

# Café Valley Inc. - Terms and Conditions of Purchase

## 1. Introduction

These Terms and Conditions (or “Terms”) govern all purchasing activities between **Cafe Valley Inc.** (referred to as "Purchaser") and the supplier (referred to as "Seller"). These Terms apply to all orders placed by the Purchaser, whether or not a **Master Purchasing Agreement (MPA)** or **Purchase Schedule (PS)** is in place. Where such agreements exist, they shall take precedence over these Terms, but the absence of these agreements does not diminish the enforceability of these Terms.

## 2. Definitions

- **Agreement:** The contract formed by the Purchaser's Purchase Order and these Terms of Purchase.
- **Purchase Order:** A document issued by the Purchaser specifying the goods or services required, along with pricing and other relevant details.
- **Goods:** Any products, materials, or services described in the Purchase Order.
- **Specifications:** Any description of the Goods as provided by the Purchaser, including technical and quality requirements.

## 3. Quotations and Pricing

- **Quotation Accuracy:** Any quotations provided by the Seller must be based on accurate information and reflect all applicable costs, including delivery. Quotations, once accepted, are binding and cannot be altered without the written consent of the Purchaser.
- **All-Inclusive Pricing:** All prices provided by the Seller are assumed to be all-inclusive of freight, handling costs, pallet fees, and all other costs and fees, unless otherwise agreed upon in writing. The Purchaser will not accept any additional freight, handling, or other charges of any kind unless these costs are approved in writing by the Purchaser before shipment.
- **Price Adjustments:** Prices listed in the Purchase Order are firm and not subject to change unless mutually agreed upon in writing by both parties. In the event of a difference in price between any Seller Quotation and any Purchaser Purchase Order, the lower price shall control.

## 4. Purchase Orders

- **Acceptance:** These Terms and Conditions and any Purchase Order become binding upon the Seller's written confirmation, commencement of work, or delivery of the Goods.
- **Modification and Cancellation:** The Purchaser reserves the right to modify or cancel any Purchase Order. The Seller must promptly notify the Purchaser of any price or delivery impact caused by such modifications.

## 5. Payment Terms

Unless otherwise agreed, payment terms are **net 45 days** from the date of the correct and complete invoice is received. Invoices must include all necessary supporting documentation, including the Purchase Order number and BOL. The Purchaser reserves the right to dispute any portion of an invoice and withhold payment on the disputed amount until the issue is resolved.

## 6. Delivery and Inspection

- **FOB Destination and Risk of Loss:** All deliveries are **FOB Purchaser's Designated Destination** under INCOTERMS, meaning the Seller is responsible for all freight, handling costs, and pallet fees. Title and risk of loss transfer to the Purchaser only upon delivery to the Purchaser's specified location. Purchaser shall not be responsible for any other freight, handling charges, pallet fees, or any other charges or fees unless accepted in writing by the Purchaser in advance to be valid.
- **Pallet Quality and Load Stability:**
  - All shipments must be delivered on pallets that meet **GMA A-Grade** quality standards as well as Purchaser's other specifications. The pallets must be in good condition, free from broken or damaged boards, exposed nails, or other defects that could compromise the stability of the load or cause damage during transport or handling. Seller is responsible for properly loading all Goods and inspecting all transportation carriers, trailers, and containers prior to loading.
  - Loads must be stable, properly secured, and wrapped to ensure safe transport and handling. Any shipments that are unstable or fail to meet these standards may be subject to fines of up to **\$250 per pallet** for restacking or repalletization, at the Purchaser's discretion.
  - The Purchaser reserves the right to inspect pallet and load quality upon delivery and may reject shipments that do not meet these specifications.
- **Traceability and Date of Manufacture:**
  - All incoming products must include a clearly legible **lot-date** for traceability purposes. Additionally, each product must display a **clearly stated date of manufacture**.
  - Failure to provide this information may result in rejection of the shipment at the Seller's expense, as traceability is a critical requirement for food safety and quality management.
- **Quantity Discrepancies:**
  - **Notification of Discrepancies:** The Seller must notify the Purchaser in advance of any quantity discrepancies between the Purchase Order and the actual shipment. Any variance in the quantity shipped relative to the quantity ordered must not come as a surprise upon receipt of the Goods.
  - **Over-Shipments:** If the Seller ships quantities in excess of the Purchase Order, the Purchaser, at its sole discretion, may:
    1. Accept and pay for the over-shipped quantity at the original order price.
    2. Return the excess quantity to the Seller at the Seller's expense.
    3. Hold the excess quantity at the Seller's risk and await further instructions, with any related costs borne by the Seller.
  - **Under-Shipments:** The Purchaser may accept under-shipments but reserves the right to:

1. Adjust freight or handling allocations to reflect the reduced shipment quantity, which may result in a price adjustment.
  2. Require the Seller to ship the remaining balance at the Seller's sole expense, including any additional freight or handling charges incurred as a result of the under-shipment.
- **Bulk Shipments Tolerance:** For items sold in bulk quantities (e.g., by weight rather than by specific units such as bags or boxes), the Purchaser will accept shipments that are within **5%** of the original ordered quantity. Variances beyond this tolerance must be communicated to and approved by the Purchaser before shipment.
  - **Lead Times:** Seller must adhere to the delivery dates specified in the Purchase Order. Any anticipated delays must be communicated to the Purchaser at least **3 days** in advance of the scheduled delivery date. Failure to provide timely notice of delays may result in penalties as outlined below.
  - **Penalties for Late Delivery:** If the Seller fails to deliver the Goods on time, without providing sufficient notice, the Purchaser reserves the right to apply penalties. These penalties will be based on the following structure:
    - **Penalty Amount:** The lesser of (a) **75%** of the total purchase cost or (b) the actual business impact caused by the late delivery, which includes costs associated with operational downtime, expedited shipping, or other direct losses resulting from the delay.
    - **Alternative Sourcing Costs:** In the event that a delay forces the Purchaser to source materials from an alternative supplier, the Seller may be held responsible for covering the cost difference between the original purchase price and the price paid to the alternative supplier.
    - **Waiver of Penalties:** Penalties may be waived at the Purchaser's discretion if the Seller can demonstrate that the delay was caused by circumstances beyond their control (e.g., force majeure) and reasonable efforts were made to minimize the impact on the Purchaser.
  - **Notice of Non-Conforming Goods:** If the Seller becomes aware that any Goods do not conform to the specifications or other requirements outlined in the Purchase Order, the Seller must immediately notify the Purchaser, prior to or upon delivery. Failure to provide this notification may result in the rejection of the Goods at the Seller's expense, as well as any applicable penalties or costs related to non-compliance.
  - **Collaboration for Mitigation:** The Purchaser and Seller will work together to mitigate the effects of any delay. If the Seller promptly notifies the Purchaser of a potential delay, the Purchaser may choose to accept the late delivery without penalty, provided that reasonable alternative solutions (such as expedited shipping or partial delivery) are agreed upon.
  - **Inspection:** The Purchaser reserves the right to inspect the Goods upon delivery. The Purchaser has up to 48 hours from the time of receiving to report any non-conforming Goods, including damage, defects, or discrepancies; provided, however, that if any defect or non-conforming is later discovered with the Goods, Purchaser's failure to notify Seller within 48 hours shall not constitute an acceptance of the Goods or waiver of any defects, non-conformities, or remedies. Any rejected Goods must be replaced or refunded at the

Seller's expense, and Seller may be liable to Purchaser for other damages, costs, losses, and expenses incurred as a result of any defects or non-conformities.

## 7. Warranties and Quality Control

- The Seller warrants that all Goods provided:
  - Conform to the Purchaser's specifications and applicable laws, regulations, and industry standards, including but not limited to the Food Safety Modernization Act and all FDA rules and regulations.
  - Are free from defects in material, workmanship, and design.
  - Are fit for the intended purpose and safe for consumption or use. The Seller is responsible for promptly correcting or replacing any defective Goods at their own expense.
  - Are merchantable.
  - Are fit for human consumption.
- **Post-Receiving Defects:** The Purchaser reserves the right to claim and seek remedies for any defects in the Goods that are discovered after receipt and initial acceptance, including during production or use. This includes, but is not limited to, defects in materials, workmanship, or performance that were not immediately apparent upon inspection. In such cases, the Purchaser will notify the Seller of the defect, and the Seller will be responsible for:
  - Promptly replacing or correcting the defective Goods at the Seller's expense, including any associated costs for removal, return, or replacement.
  - Compensating the Purchaser for any direct damages, production losses, or costs incurred as a result of the defect, including, but not limited to, costs related to delays, recalls, rework, or the use of alternative materials.
- **Extended Warranty:** The Seller guarantees that the Goods will remain free of defects in material, workmanship, and design for the full duration of the manufacture-stated shelf-life. The Seller shall repair, replace, or refund the defective Goods upon discovery of such defects within the warranty period.
- **Right to Audit:** The Purchaser reserves the right to audit the Seller's facilities, processes, and records, at reasonable times, to ensure compliance with these Terms, specifications, and applicable laws and regulations. The Seller must cooperate fully with any audits and provide all requested documentation and access to relevant areas of the facility.
- **Subcontractor Compliance:** The Seller is responsible for ensuring that any subcontractors or third parties involved in the supply of Goods under this Agreement comply with the same quality control, legal, and regulatory requirements as set forth in these Terms. The Seller is liable for the actions or omissions of its subcontractors as if they were the Seller's own.

## 8. Inventory Management and Reporting

Where applicable, the Seller must maintain adequate inventory levels to fulfill the Purchaser's orders and provide inventory reports upon request. The specific inventory requirements will be detailed in the Purchase Order or other relevant agreements. Seller shall, when applicable, fill all Purchase Orders using First-In, First-Out ("FIFO") both for ingredients and finished Goods.

## 9. Recall Procedure

- **Recall Responsibility:** In the event of a recall affecting any Goods supplied by the Seller, the Seller is responsible for managing the recall and bearing all associated costs, including but not limited to notification, retrieval, and replacement of affected Goods.
- **Fee/Penalty Schedule:**
  - **Administrative Fees:** The Purchaser will charge an administrative fee of **\$750 per SKU** involved in the recall to cover the costs associated with managing the recall process. This includes time spent on researching, notifying customers, managing inventory, and processing credits.
  - **Disposal Fees:** If the recalled products require disposal, the Seller will be responsible for all disposal costs. This may include hazardous waste fees, landfill fees, or costs for additional on-site dumpsters.
  - **Recovery Fees:** For any products held or returned to the Purchaser due to the recall, the Seller will be charged a recovery fee of **\$15 per case** for handling, plus the actual cost of the product.
  - **Product Destruction or Return Fees:** Any products returned to the Purchaser from customers will incur a charge of **\$7.50 per case** for handling, in addition to the cost of shipping and returning the products.
- **Notification:** The Seller must notify the Purchaser immediately upon learning of any issue that may result in a recall. The Purchaser reserves the right to participate in the recall process and will coordinate with the Seller to minimize the impact on business operations.

## 10. Indemnification

The Seller shall indemnify and hold harmless the Purchaser, its affiliates and customers, and their respective officers, employees, and agents from any and all claims, liabilities, losses, damages, or expenses (including legal fees) arising out of or related to:

- A breach of the Seller's obligations under these Terms and Conditions.
- Any defect, non-conformity or failure of the Goods supplied.
- Any violation of applicable laws or regulations by the Seller.

## 11. Insurance

The Seller shall maintain comprehensive general liability insurance, including product liability insurance, with coverage of no less than **\$5,000,000** per occurrence. The Purchaser may request a certificate of insurance as evidence of coverage.

## 12. Confidentiality

All information provided by the Purchaser to the Seller, whether technical, commercial, or otherwise, is to be treated as confidential and must not be disclosed to third parties without the

Purchaser's written consent. This obligation of confidentiality survives the termination of any agreement between the parties.

### 13. Termination and Remedies

- The Purchaser may terminate any Purchase Order or Agreement, or these Terms and Conditions, with the Seller for cause, including but not limited to:
  - The Seller's failure to deliver conforming Goods in a timely manner.
  - Any breach of these Terms that remains uncured after 30 days' written notice. In the event of termination for cause, the Purchaser may seek remedies including, but not limited to, covering for replacement Goods from another supplier and recovering damages for any losses incurred.
- **Termination for Convenience:** The Purchaser reserves the right to terminate any Agreement, any Purchase Order, and these Terms and Conditions, in whole or in part, at any time and for any reason, by providing written notice to the Seller. In the event of termination for convenience, the Purchaser's sole liability will be to pay for Goods or services delivered and accepted prior to the termination date.

### 14. Compliance with Laws and Regulations

The Seller warrants that all Goods supplied to the Purchaser comply with the following, as well as any other applicable federal, state, and local laws and regulations:

- **PFAS Compliance:** The Seller warrants that all Goods supplied are in compliance with regulations concerning **Per- and Polyfluoroalkyl Substances (PFAS)**. Goods must not contain PFAS at levels that exceed regulatory thresholds or pose a risk to health or the environment.
- **Prop 65 Compliance:** The Seller warrants that all Goods supplied comply with **California Proposition 65** (Prop 65). If Goods contain chemicals listed under Prop 65, the Seller must notify the Purchaser in writing before shipment and provide clear and reasonable warnings as required by law.
- **FDA Compliance:** All Goods must comply with applicable regulations enforced by the **U.S. Food and Drug Administration (FDA)**, including but not limited to food safety standards, labeling requirements, and food additive regulations. The Seller must ensure that Goods meet the requirements of the **Food Safety Modernization Act (FSMA)**, including preventive controls, hazard analysis, and traceability requirements.
- **USDA Compliance:** Where applicable, Goods must comply with regulations set by the **U.S. Department of Agriculture (USDA)**, particularly for products subject to USDA inspection and certification, such as meat, poultry, and egg products.
- **GMP Compliance:** The Seller must ensure that all manufacturing, processing, packing, and storage facilities comply with **Good Manufacturing Practices (GMPs)** as required by federal law to ensure the Goods are produced under sanitary conditions and free from contamination.
- **Allergen Labeling Compliance:** The Seller must comply with the **Food Allergen Labeling and Consumer Protection Act (FALCPA)** by ensuring proper labeling of any

allergens in the Goods. The Seller must notify the Purchaser of any potential cross-contamination risks associated with allergens.

- **Traceability and Lot Coding:** The Seller must provide accurate lot coding and traceability for all Goods supplied, as required by the FDA and FSMA. This ensures that the Purchaser can track Goods throughout the supply chain and comply with recall requirements if necessary.
- **Hazardous Substance and Material Compliance:** The Seller must ensure that Goods are free from hazardous substances, including lead, asbestos, or other harmful materials, unless otherwise disclosed and agreed upon by the Purchaser.
- **Sustainability and Environmental Regulations:** The Seller shall comply with all applicable environmental laws and regulations, including EPA standards for waste management, emissions, and chemical usage, as well as any regional sustainability requirements that pertain to packaging, materials, or disposal.
- **Anti-Corruption and Ethical Standards:** The Seller shall comply with all applicable anti-bribery and anti-corruption laws, and conduct business in an ethical and lawful manner. The Seller represents that it has not, and will not, offer or provide any bribes, kickbacks, or improper payments to influence the Purchaser's decision-making.
- **Embargoed Nations:** The Seller warrants that it will not source Goods or services, or conduct business with, entities or individuals located in countries subject to U.S. government embargoes, sanctions, or trade restrictions. The Seller agrees to comply with all applicable export control laws and regulations, including those administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC).

## 15. Miscellaneous

- **Governing Law and Arbitration:** These Terms are governed by the laws of Arizona, and any disputes arising from or related to these Terms will be resolved through binding arbitration in Arizona, in accordance with the rules of the American Arbitration Association. Both parties consent to arbitration in Arizona.
- **Force Majeure:** Neither party will be liable for delays or failures to perform due to specific events beyond their reasonable control, including natural disasters, labor strikes, government regulations, or other unforeseen circumstances ("Force Majeure Events"). However, this does not excuse either party from their obligations under any Agreement, Purchase Order, or these Terms. Instead, it allows for a proportional and fair modification to the agreement, extending deadlines or adjusting terms as necessary based on the impact of the Force Majeure Event. Both parties are expected to act in good faith to mitigate the impact of such events and work toward resuming performance as quickly as possible.
- **Limitation of Liability:** The Purchaser's liability under this Agreement is limited to direct damages resulting from its failure to fulfill its obligations under the Purchase Order. The Purchaser is not liable for any indirect, incidental, punitive, or consequential damages, including lost profits or revenues, arising out of or relating to this Agreement or the performance of the Seller.
- **Intellectual Property:** Any intellectual property, including but not limited to designs, trademarks, patents, or copyrights, developed during the performance of this Agreement

or provided by the Purchaser, shall remain the property of the Purchaser. The Seller shall not use the Purchaser's intellectual property without express written permission.

- **Uncashed Checks:** Any check issued by the Purchaser as payment for Goods or services must be cashed within 180 days from the date of issuance. After this period, the check will be void, and the Purchaser will have no further obligation to reissue or make additional payment.
- **Data Protection:** The Seller must comply with all applicable data protection and privacy laws. If the Seller collects, processes, or stores any data on behalf of the Purchaser, it must implement appropriate security measures and protect the data from unauthorized access, use, or disclosure.
- **Entire Agreement:** These Terms, together with the Purchase Order, constitute the entire agreement between the Purchaser and Seller, superseding any prior communications or agreements, unless explicitly referenced within.