

## Terms and Conditions for Sales

These Terms and Conditions for Sales (these "Terms") are incorporated into each electronic or written communication or document referencing them as if fully stated therein. Capitalized terms used below have the meanings ascribed to them elsewhere within these Terms.

Except to the extent California Natural Products otherwise agrees in a signed written agreement that amends or waives these Terms (pursuant to these Terms) and to the extent the other party ("you" or "Customer" and in the possessive, "your" or "Customer's") also agree(s) therewith (each, a "Signed Agreement"):

### 1. In General.

- These Terms govern all products provided by California Natural Products ("CNP", "we" or "us" and in the possessive, "CNP's", "our" or "ours"), and we only provide products subject to these Terms.
- You accept and agree to be bound by these Terms if you order, purchase, or accept any product directly or indirectly from us or if you otherwise incorporate, assent to, accept, and/or otherwise agree to these Terms.
- A version of these Terms shall be deemed to be incorporated into (as if fully restated in) each and every written or electronic communication/document between us and you, and the version so incorporated shall be the unnegotiated version at [www.cnp.com/terms-sales.pdf](http://www.cnp.com/terms-sales.pdf), except, in each case, to the extent a version of these Terms is already explicitly incorporated, restated and/or amended/negotiated (pursuant to these Terms) therein.

### 2. Ordering Instructions (when ordering directly from us).

- Please contact us for our current estimates of applicable lead times. All pickup, shipment and/or delivery dates are estimates that do not account for carrier delays, delays that will occur during holiday weeks, unexpected events/circumstances causing delays, or delays due to inclement weather, acts of God, or other circumstances outside our reasonable control.
- Please do not assume we have received an order unless we have acknowledged it in writing. We typically acknowledge orders for products within three to five business days.

### 3. Orders in General.

- All orders are subject to our acceptance or rejection in whole or part.
- If we propose a change to an order, you/Customer will be deemed to have accepted it unless we receive a rejection of it within 48 hours of our communication to Customer, or unless we indicate that we will take other action.
- All proposed changes made by Customer are subject to our acceptance or rejection in whole or in part. Please do not assume that we have received a proposed change unless we have sent written or electronic acceptance or acknowledgment of the same.

### 4. Reserved.

### 5. Products.

- ALL SALES ARE FINAL – NO RETURNS. Exceptions will only be made within our sole discretion. Exceptions are not made for product inventory that has not moved or is slow to move, for expired product (or product after its best-by or expiration date), or for errors or damage caused by carriers hired or owned by Customer. Except as otherwise required by law or agreed to in an applicable signed writing:
  - When we hire the applicable carrier, should there be any delivery error, damage in shipment, or any other apparent damage or defect, Customer must reject the affected products at the time of delivery (sending them back with the carrier) and note the problem and number of affected containers on the Proof of Delivery (POD). When Customer (or a carrier hired or owned by Customer) is picking up products, should there be any loading error or apparent damage or defect, Customer must reject the affected products at our dock (leaving them with us) and not have a Bill of Lading (BOL) signed with respect to those products. Once Customer has signed a POD without noting any error/damage and whenever a BOL is signed at pickup, Customer is accepting all products noted therein and is responsible for payment of those products. For products that Customer does not reject as described above, if Customer later discovers any latent damage or defect for which we are responsible, in order to make a claim for a refund or credit, Customer must contact us immediately, and in no event later than two days following discovery of the issue, with a description of the problem. Thereafter, Customer must promptly and accurately complete our Product Return Request Form, sign and return it (together with photographs of the affected containers on all sides) within two days, and keep it updated as additional information becomes available.
  - If we require it, Customer must return affected products (and/or, if we prefer, a sample of them) to us or to our representative and/or dispose of them, in each case, as directed by us. Reasonable direct and documented shipping costs of any such returns will

be reimbursed by us to the extent we are responsible for the corresponding latent damage or defect. Such costs may not be marked-up in any way.

- Customer's right to a refund or credit will be subject to Customer properly maintaining, storing, and segregating affected products from unaffected products so that Customer can ensure that unaffected products remain safe and fit for use, resale, etc. as intended. Other terms and conditions may also apply depending on the situation.
- Our customer service department will review and approve or decline requests for returns (and refunds/credits). No returns may be made without our approval and an RMA number issued by us on our External RMA Form. If a return is approved, Customer must return the affected products (and/or, if we prefer, a sample of them) within 30 days and must adhere a copy of the issued External RMA Form to ALL pallets and the BOL. Failure to meet both requirements may result in our rejection of the return (and of any refund/credit).
- Should we deny a refund/credit for any returned products (for example because our inspection failed to verify the existence of a problem or our responsibility therefor or the return was made in violation of these Terms), then we will let Customer know and afford Customer 10 days to retrieve the products from us, less those used by us for testing, a sample that we may elect to retain and for which we will refund/credit Customer, and any that we in good faith believe may be unsafe or unfit (in which case we will preserve for Customer's retrieval only a sample of the unsafe/unfit products and on behalf of Customer dispose of what remains after we retain a sample). We do not otherwise accept responsibility for the longer-term storage of returned products and may destroy or otherwise dispose of products left beyond such 10-day period without any liability on our part.
- Should we ever authorize a refund/credit for any products when we are not responsible for the latent damage or defect (or when the return was made in violation of these Terms), then the amount of the refund/credit will be reduced by any handling or restocking fees (20% of sales invoice), and any other damages suffered by us in connection with the returned or affected products.
- Returns (and refunds/credits) are not authorized for, and we will not be responsible for, any cost, expense, damage, or defect that results from or is related to abuse; misuse; neglect; or improper transportation, storage, use, modification or handling of any product after delivery by us; negligence or willful misconduct by anyone other than us; the natural expiration of any product (or product after its best-by or expiration date); violation of any laws (including, but not limited to, those stemming from common law), rules, regulations and/or other requirements created by any judiciary, legislative, or other governmental (or quasi-governmental) body, agency, entity or other authority (together, "Laws") by anyone other than us; and/or violation of any agreement between us and/or any of our terms or conditions for sales/leases by anyone other than us.
- Subject to our lien for unpaid invoices, delivery of product by us to a carrier at the point of shipment shall constitute delivery to Customer.

## 6. Pricing.

- All prices and conditions are subject to change by us at any time without notice.
- Please contact us for what is included in the pricing. All pricing is for pickup at our dock.
- Pricing does not include any services. Additional charges will apply to accommodate any services such as special loading, handling, shipping, or unloading instructions (for example, but not limited to, the use of airbags in shipment). Customer shall pay these charges.
- Our price lists and prices are our confidential information and cannot be passed on to third parties without our written preapproval.

## 7. Payment Instructions.

- For sales of products made on credit, payment terms are Net 30 days, measured from the date of the invoice. The date of the invoice will be deemed to be the date the product leaves our dock.
- We encourage payment through ACH (Automated Clearing House electronic transfer of funds). Please contact our Finance Department for an ACH Credit Authorization Agreement required for initial setup.
- The payment date will be deemed to be:
  - for payment made via ACH: the date the payment is received in our account.
  - for payment made via U.S. mail: the date we receive the payment.

## 8. Credit.

- Credit is subject to a credit review, the results of which are satisfactory to us. If at any time the financial responsibility of Customer becomes unsatisfactory to us, we may require payment in advance or a satisfactory security or guarantee. Nothing in these Terms shall be interpreted to require us to grant credit to (or any other payment arrangement with) Customer.

- If we receive an order before we have been paid for previous orders, we may hold that order until we receive all payments. If we receive an order before we have been paid for all past-due amounts, we may hold that order until we receive all such amounts.
- If we have accepted an order and Customer is past due for any amount at the time of pickup, shipment, or the carrier's delivery of that order, we may withhold any or all of the ordered products until we receive all amounts.
- If we require it, Customer shall pay interest on all past due amounts equal to the lesser of 1.5% per month or the maximum amount allowed by law. To the extent permitted by law, Customer shall also pay all costs and expenses involved in collection (including, but not limited to, attorneys' fees and expenses) as well as administrative fees.

**9. Pickup, Shipment, and Delivery.**

- If a date for pickup, shipment, or delivery is indicated by us in any manner, it is understood to be an estimate (without our guarantee or any liability on our part as to that date). We will, however, make in-stock products available for pickup (or shipment, as is applicable) as near to that date as practicable. If a date for pickup, shipment, or delivery is specified by or on behalf of Customer, it is understood to be a request without any guarantee or liability on our part as to that date.
- We reserve the right to cancel an order or postpone pickup, shipment, or delivery for any reason, including, but not limited to, a strike, transportation unavailability, accident, fire, or other cause beyond our reasonable control.
- If Customer picks up products (even when transportation is arranged/scheduled by us for Customer's benefit), any charges by its carrier will be for Customer's account and are the sole responsibility of Customer.
- We only sell products within the United States and do not act as (and shall not be deemed to be) an exporter of any products. Sales are Ex Works (EXW) (as defined by Incoterms© 2020), Lathrop, California (so that our customers are responsible for all activities/costs after packaging, including shipping and insurance costs), except that: (1) we will load a standard truck (or standard tanker) at our dock, (2) we may arrange/schedule transportation on Customer's behalf if agreed upon by the parties (such transportation to be paid for by Customer), and (3) we may deliver within the 48 contiguous states and the District of Columbia (of the United States) if such arrangements have been agreed by us in a signed writing and if pricing reflects such delivery.
- If Customer does not pick up products because other arrangements have been agreed by us in a signed writing, Customer will pay for any charges of the carrier due to delays at Customer's location in unloading, re-delivery, furnishing helpers, sorting, accessorial services, and any non-standard charges.
- If Customer does not pick up product because other arrangements have been agreed by us in a signed writing, Customer must be able to accept 53-foot trucks (or standard tankers) for deliveries.
- We reserve the right to charge a fee for missed and late appointments by Customer (which fee may be invoiced separately), and Customer is responsible for paying this fee. Please contact us for the current fee.
- We may have additional terms and conditions applicable to pick up, shipping, and delivery. Please contact us with questions.

## 10. Product Pick Up Instructions.

- Pickup orders require a loading appointment made at least 24 hours in advance.
- No attempt shall be made to make a loading appointment that is earlier than the pickup date and time requested in the order or the estimated pickup date and time provided by us.
- Please contact us to make a loading appointment. We can typically be reached weekdays (excluding holidays) from 7:00 a.m. to 4:00 p.m. central time. Loading times are typically during these same days/hours.
- Drivers must not park at a dock when arriving. All drivers must first complete and sign our driver's log and then be assigned a dock number.
- All drivers must have the following information upon arrival and before picking up:
  - Appointment time
  - Customer name
  - Destination (city and state)
  - Customer purchase order number
  - Valid driver's license
- If a driver is running late for a pickup, we must be promptly notified so that we can reschedule the pickup to the next available timeslot. As noted above, we reserve the right to charge a fee for missed and late appointments (which fee may be invoiced separately), and Customer is responsible for paying this fee.
- Trucks will not be allowed to arrive more than 30 minutes prior to the scheduled appointment time. Trucks will not be allowed to arrive before 6:00 a.m. or stay overnight for any reason.
- Trucks (and tankers) must be clean, free from odors, equipped for temperature requirements, and maintained to prevent damage during transit, and injury to our loading equipment and personnel. We reserve the right to refuse a pickup for any reason, including, but not limited to, a disruptive driver or a vehicle we perceive as dangerous.
- Drivers must let us know upon arrival if there will be another pickup after the one from us. We will stretch the load out to the end of the trailer unless told otherwise.
- Unless other arrangements have been made in advance, trucks must be dock high (four foot high) and able to safely accept a forklift.
- Drivers must obey all reasonable requests, signs, and all health and safety instructions. Customer will be responsible for its carriers and their drivers in all respects.
- Smoking is permitted only in designated areas.
- Claims for damage caused by us must be substantiated. For example, without limitation, if the claim is that we damaged a product in loading it, the claim must be substantiated by photos of the product undisturbed in the truck (or tanker) before unloading. Such claims, as well as claims for missing product or improper product, must be made promptly, and in any event, no later than 24 hours after unloading.
- Carriers and drivers must comply with all applicable Laws, including, but not limited to, Laws pertaining to the safe and sanitary transporting of food products and the Food Safety Modernization Act.
- Each shipment must be sealed and remain unopened until it reaches its final destination (except to the extent otherwise required by a government official and properly reported in the seal accountability log).
- Customer will comply with these instructions and ensure that its carriers and drivers comply as well.

## 11. Amounts Due to Customer.

- If applicable, to be entitled to any previously approved refund, payment, or credit from us, we must be invoiced for the same, unless a deduction or other form of payment has been agreed to by us in a signed writing. No other deductions may be taken from our invoices. If the foregoing is violated, we have the right to treat the amount of the deduction as a balance due. A balance due means we may, among other actions, invoice Customer back for such amounts, reduce the payment of allowances, hold orders, or withhold delivery of products until the balance is paid.
- Customer waives any and all claims arising out of its transaction with us unless commenced within 12 months from the transaction date. Any audit claim must be fully documented by copies of invoices, contracts, deal sheets, and bills of lading. Customer is responsible for the proper review of third-party audit claims prior to submissions.

## 12. Allowances.

- If, in our sole discretion, we ever offer to provide any allowance, credit, discount, marketing fund, merchandising fund, or other trade fund, promotional payment, etc. (each, an "allowance"), we shall not be liable to pay it if there has not been full compliance with its terms and conditions. For example, without limitation, if an allowance has a specific time period during which it is applicable, we shall not be liable for that allowance to the extent related to services performed outside of that time period.
- To be entitled to any allowance correlated to a product, unless the terms and conditions involving that allowance explicitly state otherwise, Customer must take title and physical possession of that product at its owned/operated facility within the timeframe applicable to the allowance. Please contact one of our sales representatives if there are any questions.
- To be entitled to any applicable allowance, we must be invoiced for the amount of the allowance, unless a deduction has been agreed to by us in a signed writing. As stated in Amounts Due to Customer above, no other deductions may be taken from our invoices. Invoices and applicable documents for an allowance must be received by us within 45 days of the end of each claim period in which they are earned, or such allowances will be forfeited.
- Any and all allowances will be subject to our terms and conditions for the same. Such terms and conditions are subject to change by us at any time without notice.
- We reserve the right to withhold payment of any allowance if Customer is not current on all payments. Deductions for invalid claims (those which result in a violation of the terms or conditions to, or a change in the nature of, our allowance programs) and/or undocumented claims will be charged back for repayment or, at our option, will be deducted from other allowances. In addition, we reserve the right to require reimbursement of administrative costs associated with the research of any invalid claims.
- The terms and conditions of any allowance program and the allowances themselves are our confidential information and cannot be passed on to third parties without our written preapproval.

13. **Availability.** We do not guarantee the availability of our products and as such shall not be liable for allowances or other costs or deductions when products are not available for pickup, delivery, or shipment.

14. **Policy Acceptance.** Acceptance of an order by us does not constitute acceptance by us of any term, condition, or provision appearing on or referenced in any written or electronic document submitted to us.

15. **Regulatory Compliance.** The amount of any tax, charge, or imposition not in effect at least 15 days before the effective date of a price list which may, prior to the completion of deliveries, be levied, imposed, or increased by the U.S., any state or any governmental (or quasi-governmental) agency, upon or measured in terms of any of the commodities used in the manufacture of products covered by that price list, upon the finished products, upon the containers therefor, or upon the processing, purchase, sale, holding for sale, distribution or handling of any said commodities, products, or containers if paid, borne, or required to be paid or borne (directly or indirectly) by us, shall be added to the prices specified, with Customer responsible for the remittance of payment pursuant to these Terms.

## 16. No Diverting and International Matters.

**A. No Diverting and International Matters - Generally.** We sell our products solely within the United States pursuant to these Terms, and you are authorized to use products only in the United States and only if those products are labeled for use within the United States (with labels in English only or in both English and Spanish). You may not otherwise use any of our products except to the extent otherwise preapproved by us in a signed writing with respect to: (1) the applicable products (the "Authorized Products"), and (2) the corresponding applicable geographic area(s) (the "Authorized Geographic Locations"). The right to use product is non-exclusive, and you do not have any exclusive rights with respect to any Authorized Product, any of the Authorized Geographic Locations, or otherwise. If any product is located in any geographic location outside the United States as a result of your direct and/or indirect engagement and/or attempted engagement in any Activity After CNP's Sale/Lease (as defined below), directly or indirectly (whether an Authorized Geographic Location or elsewhere outside the United States, the "Non-U.S. Locations"):

- As between the Parties, you are responsible for: (1) ensuring, and you shall at all times ensure, that all manufacturing, packaging and other aspects, attributes, condition, acts and failures to act in any way related to, of and/or in connection with the products prior to and/or at the time at which we provide you (directly or indirectly) with such products (each, an "Activity Before/At CNP's Sale"), and all exportation, importation, storage, transportation, handling, uses, distribution, advertising, sales and other aspects, attributes, condition, acts and failures

to act in any way related to, of and/or in connection with the products (each, an "Activity After CNP's Sale") are in full compliance with, and the products themselves (through their shelf life) with, all applicable Laws outside the U.S. (with no commitment and/or responsibility on our part to add to and/or change any Activity Before/At CNP's Sale and/or thereafter and/or any aspect of the products), (2) all taxes and other Damages as a result of your direct and/or indirect engagement and/or attempted engagement in any Activity After CNP's Sale in Non-U.S. Locations, and (3) export clearance as the Foreign Principal Party of Interest ("FPPI").

- Our authorization regarding your right to use and any related designations we bestow on you are made solely for your benefit and may be continued, revoked and/or limited (whether by product and/or geographic area) solely within CNP's discretion at any time and from time to time, and you shall be solely responsible for any and all Actions and Losses connected with, arising out of and/or related from such designations, revocations and/or limitations (together, the "Assumed Liability for Bestowed Designations"); provided, however, you may assume our designations continue if we fill for you (and you pay for) at least one shipping container of each Authorized Product every 90-days, you have complied and continue to comply with obligations regarding applicable Laws, you otherwise remain in good standing with us, and we have not notified you and/or communicated to you (via email or in writing) that we have imposed additional restrictions on, and/or revoked, the same. If there are any previous exclusive agreements, arrangements or designations regarding your status in relation to us, they are hereby terminated and superseded and replaced by the non-exclusive authorizations and designations described above.
- As used in these Terms, "Packaging Graphics" means the information on and/or missing from products' labels and other packaging (including (but not limited to) codes and classifications used and/or useful in connection therewith), each printed element of such products' labels and packaging, and all advertising, including (but not limited to), in each case, design, content, wording, artwork, label features, product claims, logos, trademarks (registered and unregistered), service marks, trade names, trade dress, nutritional statements, ingredient lists, certifications, and/or health, benefit and/or other claims (as all of the foregoing may be changed from time to time). As used in these Terms, "English-Language Information Upon Which You May Rely" or "Seller-Provided Information" is information that we provide to you that we specifically identify as *English-Language Information Upon Which You May Rely* (using those exact words), which may be and/or include (but not be limited by) the product's English-language label for use if/when the product is sold within the United States, the product's English-language ingredient statement for use if/when the product is sold within the United States, the product's English-language ingredient list for use if/when the product sold in the United States or in the EU and/or GCC, the product's English-language list of functions for food additives for use if/when the product is sold in the EU and/or GCC, and/or the product's English-language nutritional statement for use if/when the product is sold in the United States; provided, however, that no information from a third-party (including (but not limited to) Intertek or another consultant hired to assist in the development of the label) shall ever be deemed to be included in such information. No such Seller-Provided Information shall be deemed to be inaccurate if it was accurate at the time it was provided by us and if it complied with either U.S. federal law or such other law as is referred to within such Seller-Provided Information.
- We understand that you will use some or all of the Seller-Provided Information as part of your process in creating and/or approving Packaging Graphics. Although we may share with you our thoughts about Packaging Graphics and/or provide you with proposals, artwork, samples, labels and/or other Packaging Graphics, and although we at all times reserve the right to reject the use of any Packaging Graphics that we suspect violate a Law, CNP makes no representation, warranty and/or covenant regarding Packaging Graphics, and you acknowledge that definitions under U.S. Laws may or may not be similar to definitions applicable under non-U.S. Laws (including (but not limited to) definitions of ingredients). Notwithstanding anything to the contrary, as between the Parties: (i) you shall be solely responsible for the Packaging Graphics, including (but not limited to) the accuracy, completeness and layout thereof, for obtaining and maintaining all supporting documentation, for ensuring that all Packaging Graphics (and all products related thereto) comply in all respects with all applicable Laws, and for any and all Actions and Losses stemming from the foregoing (together, the "Assumed Liability for Packaging Graphics"), and (ii) you hereby represent and warrant that all Packaging Graphics (and all products related thereto) comply, and at all times during each product's shelf life will comply, with all applicable Laws; provided, however, that you shall not be responsible for any of the foregoing to the extent directly caused by inaccurate Seller-Provided Information. You hereby acknowledge and assume the Assumed Liabilities for Packaging Graphics, including (but not limited to) associated Losses during any step of CNP's manufacturing, packaging, handling, storage, release, transportation and/or sale process and/or in the course of distribution, use, handling, and/or consumption of the products. If any packaging fails to conform to your representations and warranties, CNP may treat such packaging as obsolete and cease using the same (at your expense).
- You hereby agree to indemnify, defend (at our request) and hold harmless us and our Affiliates and our and our Affiliates' Representatives from and against any and all third-party (including (but not limited to) Governmental Entities' and our employees') Actions and any and all judgments and awards resulting therefrom, settlements thereof (to the extent such settlements are made with both your and our approval, which approval shall not be unreasonably withheld or delayed), and direct and/or third-party bodily injuries, illnesses, property damages and Losses connected with, arising out of and/or related to the Assumed Liability for Bestowed Designations, the Packaging Graphics, the Assumed Liability for Packaging Graphics, Activities After CNP's Sale, any breach by you of these Terms and/or any other agreement between us and you (including (but not limited to) breach of any representation and/or warranty), any negligence and/or willful misconduct by you, any of your Affiliates and/or any of your and/or their Representatives, any recall and/or withdrawal from the marketplace of the products, breach of any Law for which compliance is your responsibility as described herein and/or in any agreement you have with us, any failure to provide adequate warning with respect to any product, and/or any breach of any Law by you, any of your Affiliates and any of your or such Affiliates' Representatives, and/or, after we have sold the product, anyone else; provided, however, that you shall not be responsible for any of the foregoing to the extent directly caused by inaccurate Seller-Provided Information.
- If a recall or withdrawal of products is initiated, either voluntarily or by order of any governmental (or quasi-governmental) body, agency, entity or authority (a "Governmental Entity"), we will, at your expense (except to the extent directly caused by inaccurate Seller-Provided Information), provide reasonable assistance to you in developing a recall strategy and in preparing such reports as may be required in connection therewith. You shall promptly notify and provide copies to us of any communications with any Governmental Entity relating to the products and/or such recall (except to the extent such communications are prohibited by Law), and you shall immediately notify and provide copies to us of any communication with any Governmental Entity relating to such products and/or recall to the extent such

communication relates to our facility or processes or any assessments of the quality or specifications of any product. If you have reason to believe that any product must be recalled, you shall notify us in writing, as soon as reasonably practical, including (but not limited to) the reasons and explanations underlying that belief, prior to taking any action.

**B. Certain Definitions.** As used in these Terms: "Actions" are claims, lawsuits, administrative proceedings, causes of action, and/or other legal and/or administrative proceedings, of any kind and/or character whatsoever, whether in law or equity, whether known or unknown, past, present or future, suspected or unsuspected. "Affiliates" of a party means individuals and entities that directly or indirectly control, are controlled by, or are under common control with, that party. "Customer" means you. "Disputes" are disputes, controversies, demands, agreements, obligations, promises and/or acts, of any kind and/or character whatsoever, whether known or unknown, past, present or future, suspected or unsuspected. "Laws" are federal, state, local, municipal, foreign, international, multinational and/or other administrative orders, constitutions, laws, ordinances, principles of common law, regulations, statutes, rules, guidance, recommendations and/or treaties. "Losses" are debts, liabilities, costs, penalties, fines, losses, deficiencies, judgments, damages and/or expenses, in each case, of any kind and/or character whatsoever (including (but not limited to) reasonable attorneys' and experts' fees and costs and/or reasonable defense and/or investigation expenses), whether known or unknown, past, present or future, suspected or unsuspected. "Representatives" of a party are its Affiliates and its Affiliates' directors, officers, managers, shareholders, members, owners, principals, employees, agents, subcontractors, attorneys, legal representatives, administrators, consultants, advisors, representatives and divisions.

**C. U.S. Export Control Laws and U.S. Foreign Corrupt Practices Act.**

**1. U.S. Export Compliance Laws**

- a. Products and related technical data are subject to U.S. export control laws (the "U.S. Export Control Laws").
- b. As part of the express consideration provided for receipt of the products, Customer and its Representatives shall not (and Customer shall ensure that none of its direct and/or indirect customers and none of their Representatives) export, re-export or otherwise transfer, directly or indirectly, the products and/or technical data provided by CNP in violation of the U.S. Export Control Laws or any other applicable law. Customer shall be responsible for obtaining any necessary U.S. government authorization required to ensure compliance of Customer (and its direct and indirect customers) with the U.S. Export Control Laws. Customer acknowledges that it can contact the U.S. Departments of Commerce, State and Treasury for guidance as to applicable licensing requirements and other restrictions.
- c. Customer shall immediately notify CNP in writing if Customer's export privileges under U.S. law are denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency.

**2. Foreign Corrupt Practices Act**

- a. Customer acknowledges, on its behalf and on behalf of its Representatives, that the U.S. Foreign Corrupt Practices Act, as amended, (the "Act") may govern with respect to Customer's (and its direct and indirect customers') export, sale, distribution, and/or marketing of the products.
- b. Customer further acknowledges that under the Act, Customer is prohibited from making a payment, gift, promise, or offer of payment or gift, or authorization of payment, gift, or promise, or offer of payment (collectively for purposes of this subsection C, "payment") to any government official, political party or party official or candidate, or employee or official of any public international organization, or anyone acting in an official capacity on behalf of such a person (collectively, "foreign official"), or to any other person who may transfer a payment to any foreign official, for the purpose of obtaining, retaining, or directing business to or for any person by influencing an act or decision of a foreign official in his or her official capacity, or inducing a foreign official to do or omit to do any act in violation of the lawful duty of the official, or securing any improper advantage, or inducing a foreign official to use his or her influence with a foreign government, government instrumentality, or public international organization to affect or influence any act or decision of the government, government instrumentality, or public international organization, or to secure any improper advantage.
- c. As part of the express consideration provided for receipt of products, Customer shall comply, and Customer shall ensure that its Representatives comply (and that Customer's direct and indirect customers and their Representatives comply) with the Act and all anti-corruption Laws, at all times while engaged in the distribution, sale, and/or export of products, including (but not limited to) by ensuring that Customer's Representatives (and Customer's customers' Representatives) make no payment (as defined above) or take any action in violation of the Act or any applicable anti-corruption Laws.
- d. Customer agrees not to pay, offer, or promise to pay any fee, bonus, commission, or other payment or anything of value to any person or entity for the purpose of obtaining, retaining, or directing business, or securing any advantage on behalf of CNP without the prior written approval of CNP.
- e. Customer agrees to notify CNP immediately upon learning of a possible violation of the Act or other applicable anti-corruption Law or upon receiving an invitation to take action that might violate the Act or other applicable anti-corruption Law.

**D. Arbitration; U.N. Convention on Contracts.** If you are not a U.S. resident or an entity organized under the laws of any U.S. state, then: (1) with respect to each Dispute arising out of or in connection with these Terms, each order, each other written or electronic communication/document in connection with any of the foregoing and/or breach thereof, including (but not limited to) any question regarding the existence, validity and/or termination of any agreement between the Parties (whether sounding in contract, warranty, tort or otherwise) (each of the foregoing, a "Potential Arbitration Dispute"): (1) notwithstanding anything to the contrary, to the extent CNP so elects (in its sole discretion), such Dispute shall be referred to and finally resolved by arbitration under the rules of or by the London Court of International Arbitration (the "LCIA Rules"), which LCIA Rules are deemed to be incorporated into (as if fully restated in) these Terms, where: (a) the number of arbitrators shall be one, (b) the language to be used in the arbitral proceedings shall be English, and (c) the seat, or legal place, of arbitration shall be San Francisco County, California, U.S., and (2) these Terms, each Potential Arbitration Dispute and the communications/documents involved in either shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended (collectively, the "Conventions"). For the avoidance of doubt, the Conventions are hereby excluded.

17. **Other Fees.** We will not pay for any administrative or handling fees, costs, expenses, or other charges, including, but not limited to, nuisance fees and processing charges.
18. **Guaranty.** With respect to CNP-branded products to be maintained and used entirely within the United States, upon request we agree to sign and deliver with such products our standard Continuing Guaranty for the benefit of our direct customer.
19. **Limited Warranty.** In addition to the guaranty provided as set forth above, we hereby warrant that when delivered by us to our direct customer, each CNP-branded product that is labeled for use within the United States, at the time of such delivery:
1. will conform to any and all final written specifications furnished by us;
  2. will have been manufactured, packaged, labeled, and packed by us in compliance with all applicable Laws within the United States, except to the extent any of the foregoing is not our responsibility pursuant to the section of these Terms entitled *No Diverting*; and
  3. unless labeled otherwise is generally recognized as safe for use in foods or is exempt from the provisions of the 1958 Food Additives Amendment to the Food, Drug and Cosmetic Act.
- Notwithstanding the foregoing, however, we do not warrant product if there has been any of the following, and we shall not be responsible unless there has been none of the following:
- improper transportation, storage, use, modification, tampering or handling of the product by anyone other than us after delivery by us to our direct customer;
  - natural expiration of the product after its best-by or expiration date;
  - alleged or actual problem related with any information and/or intellectual property of or provided by Customer that Customer requested be placed on or used in connection with the product;
  - violation of any Law by or on behalf of Customer and/or any of its Affiliates and Representatives;
  - after delivery of the product by us to our direct customer, violation of any Law by anyone other than us; and/or
  - negligence, gross negligence, fraud, and/or willful misconduct by, and/or the Product's nonconformance with the representations, warranties and guarantees described herein as a result of the acts and/or omissions of, Customer and/or any of its Affiliates and Representatives (including, without limitation, the end consumer), and/or, after delivery by us of the product to our direct customer, by any third-party.
20. **DISCLAIMER OF IMPLIED WARRANTIES; DISCLAIMER OF REPRESENTATIONS OUTSIDE OF WARRANTY.** EXCEPT AS EXPRESSLY STATED IN THESE TERMS, WE HEREBY EXPRESSLY DISCLAIM, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL EXPRESS OR IMPLIED REPRESENTATIONS AND/OR WARRANTIES RELATED TO PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF ACCURACY, MERCHANTABILITY, TITLE, NONINFRINGEMENT, AND/OR FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING DISCLAIMER DOES NOT AFFECT THE TERMS OF ANY WARRANTY FROM THIRD PARTIES (THAT ARE NOT OUR AFFILIATES AND REPRESENTATIVES). ANY WARRANTY THAT THE LAW DOES NOT RECOGNIZE AS BEING DISCLAIMED OR WAIVED IS LIMITED TO THE DURATION OF TEN (10) DAYS OR SUCH LONGER TIME AS MAY BE REQUIRED BY APPLICABLE LAW.
21. **LIMITATION OF REMEDIES; EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGE.** We disclaim all liability in connection with the storage, handling and/or use of CNP-branded products that are not labeled for resale, except only to the extent such liability is proximately caused by our breach of these Terms. Customer may not institute any action in any form more than one (1) year after the cause of action has arisen. The Customer's exclusive right for recovery in connection with any defective products is limited to repair, replacement or refund (at our option) of them, except for our obligations hereunder in connection with any recall and the reimbursement of direct, actual and reasonable costs of third-party losses to the extent directly caused thereby. TO THE MAXIMUM EXTENT ALLOWABLE BY LAW: IN NO EVENT SHALL WE AND/OR ANY OF OUR AFFILIATES AND REPRESENTATIVES BE LIABLE TO CUSTOMER, ANY OF ITS AFFILIATES AND REPRESENTATIVES, AND/OR ANY OTHER PERSON OR ENTITY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY AND/OR SPECIAL DAMAGES (INCLUDING BUSINESS INTERRUPTION, LOST BUSINESS, LOST PROFITS, LOST SAVINGS, DAMAGE TO GOODWILL OR REPUTATION, AND/OR DEGRADATION IN VALUE OF BRANDS, TRADE NAMES, SERVICE NAMES AND/OR SERVICE MARKS) EVEN IF WE HAVE BEEN ADVISED OF THEIR POSSIBLE EXISTENCE, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY), CONTRIBUTION, INDEMNITY, SUBROGATION AND/OR OTHERWISE.
22. **Additional Terms and Conditions.**
- These Terms are the only terms and conditions controlling the purchase and sale between us and Customer. These Terms are the exclusive terms and conditions under which we sell, invoice, ship, and/or deliver our products. These Terms supersede and replace in their entirety any and all other terms and/or conditions relating to the subject matter hereof, whether oral, written, electronic, or implied, if any, between us and Customer with respect to the subject matter hereof.
  - Acceptance of an order by us does not constitute acceptance by us of any term, condition or provisions appearing on or referenced in such order and/or any other written or electronic document submitted to us. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY CUSTOMER OR ON CUSTOMER'S BEHALF OR ANY ATTEMPT TO VARY, IN ANY DEGREE, ANY OF THE PREPRINTED TERMS OR CONDITIONS STATED HEREIN SHALL NOT OPERATE AS A REJECTION OF AN OFFER BY US OR OF THESE TERMS AND CONDITIONS (UNLESS THERE IS VARIANCE IN AN ORDER'S DESCRIPTION, QUALITY, AND/OR PRICE), BUT SHALL INSTEAD BE DEEMED TO BE A MATERIAL ALTERATION HEREOF. THIS OFFER AND THESE TERMS AND CONDITIONS SHALL BE DEEMED ACCEPTED WITHOUT SAID ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS OR SAID VARIANCES, AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN. CUSTOMER AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS AND SHALL BE DEEMED TO HAVE ACCEPTED THEM BY SIGNING AND DELIVERING THEM OR AN ACKNOWLEDGEMENT OF THEM, BY



DELIVERING (DIRECTLY OR INDIRECTLY) AN ORDER REFERENCING A PRODUCT OF OURS, AND/OR BY ACCEPTING RECEIPT (DIRECTLY OR INDIRECTLY) OF A PRODUCT OF OURS.

- FOR YOUR CONVENIENCE, WE MAY PERMIT THE USE OF YOUR EDI OR OTHER WEB-BASED OR ELECTRONIC SYSTEM AND/OR MEANS ("EDI Systems") TO SUBMIT ORDERS AND/OR SEND AND/OR RECEIVE COMMUNICATIONS TO AND/OR FROM US, BUT NO MATTER WHAT TERMS AND/OR CONDITIONS ARE CONTAINED IN AND/OR SUBMITTED TO US THROUGH SUCH EDI SYSTEM, EVEN THOSE FOR WHICH AN EMPLOYEE OR OTHER REPRESENTATIVE OF OURS WAS REQUIRED TO CLICK A BOX TO ACCEPT, HAS CLICKED A BOX TO ACCEPT, AND/OR HAS OTHERWISE INDICATED HIS, HER AND/OR OUR ASSENT THERETO, AND WITHOUT REGARD TO HOW DATA FIELDS ARE LABELED THEREIN AND/OR HOW THEY ARE DESCRIBED, NEITHER WE NOR ANY EMPLOYEE OR OTHER REPRESENTATIVE OF OURS SHALL BE BOUND BY ANY PROCESS, INTERPRETATION, TERM AND/OR CONDITION THAT IS IN ADDITION TO AND/OR IN CONFLICT WITH THESE TERMS. By indicating your desire to have us use your EDI Systems, you acknowledge and agree with the foregoing, understanding that we cannot be expected to read nor agree to all customers' EDI Systems' terms, conditions and limitations.
- We are not responsible for, and shall not be liable for any losses or damages resulting from, any delay and/or inability to perform if due to the following: any situation and/or circumstance whose cause is beyond our reasonable control, including, but not limited to, those that are an act of God (including, but not limited to, any hurricane, typhoon, drought, earthquake, lightning, snowstorm or other adverse weather condition or natural calamity); an act or threat of war (including, but not limited to, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, rebellion, revolution, insurrection, military or usurped power, or civil war), terrorism, civil disorder, nuclear or utility incident, manmade environmental or natural calamity, explosion, fire, embargo, change in the Laws, epidemic, pandemic, infectious disease, illness, injury, famine, plague, quarantine, travel restriction, accident, flood, sabotage, or damage to tangible property; a riot, lockout, strike, slowdown, injunction, or labor dispute, in each case, even if reasonably preventable; a delay in transportation; or a delay, disruption or shortage of energy, utilities, labor, materials, equipment or facilities, including, but not limited to, a delay or failure of a third-party vendor selected by us to be used in our performance, to provide that which is reasonably required for performance of such obligations.
- Customer will comply with all applicable Laws, including, but not limited to, Laws pertaining to the safe and sanitary warehousing and transporting of food products. Customer will permit audits to verify compliance with the foregoing by our third-party representatives granted we agree that we will act in good faith to minimize any disruption to Customer.
- No provision of these Terms shall be deemed waived, amended, or modified by us or by Customer unless such waiver, amendment, or modification is in a writing signed by an officer of ours and by Customer. Any writing signed in connection with these Terms may be signed in separate counterparts each of which shall be deemed an original and all of which together shall be deemed to be one original.
- Headings and captions are inserted and used solely for convenience of reference and shall not control or otherwise affect interpretation. Any writing signed in connection with these Terms may be signed in separate counterparts each of which shall be deemed an original and all of which together shall be deemed to be one original. Copies of handwritten signatures sent via electronic means are the equivalent of written and signed documents. We and Customer each consent thereto and agree not to object to the use of such electronic documents; however, names that are merely typed and sent via electronic means are not the equivalent of written and signed documents.
- Any delay or failure by us to exercise any right or remedy shall not constitute a waiver by us to thereafter enforce such right and obtain such remedy. Our rights and remedies under these Terms are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available at law or in equity.
- If any term or condition of these Terms is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, then to the extent allowed by law, the same shall (a) be construed and enforced so as to best effectuate our original intention, and (b) not affect the other terms or conditions hereof or the whole of these Terms. We and Customer agree that each of the obligations under these Terms is separate, independent, and divisible from the others.
- EXCEPT AS REQUIRED BY U.S. FEDERAL LAW, THESE TERMS, EACH SIGNED AGREEMENT, EACH ORDER, EACH WRITTEN OR ELECTRONIC DOCUMENT IN CONNECTION HERewith OR THEREWITH, THE RIGHTS AND OBLIGATIONS OF THE PARTIES, AND ALL CLAIMS RELATING TO OR ARISING OUT OF ANY OF THE SAME OR THE BREACH THEREOF (WHETHER SOUNDING IN CONTRACT, WARRANTY, TORT OR OTHERWISE) SHALL BE GOVERNED, CONSTRUED AND ENFORCED IN ALL RESPECTS (INCLUDING, WITHOUT LIMITATION, AS TO VALIDITY, CONSTRUCTION, INTERPRETATION, CAPACITY, PERFORMANCE AND EFFECT) BY AND IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, U.S., WITHOUT REGARD TO CONFLICTS OF LAWS RULES.
- ANY LITIGATION SHALL BE BROUGHT EXCLUSIVELY IN THE U.S. FEDERAL COURTS OF THE NORTHERN DISTRICT OF CALIFORNIA AND/OR THE STATE COURTS OF SAN FRANCISCO COUNTY, CALIFORNIA, AND EACH PARTY IRREVOCABLY CONSENTS AND SUBMITS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN AND WAIVES THE RIGHT TO CHANGE VENUE. SUCH CALIFORNIA STATE AND FEDERAL COURTS SHALL CONSTITUTE THE EXCLUSIVE COURTS OF COMPETENT JURISDICTION AND VENUE FOR PURPOSES OF ANY DISPUTE (INCLUDING, WITHOUT LIMITATION, ALL QUESTIONS OF JURISDICTION AND ALL DISPUTES ARISING UNDER, REGARDING OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED IN THESE TERMS, AN ORDER, OR ANOTHER WRITING SIGNED BY BOTH PARTIES). Notwithstanding the foregoing: (1) a final judgment in any such action may be enforced in any other jurisdiction by suit on the judgment, and (2) any action for equitable relief may be brought in any other court having personal jurisdiction over the defendant.

**These Terms are subject to change by us at any time without notice. The latest version will be posted on our website at [www.cnp.com/terms-sales.pdf](http://www.cnp.com/terms-sales.pdf). The version of these Terms that is in effect on the date an order is placed shall govern that order.**

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