

# BEE SWEET CITRUS, INC.

## TERMS & CONDITIONS FOR PURCHASE ORDERS

The following terms and conditions (these "Purchase Terms") shall apply when Bee Sweet Citrus, Inc. ("Bee Sweet") is purchasing goods ("Goods") and/or services ("Services") from a seller ("Seller") pursuant to a Purchase Order ("Order") issued by Bee Sweet to the Seller.

### 1. APPLICATION AND INTERPRETATION

1.1 Seller Terms Excluded. Acceptance of any Order by Seller is limited to acceptance of the express Purchase Terms herein. Any general terms and conditions of Seller are hereby expressly rejected by Bee Sweet and excluded. Notwithstanding any language contained in any document of Seller stating the language of such document, or any other document referenced therein supersedes any other language, if the Seller chooses to accept an Order, Seller specifically acknowledges and agrees these Purchase Terms control. Any proposal, confirmation, or any other writing of whatever kind inconsistent with or in addition to the terms of the Order and these Purchase Terms shall not be binding upon Bee Sweet. Bee Sweet's acceptance of, or payment for, Goods and/or Services will not constitute acknowledgement or acceptance of the Seller's conditions of sale.

1.2 Order of Precedence. The provisions of any Order and these Purchase Terms will be read, to the extent possible, to be consistent. If a provision in an Order directly conflicts with a provision in these Purchase Terms, the provision in these Purchase Terms will prevail unless either (i) the provision of the Order specifies characteristics, quantities, prices, delivery times or other similar commercial terms for Goods and/or Services to be provided under that Order, or (ii) the Order specifically states that the provision in the Order will prevail.

1.3 Acceptance. An Order shall be deemed accepted by Seller upon the earliest of (i) Seller issuing an electronic confirmation or written acceptance of the Order, (ii) Seller's commencement of work on the Goods and/or Services subject to the applicable Order, or (iii) shipment of the Goods and/or delivery of the Services subject to the applicable Order.

1.4 Changes. Bee Sweet shall have the right at any time to make changes in drawings, designs, specifications, payment methods, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for performance of an Order, an equitable adjustment will be made and the applicable Order shall be modified in writing accordingly. Seller agrees to accept any such changes to any Order or decline such changes promptly in writing.

1.5 References to Laws. A reference to any law, rule, or regulation is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

### 2. COMPENSATION

2.1 Price. The price of the Goods and/or Services shall be as stated in the Order and unless otherwise agreed in writing by Bee Sweet shall be F.O.B. delivered and inclusive of all other charges including but not limited to customs, duties, all sales, use, excise and property taxes, shipping, packaging, boxing, crating, labeling, storage, insurance and any other similar charges. In the event a price is not contained in an Order, Bee Sweet's agent must be notified of the price and its written acceptance obtained before Seller accepts such Order. No additional costs, fees, surcharges or expenses of any kind shall be added to the Order without the advance written consent of Bee Sweet.

2.2 Price Warranty. Seller warrants that the prices for the Goods and/or Services sold to Bee Sweet under any Order are as favorable as those currently offered to Seller's customers for the same or similar Goods and/or Services in similar quantities and type in compliance with all pricing laws and regulations. Seller warrants that prices shown on any Order are complete.

2.3 Invoices. Seller shall present Bee Sweet with an invoice for the amounts due and owing pursuant to the Order and Bee Sweet will pay all undisputed amounts on each invoice within the time period set forth in the applicable Order. Each invoice shall be in a form reasonably acceptable to Bee Sweet. Bee Sweet shall have no obligation to pay any amounts that Seller fails to invoice to Bee Sweet within 120 days after the amounts were incurred. Except as required by applicable laws, Bee Sweet shall not be required to pay any late charge, surcharge, interest, finance charge or similar charge.

2.4 Setoff. Bee Sweet shall have the right to deduct or set-off amounts owed by Seller or any of Seller's affiliates to Bee Sweet against amounts payable under any Order.

### 3. GOODS PURCHASE PROVISIONS

3.1 Delivery. Seller shall deliver the Goods in the quantities, on the dates, and to the places specified in the applicable Order and all Goods shall be properly packed, sealed and secured in such manner as to reach their destination in good condition. If no date is specified in the Order then Seller shall deliver the Goods promptly. Time shall be of the essence.

3.2 Late Delivery. If the Goods are not adequately delivered on the due date, in addition to its other rights and remedies, Bee Sweet may (i) terminate the Order in whole or in part without liability by notice effective when received by Seller as to Goods not yet delivered, (ii) refuse to accept any subsequent delivery of the Goods which Seller attempts to make, (iii) recover from Seller any expenditure reasonably incurred by Bee Sweet in obtaining the Goods in substitution from another provider, or (iv) claim damages for any additional costs, losses or expenses incurred by Bee Sweet which are in any way attributable to Seller's failure to adequately deliver the Goods on the due date.

3.3 Expedited Shipment. If, in order to comply with Bee Sweet's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in the applicable Order, any resulting increased transportation costs shall be paid by Seller unless the necessity for such rerouting or expedited handling has been directly caused by Bee Sweet.

3.4 Title and Risk of Loss. Title to and risk of loss of the Goods, including but not limited to any shipping and transit costs, will pass to Bee Sweet upon the delivery of the Goods to Bee Sweet, provided that in the event the Goods are Non-Conforming Goods as defined herein, title to and risk of loss of such Non-Conforming Goods shall remain at all times with Seller unless Bee Sweet agrees in writing to accept such Non-Conforming Goods. If a shipment is not accompanied by a bill of lading, packing slip or similar delivery document, Bee Sweet's count and/or weight will be conclusive.

3.5 Export-Import Regulations. Seller will prepare, maintain and, to the extent required under applicable laws, rules or regulations promulgated by any governmental or self-regulatory agency having jurisdiction over a party, submit to the applicable customs authorities, all necessary information and documentation to comply with the applicable customs and export and import requirements of each country from which the Goods will be exported and each country into which they will be imported.

3.6 Title. Seller represents and warrants to Bee Sweet that the title conveyed on all Goods produced pursuant to any Order will be good and marketable, its transfer rightful, and the Goods will be delivered free from any security interest or other lien or encumbrance (including any statutory or common law lien).

3.7 Inspection-Testing. Bee Sweet shall have the right, but not the obligation, to inspect and/or test Goods purchased under any Order and reject, in whole or in part, any or all of the Goods contained therein. Nothing contained in any Order or any confirmation or related documents sent by Seller shall relieve Seller from the obligations of testing, inspection, and quality control.

3.8 Warranty. Seller expressly warrants and represents to Bee Sweet, its successors, assigns, customers, and users of Bee Sweet's products, that all Goods furnished under any Order shall (i) conform in all respects to all samples, specifications and appropriate standards, (ii) meet all performance specifications or guarantees provided either orally or in writing to Bee Sweet, (iii) be new, and free from defects in materials or workmanship, (iv) conform to any statements made on the containers, labels, and/or advertisements, (v) be properly contained, packaged, marked, and labeled, (vi) not infringe or misappropriate any patents, copyrights, trademarks, trade names, trade secrets or other intellectual property rights, and (vii) be merchantable, safe and appropriate for the purpose(s) for which Goods of that kind are normally used. In addition, if Seller knows or has reason to know the particular purpose for which Bee Sweet intends to use the Goods, Seller warrants that such Goods will be fit for such particular purpose. Inspection, test, acceptance or use of the Goods furnished under any Order shall not affect Seller's obligation under this warranty, and all warranties shall survive inspection, test, acceptance and use.

3.9 Non-Conforming Goods. Any Goods that are defective, damaged, or fail to conform to (i) the requirements of these Purchase Terms, (ii) the requirements of any applicable Order, (iii) the specifications supplied by Bee Sweet to Seller, or (iv) applicable industry or legal fitness and safety standards ("Non-Conforming Goods").

3.10 Rights with Respect to Non-Conforming Goods. In addition to its other rights and remedies, Bee Sweet reserves the right to (i) cancel or terminate for cause any Order, in whole or in part, which contains Non-Conforming Goods or (ii) require Seller to replace or promptly repair defects of any Non-Conforming Goods without expense to Bee Sweet. Seller shall be liable for all charges, expenses, field corrections, withdraws, recalls, repurchases, or commissions incurred in the inspection, receipt, transportation, care custody and disposal of the Non-Conforming Goods. If Seller fails to repair defects in or replace any Non-Conforming Goods, Bee Sweet may make such repairs or replace such Goods and charge Seller any cost incurred. For Non-Conforming Goods whose defect or non-conformity is not apparent on examination, Bee Sweet reserves the right to require correction or replacement as well as payment of damages.

3.11 Information Regarding Non-Conforming Goods. Seller will promptly furnish to Bee Sweet all information and copies of all documents (including any complaints, inquiries, test or inspection results, internal reviews, warnings, declarations or notices) that Seller receives which suggest or indicate that any Goods, including but not limited to any ingredient, material, and/or any packaging or supplies used in connection with any Goods, may be Non-Conforming Goods.

3.12 Food Related Provisions. Seller represents, warrants and guarantees that Goods which are food related products, including the contents, packaging, and labeling, sold to, constituting or being a part of any shipment or other delivery now or hereafter made by Seller to or on the order of Bee Sweet, and their manufacture, branding and sale, will at the time of such shipment or delivery:

(a) comply with the Federal Food, Drug and Cosmetic Act of June 25, 1938, as amended (the "FFDCA"), including the Food Additives Amendment of 1958 and the Food Allergen Labeling and Consumer Protection Act of 2004; the Federal Meat Inspection Act, as amended; the Poultry Products Inspection Act, as amended; the Federal Insecticide, Fungicide, and Rodenticide Act; the Fair Packaging and Labeling Act; the Poison Prevention Packaging Act of 1970, (collectively, and as applicable, the "Acts"); the HACCP food safety systems requirements of the USDA/FSIS; the provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; the registration requirements of the Food Safety Modernization Act (FSMA); the country-of-origin labeling provisions of the Farm Security and Rural Investment Act of 2002 as amended; and any applicable state food and drug law, the adulteration and misbranding provisions of which are (i) identical with or substantially the same as those found in the Acts, and (ii) are not preempted by the Acts or federal law;

(b) be manufactured in accordance with current good manufacturing practices and any specifications for the Goods to be delivered under these Purchase Terms or any Order and, where applicable, fit for human consumption; and

(c) not be articles which may not, under the provisions of Section 404 or 505 of the FFDCA, be introduced into interstate commerce.

Seller further represents and warrants that all color additives that Seller sells or delivers to Bee Sweet will be manufactured by Seller and (where color additive regulations require certification) will be from batches certified in accordance with the applicable regulations issued under the FFDCA.

#### **4. SERVICE PROVISIONS**

4.1 Performance of Services. Seller will provide Services purchased in any Order in accordance with these Purchase Terms and the applicable Order. If the Order describes Services in a general or non-specific manner, the Services will include not only those Services specifically described in such Order but also those that are an inherent, necessary or a customary part of those Services. Except as provided by the applicable Order, Seller will be responsible for all materials, facilities, equipment, software and other resources required to provide the Services and Seller shall ensure that all equipment used in connection with an Order is maintained in good working order and in compliance with the manufacturer's instructions and current regulations.

4.2 Services Warranty. The Seller represents and warrants that any Services performed by the Seller (or its duly appointed subcontractor) will comply to all applicable statutory rules and regulations and shall not infringe or misappropriate any patents, copyrights, trademarks, trade names, trade secrets or other intellectual property rights and be performed (i) in a good, timely, efficient, professional and workmanlike manner using then-current technology, (ii) using sufficient numbers of personnel who have suitable competence, ability, education, training and other qualifications for any assigned roles, (iii) with at least the degrees of accuracy, quality, efficiency, completeness, timeliness and responsiveness as are equal to or higher than the accepted industry standards applicable to the performance of the same or similar Services, and (iv) in compliance with the requirements of the Order and these Purchase Terms.

4.3 Compliance with Bee Sweet Policies and Procedures in Performance of Services. Seller will ensure that the Seller personnel, while assigned to provide Services or otherwise visiting or accessing Bee Sweet's facilities, will (i) comply with Bee Sweet's then-current environmental, health, safety, and security policies and procedures and other policies and regulations applicable to Bee Sweet personnel at those facilities, (ii) comply with all reasonable requests of Bee Sweet personnel, as applicable, pertaining to personal and professional conduct, and (iii) otherwise conduct themselves in a professional and businesslike manner.

4.4 Rights for Non-Conforming Services. In the event the Services do not conform with these Purchase Terms and the stipulations in any applicable Order, Bee Sweet shall, without prejudice to any of its other rights or remedies, have the right to (i) terminate the Order in whole or in part without liability by notice effective when received by Seller as to Services not yet performed, (ii) refuse to accept any subsequent performance of the Services which Seller attempts to make, (iii) suspend any payment obligation in respect to the Services, and (iv) purchase Services to correct or replace the non-conforming Services from an alternative provider after giving Seller notice and charge Seller any cost incurred.

## **5. TERMINATION**

5.1 Termination for Convenience. Bee Sweet reserves the right to terminate any Order for convenience, in whole or in part, at any time. Upon notification by Bee Sweet, Seller shall immediately stop all work and shall immediately cause any of its suppliers and/or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the applicable Order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, or for any costs incurred by Seller's suppliers and/or subcontractors which Seller reasonably could have avoided. Notwithstanding the foregoing, in no event shall Seller be entitled to an amount greater than what Bee Sweet would have paid absent the termination.

5.2 Termination for Cause. Bee Sweet may terminate any Order, in whole or in part, in the event of (i) any default by Seller, (ii) Seller's failure to comply with these Purchase Terms, or (iii) Seller's failure to comply with any specific terms and conditions contained in an applicable Order. Late deliveries, deliveries of Non-Conforming Goods and/or performance of non-conforming Services, and/or failure to provide Bee Sweet, upon request, reasonable assurances of future performance, shall all be bases for Bee Sweet's right to termination for cause. In the event Bee Sweet terminates an Order for cause, Bee Sweet shall not be liable to Seller for any amount, and Seller shall be liable to Bee Sweet for any and all damages sustained by reason of Seller's default which gave rise to the termination.

5.3 Termination for Financial Insecurity. Bee Sweet may terminate any Order, in whole or in part, as of the date specified in a termination notice if Seller (i) files for bankruptcy, (ii) becomes or is declared insolvent, (iii) is the subject of any proceeding(s) (not dismissed within 30 days) related to its liquidation, insolvency or the appointment of a receiver or similar officer for Seller, (iv) makes an assignment for the benefit of all or substantially all of its creditors, (v) takes any corporate action for its winding-up, dissolution, or administration, (vi) enters into an agreement for the extension or readjustment of substantially all of its obligations, or (vii) makes any material misstatement as to its financial condition.

## **6. INDEMNIFICATION**

6.1 General. Seller shall defend, indemnify and hold harmless Bee Sweet, including its parents, subsidiaries, sisters and other affiliated companies and each of their respective directors, officers, employees, and agents from and against any and all claims, demands, actions, losses, damages, penalties, liabilities, costs, obligations, and expenses (including reasonable attorneys', experts' and legal fees) arising out of or resulting in any way from any act or omission of Seller (its agents, employees or subcontractors, in whole or in part) in performing work in connection with any Order, including but not limited to, (i) Seller's breach of these Purchase Terms and/or any Order, (ii) the actual or alleged infringement or misappropriation of any patent, copyright, trademark, trade name, service mark, trade secret, or other intellectual property right, (iii) violation of any law or regulation of Seller, (iv) any claim that the Goods and/or Services are defective, and (v) any claim that Bee Sweet has or had a duty to warn a third party with respect to the Goods and/or Services; provided that Bee Sweet gives Seller prompt written notice of any such claim once it has actual knowledge thereof and no settlement or compromise that imposes any liability or obligation on Bee Sweet shall be made without Bee Sweet's prior written consent. Notwithstanding the foregoing, Bee Sweet shall have the right, but not the obligation, to assume and control the defense and/or settlement of such claim, and Seller shall cooperate in the defense of any such claim and provide such assistance and information as is reasonably necessary for defense of such claim. This indemnity shall be in addition to the warranty obligations of Seller.

## **7. INSURANCE**

7.1 At its sole cost and expense, Seller shall carry and maintain in full force and effect, and cause its agents to obtain and maintain, insurance coverages with insurance companies rated not less than A-, IX by A.M. Best or otherwise reasonably satisfactory to Bee Sweet of the following types and amounts:

- (a) Workers' Compensation Insurance for statutory limits and in accordance with the laws and regulations of California;
- (b) Commercial Auto Liability Insurance covering each vehicle whether owned, non-owned, hired, operated, or used by Seller and/or any agents while in, on or adjacent to Bee Sweet's facility, with a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage as to any one accident, including an MCS-90 endorsement (if applicable).
- (c) Commercial General Liability Insurance including coverages for contractual liability, third-party personal injury liability, and sudden and accidental pollution, with limits of not less than one million dollars (\$1,000,000) combined single limits each occurrence.

(d) Excess Liability Insurance in excess of the insurance coverages required at Sections (b) and (c) above, with a combined limit of not less than two million dollars (\$2,000,000) per occurrence.

For all recurring purchases or for the provision of Services, Seller shall cause “Bee Sweet Citrus, Inc.” to be named as an additional insured on all policies of insurance secured by Seller (other than workers’ compensation insurance). Seller shall furnish Bee Sweet with certificates of insurance evidencing this coverage. All policies shall be endorsed to provide that no material change or cancellation of the coverage shall occur until Bee Sweet has received thirty (30) days written notice. Seller hereby waives (on behalf of itself and its insurers), and shall cause its insurers and those of the agents to also waive, any right of subrogation that they may have against Bee Sweet. All insurance coverage required hereunder shall be primary to, and not in excess of or contributory with, any insurance that may be maintained by Bee Sweet.

## **8. COMPLIANCE**

8.1 Compliance with Laws. Seller expressly represents and warrants that all Goods and/or Services supplied under any Order will have been produced in compliance with, and Seller agrees to be bound by, all applicable federal, state and local laws, orders, rules and regulations. Seller represents that, by acceptance of any Order, it is and shall continue to be in full compliance with all Executive Orders, federal laws, rules and regulations, all as from time to time amended, relating to equal employment opportunity, and that the following laws, orders and regulations are hereby incorporated by reference: Equal Opportunity Clause prescribed by E.O. 11246, as amended (41 CFR Chapter 60); Minority Business Enterprises Clause requirements of E.O. 11625 (41 CFR Part 1); the Union Dues Clause prescribed by E.O. 13201 (29 CFR Part 470), the Lilly Ledbetter Fair Pay Act of 2009, and the Employee Notice Clause requirements prescribed by E.O. 13496 (29 CFR Part 471, Appendix A to Subpart A). Bee Sweet and Seller shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. Bee Sweet and Seller shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

8.2 Supplier Conduct. Neither Seller nor any of its affiliates in the course of providing Goods and/or Services to Bee Sweet under any Order will (i) use any funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to any political activity or to influence official action, (ii) make any direct or indirect unlawful payment to any foreign or domestic government official or employee (whether full-time or contract), (iii) make or receive any bribe, payoff, influence payment, kickback or other improper payment, or (iv) make any other similar type payments or gifts or give anything of value to any government official or employee that could be deemed a bribe or unlawful. Bee Sweet shall have the right to request and review all relevant records of Seller to ensure compliance with the terms of this provision. Seller acknowledges and agrees that Bee Sweet retains the right to decline future business opportunities or to end existing business relationships, including the transactions represented in any Order, if Seller does not comply with the Bee Sweet Supplier Code of Conduct, the additional requirements of this Section 8, or with laws applicable to Seller’s business operations.

## **9. FORCE MAJEURE**

Neither party shall be liable to the other for its failure to comply with the terms of an Order if such failure shall have been caused by any unforeseeable incident beyond the control of the non-performing party, including but not limited to fire, labor dispute, strike, war, insurrection, governmental restriction, or act of God, provided that it shall be the responsibility of each party to take all reasonable measures to eliminate such cause and recommence performance as quickly as possible; and further provided, it shall be the obligation of the party claiming a force majeure event for excuse of non-performance to notify the other party in writing as soon as practicable. In the event Seller claims inability to perform due to an act of force majeure, Bee Sweet shall have the right to secure an alternate source of supply and Seller shall reimburse Bee Sweet for any additional reasonable expense incurred by Bee Sweet. Notwithstanding the foregoing, if the inability of Seller to perform continues for a period greater than thirty (30) days from written notice to Bee Sweet, Bee Sweet shall have the option of terminating the Order immediately without any liability for Goods not yet shipped or Services not yet performed. Whenever Seller has knowledge of any occurrence (or potential occurrence) which may delay, stop or in any way disrupt production or shipment of the Goods and/or Services under an Order, Seller shall promptly notify Bee Sweet of said occurrence or potential occurrence.

## **10. CONFIDENTIALITY**

Subject to the terms of any confidentiality agreement with Bee Sweet, Seller shall consider the information related to any Order and all information furnished by Bee Sweet, including but not limited to any drawings, specifications, and/or other documentation prepared by Seller for Bee Sweet in connection with any Order, to be confidential (collectively the “Confidential Information”)

and shall not disclose any such Confidential Information to any other person or entity, or use such Confidential Information itself for any purpose other than performing the applicable Order unless Seller obtains written permission from Bee Sweet to do so. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Bee Sweet shall be deemed secret or confidential. Seller's confidentiality obligations pursuant to this Section 10, as applicable will survive (i) perpetually for trade secrets and personally identifiable information and (ii) for a period of five (5) years from the date of Bee Sweet's disclosure for all other Confidential Information. Seller will return or destroy any Confidential Information promptly upon Bee Sweet's request. If Bee Sweet so requests, Seller will provide a certificate, signed by an authorized representative, certifying that all confidential information has been returned or destroyed.

## **11. RECORDS AND INSPECTION RIGHTS**

At all times Seller shall maintain accurate books and records containing information regarding the raw materials, production, storage, sale, shipment, pricing of and payment of any Goods and/or Services purchased under an Order. These books and records shall be kept in accordance with all legal requirements, industry practice and generally accepted accounting principles, as applicable, and preserved for not less than three (3) years after creation. Bee Sweet and its agents and representatives have the right, but not the obligation, to examine the books and records of Seller for the purpose of verifying Seller's compliance with its obligations under these Purchase Terms and any Order. Any such examination shall be during business hours in Seller's principal offices, the facility where the Goods and/or Services were produced, or such other location or method as Bee Sweet may reasonably request. Seller shall cooperate with Bee Sweet's examination, which cooperation shall include making Seller's officers available for discussion of Seller's books, records and compliance with these Purchase Terms and any Order. The examination shall be at Bee Sweet's expense, provided that, in the event Seller has failed to perform its obligations under these Purchase Terms, any applicable Order, or laws, the expense of examination plus other damages incurred by Bee Sweet shall be paid by Seller. Bee Sweet also has the right, but not the obligation, to inspect any facility where the subject Goods are produced or stored or Services rendered for the purpose of verifying compliance of such facilities with applicable law, compliance with these Purchase Terms and any Order, and compliance with Bee Sweet's food safety, quality and other manufacturing and storage standards, practices and procedures. Seller will provide copies of such books and records as Bee Sweet may reasonably request, provided that Bee Sweet agrees to maintain any information contained in such books and records which is confidential and proprietary information of Seller in the same manner that Bee Sweet maintains its own confidential and proprietary information. Bee Sweet will not use any such confidential and proprietary information of Seller except as contemplated by these Purchase Terms.

## **12. APPLICABLE LAW - JURISDICTION**

12.1 Applicable Law. These Purchase Terms and every Order will be governed by and construed in accordance with the applicable laws of California, without giving effect to the conflict of law principles thereof. Bee Sweet and Seller agree that the United Nations Convention on Contracts for the International Sale of Goods shall be specifically excluded from application to any Order.

12.2 Jurisdiction/Venue. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of these Purchase Terms or any Order must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the state courts of Fresno County, California or the federal courts located in the Eastern District of California, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the state and federal courts located in California, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. Notwithstanding the foregoing, claims for equitable relief may be brought in any court with proper jurisdiction within the United States.

## **13. LIMITATION ON BEE SWEET'S LIABILITY – STATUTE OF LIMITATIONS**

In no event will Bee Sweet be liable to Seller for any indirect, incidental, consequential, punitive, special, or exemplary damages or penalties of any description, regardless of the form of the action or the theory of recovery, even if Bee Sweet has been advised of the possibility of those damages. Bee Sweet's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from any Order, or from the performance or breach thereof, shall in no case exceed the price allocable to the Goods and/or Services which gives rise to the claim. Any action resulting from any breach on the part of Bee Sweet as to the Goods and/or Services purchased under any Order must be commenced within one (1) year after the cause of action has accrued. This Section 13 is not intended to limit or exclude Bee Sweet's liability for any matter for which liability cannot be limited or excluded by law.

## **14. GENERAL**

14.1 Assignment. Seller may not assign any rights or delegate any obligations under these Purchase Terms or any Order without the prior written consent of Bee Sweet.

14.2 Subcontractors. Seller will not subcontract any of its obligations without obtaining Bee Sweet's prior written approval. Notwithstanding any approval by Bee Sweet, Seller will remain solely responsible for all its obligations and will be liable for any subcontractor's failure to perform or abide by the provisions of these Purchase Terms or any Order.

14.3 No Liens. Seller shall promptly discharge any mechanic's or materialman's liens, retention rights, security rights or any security interests arising in connection with any Order at Seller's sole cost and expense.

14.4 Independent Contractors. The parties are independent contractors. Neither party will have any right, power or authority to enter into any agreement for or on behalf of, or to assume or incur any obligation or liabilities, express or implied, on behalf of or in the name of, the other party.

14.5 Rights and Remedies Cumulative. All rights and remedies reserved by Bee Sweet in these Purchase Terms will be cumulative and in addition to, and not in lieu of, any other remedies available at law, in equity or otherwise. Any rights of Bee Sweet not expressly granted herein are reserved by Bee Sweet.

14.6 Attorneys' Fees and Costs. In the event of any adversarial proceeding(s) between the parties arising out of any Order, the prevailing party will be entitled to recover from the other party, in addition to any other relief awarded, all reasonable expenses the prevailing party incurs in such proceeding(s), including reasonable attorneys' fees and expenses and court costs. For purposes of this section, "prevailing party" means: (a) in the case of the party initiating the enforcement of its rights or remedies, that such party recovered substantially all of its claims, and (b) in the case of the party defending against such enforcement, that it successfully defended substantially all of the claims brought against such part. If no party is a "prevailing party" within the meaning of this section, then no party will be entitled to recover its costs and expenses from any other party.

14.7 Severability. If any provision of these Purchase Terms conflicts with the law under which these Purchase Terms are to be construed or is held invalid or unenforceable by a court of competent jurisdiction, that provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law.

14.8 Publicity. Seller will not, without Bee Sweet's prior written consent, (i) use the name, trademark, service mark, trade dress, logo or other identifying marks of Bee Sweet in any sales, marketing or publicity activities or materials, and/or (ii) issue any public statement regarding its relationship with Bee Sweet.

14.9 Waivers. The failure of Bee Sweet to enforce strict performance by Seller of any provision of these Purchase Terms or to exercise any right under these Purchase Terms will not be construed as a waiver to any extent of Bee Sweet's right to assert or rely upon any provision of these Purchase Terms. A delay or omission by Bee Sweet to exercise any right or power under these Purchase Terms will not be construed to be a waiver of that right or power. Bee Sweet's waiver of one breach will not be construed to waive any succeeding breach. All waivers must be in writing and manually signed by Bee Sweet.

14.10 Survival. The provisions of these Purchase Terms and any Order that expressly or by their nature contemplate performance or observance after the Order terminates or expires will survive and continue in full force and effect. Without excluding any other provisions of these Purchase Terms and any Order, the terms of Sections 6 and 10 shall survive the termination or expiration of any Order.

14.11 Notices. All notices must be in writing and will be deemed given only when (i) hand delivered, (ii) one business day following the day sent by documented overnight delivery service to the party whom the notice is directed at its address indicated in the applicable Order or otherwise provided in writing, or (iii) sent by electronic mail to the party whom notice is directed at the electronic mail address specified in the applicable Order or otherwise provided in writing, provided, that if notice is provided to Bee Sweet under subsection (iii) herein, written confirmation of such notice shall also be provided to Bee Sweet as described in subsection (i) or (ii).

14.12 Entire Agreement. These Purchase Terms and the applicable Order collectively constitute the entire agreement of the parties. Notwithstanding the foregoing, in the event Bee Sweet and Seller have an existing written agreement signed by an authorized signatory of Bee Sweet and Seller encompassing the Goods and/or Services purchased in the Order, these Purchase Terms shall remain in full force and effect to the extent they do not conflict with the terms of such written agreement.