officer of each party.

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