

## STANDARD PURCHASE TERMS & CONDITIONS

ALL NIAGARA BOTTLING, LLC, PURCHASES ARE EXPRESSLY CONDITIONED UPON SELLER'S STRICT ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH HEREIN. NOTWITHSTANDING ANY OTHER PROVISION OF THE PARTIES' AGREEMENT, SELLER ACKNOWLEDGES THAT NIAGARA'S PURCHASING DEPARTMENT MAY NOT RECEIVE NOTICE OF VENDOR'S STANDARD TERMS AND CONDITIONS (IF ANY), AS SET FORTH ON SELLER'S INVOICES OR WHICH ACCOMPANY SELLER'S INVOICES OR SIMILAR DOCUMENTATION. SELLER FURTHER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS PURCHASE ORDER MAY BE DIFFERENT THAN THOSE SET FORTH IN SELLER'S QUOTATIONS. THUS, IN THE EVENT SELLER DEMANDS INCLUSION OF SOME OR ALL OF ITS STANDARD TERMS AND CONDITIONS AND/OR ANY OTHER TERMS WHICH ARE NOT EXPRESSLY SET FORTH HEREIN (REGARDLESS OF WHETHER SUCH TERMS ARE ADDITIONAL, SUPPLEMENTARY, OR CONTRARY TO NIAGARA'S TERMS), SELLER SHALL NOTIFY NIAGARA IN WRITING OF PURCHASE ORDER NONACCEPTANCE WITHIN 48 HOURS OF RECEIPT OF THIS PURCHASE ORDER. SUCH NOTICE MUST BE SENT TO PAMELA ANDERSON VIA EMAIL AND CERTIFIED MAIL: (1) [panderson@niagarawater.com](mailto:panderson@niagarawater.com), (2) Pamela Anderson, 2560 E. Philadelphia St, Ontario, California. UNLESS THE FACE OF THE PURCHASE ORDER SPECIFIES OTHERWISE, THE FOLLOWING SHALL BE APPLICABLE:

1. Acknowledgement/ Lead Times:
  - a. The Purchase Order, including the general terms and conditions as set forth herein, is in confirmation of agreement relative to the subject good(s)' ("Agreement").
  - b. Niagara must be promptly advised within 48 hours of receipt of this Purchase Order if lead time is insufficient for any reason, or if any other terms set forth herein are contrary to the parties' Agreement.
  - c. By selling, delivering and/or shipping goods or by performing services in response to the Purchase Order, Seller agrees that the terms of the Purchase Order, including all terms set forth herein.
  - d. Due to the nature of Niagara's business and operations, **Time is of the Essence** relative to **All** Seller obligations (including, but not limited to, lead times and installation schedules).
  - e. Equipment Purchases: Unless a different time period is set forth on the face of the Purchase Order, delivery lead times for stock spare, wear, change, warranty and any other stock part required (i.e., parts which are in-stock in one or more of Seller's facilities) shall be twenty-four (24) hours from the time of request (i.e., the part will be delivered within 24 hours). Lead time for a Seller service technician shall also be twenty-four (24) hours from the time of Niagara's request.
2. Invoices:
  - a. Invoices shall be submitted to Buyer immediately upon shipment of the goods or performance of the services. The cash discount and "net" payment periods provided for herein shall date from Niagara's receipt of the goods described on the face of the Purchase Order, or from the date of Niagara's receipt of Seller's invoice, whichever is later. For the purposes of determining the timeliness of Niagara's payments (including cure payments), payment shall be deemed effective on the date of postmark (as printed on the payment envelope by Niagara's electronic postal meter).
  - b. In the event any payment becomes overdue, Seller shall provide Pamela Anderson of Niagara Bottling, LLC, with written notice of nonpayment via email at [panderson@niagarawater.com](mailto:panderson@niagarawater.com), and via certified mail. Upon Ms. Anderson's actual receipt of the certified mail notice, Niagara shall then have twenty (20) days from receipt of this notice to cure any late payment. In the event of timely cure, Niagara shall not be deemed to be in breach of this Agreement.
3. Pricing/ Payments/ deductions:
  - a. The price applicable to Niagara purchase(s) shall be as set forth on the face of Niagara's Purchase Order. Unless otherwise stated on the face of the Purchase Order, the price shall include all charges, levies, deposits and taxes applicable to the production, shipment and sale of the goods (including all amounts for present or future sales, excise, exportation, duties and costs of customs compliance/clearance or other similar tax or fee which may be applicable to the sale of the goods and/or services purchased; provided, however, that Niagara shall be responsible for State Sales Tax (depending on the final destination of the particular good(s)). Seller agrees to pay all such taxes, including interest and penalties thereon. If Niagara is required to pay these taxes (other than State Sales Tax) to the taxing authority, Seller shall, within 30 days of Niagara's payment to the taxing authority, reimburse Niagara for the amount paid. Seller further agrees that upon invoicing Niagara for the amount owed pursuant to this Agreement, Seller shall delineate costs associated with all non-taxable items for the purpose of State Sales Tax (e.g., shipping, installation, warranty, etc.).
  - b. Unless otherwise stated on the face of the Purchase Order, the price shall include all shipping, freight and delivery costs (i.e., FOB Niagara's designated place of business). Seller hereby acknowledges that in the event the face of the Purchase Order states that Niagara is responsible for shipping costs (i.e., pursuant to FOB Point of Origin
- c. Extra Charges/ Change Orders: Without Buyer's prior written consent, Seller shall not add any charges of any kind. In the event that any change is required or requested after the original Purchase Order has been issued, a written change order, including revised and agreed upon price adjustment(s), must be prepared and must be signed off by the author of the original PO and the applicable Plant Manager, Director or Niagara's Legal Department. In the event that a written change order is not prepared and is not signed off on by the authorized Niagara representative(s), Niagara shall not be held responsible for any additional costs above and beyond the original Purchase Order amount.

terms or otherwise), risk of loss will not pass until the goods which are the subject hereof are delivered and secured within Niagara's facility. Under no circumstances and notwithstanding any other provision to the contrary, shall risk of loss pass until the goods are delivered and secured within Niagara's facility.

- c. Seller represents and warrants that the prices and payment terms under the Purchase Order are not less favorable than those currently extended to any other customer for the same or substantially similar goods in similar quantities or for services of the same or like scope and to the extent no price or prices are set forth herein, Seller's price shall be the lowest market price prevailing at time of either the quotation or shipment, whichever price is lower. In no event may the Purchase Order be filled at prices higher than those last previously quoted or charged to Niagara without Niagara's written consent. In the event Seller reduces its price to third parties for similar goods or services during the term of this Agreement, Seller agrees to reduce the price to Niagara accordingly, effective as of the date of the first reduction. In the event Seller does not reduce Niagara's price as described herein, Niagara shall be entitled to take a deduction equal to the amount of the original price minus the reduced price.
  - d. If Niagara has a claim against Seller resulting from this Purchase Order or any other transaction, (even if said claim is associated with an unrelated project or contract) or Seller owes Niagara for any damages, rebates and/or credits, Niagara may deduct or set off disputed amounts from Seller's claims for amounts due.
4. Warranties:
- a. By selling, delivering and/or shipping goods or by performing services in response to the Purchase Order, Seller agrees that the Purchase Order, these terms and any and all express written or oral warranties made by Seller (provided such oral warranties are not less than those warranties set forth in this Purchase Order), shall be the sole, final and exclusive terms of the Agreement between Niagara and Seller relative to the goods and/or services identified herein.
  - b. Seller's warranties, as set forth herein, shall survive delivery and shall not be deemed waived either by reason of Niagara's acceptance of goods or by payment for them. No attempt by Seller to disclaim, exclude or modify the warranties contained herein, or any disclaimer of Seller's liability for direct or consequential damages shall be of any force or effect.
  - c. All warranties implied by California's Commercial Code, including California's implied warranties of merchantability and fitness for a particular purpose, shall apply to this transaction, notwithstanding any other terms or disclaimers set forth in Seller's sales invoice(s) or other confirming memoranda. These warranties shall be in addition to any and all express warranties of Seller.
  - d. Seller understands, acknowledges and agrees that Niagara is relying upon Seller's expertise and recommendation in purchasing the goods and/or services which are the subject of the Purchase Order and confirms that Niagara has informed Seller of its particular and general requirements (for the purposes of the California Commercial Code), including, but not limited to, those pertaining to Niagara's lightweight potable water bottles, Niagara's product and packing dimensions, and Niagara's customer demands. Seller guarantees and warrants that all goods will be manufactured, assembled and commissioned in accordance with prevailing industry standards, and further guarantees that all goods will be fit for their intended, particular and represented purposes. Seller acknowledges that it has reviewed Niagara's precise specifications, needs, and requirements prior to recommending the goods which are the subject of the Purchase Order.
- e. From time to time, Niagara's purchase of goods and/or services (including, but not limited to, equipment and raw materials) shall require Niagara's acceptance of certain product specifications (e.g., bottle design) and/or layout designs. Under no circumstances shall Niagara's conduct in "signing off" on such drawings, designs or specifications eliminate or modify Seller's warranties or liability hereunder. Seller agrees and acknowledges that it is the expert with regard to its goods in question, and that Niagara shall not be deemed to have assumed responsibility for errors and/or problems contained in or associated with such drawings, specifications or designs and/or implementation of the same.
  - f. Vendor expressly represents and guarantees that all Fungible goods shall be warranted for the duration of their specified shelf life.
  - g. Unless a different time period is provided on face of the Purchase Order, Seller warrants all Equipment and individual component parts to be free from manufacturing or design defects (whether latent or patent), and free from defects in material and workmanship for a period of twenty-four (24) months, commencing on the installation and commissioning completion date ("Warranty Start Date"). In the event the face of the Purchase Order specifies that Niagara is responsible for installation, commissioning or start-up, then the Warranty Start Date shall be the delivery date, as stated on the Seller's signed Proof of Delivery.
  - h. Vendor agrees that in the event Niagara becomes aware of a latent defect after the end of the applicable warranty period, but the defect arose during term of the warranty, Vendor shall acknowledge and accept any such warranty claim.
  - i. In the event a defective part requires replacement during the term of this warranty period, the replacement part shall be new and shall be afforded a new 24 month warranty protection.
  - j. In the event a defective part requires repair or remedy or if the goods do not meet the performance guarantee warranted at any time during the term of this warranty period, Niagara's warranty period shall be extended by the number of days the goods are out of the Niagara's possession for service or repairs and the warranty shall not expire until the defect has been remedied.
  - k. If Seller cannot replace, repair or remedy the defective part within a reasonable time as required by Niagara's business necessity, Niagara is may, in its sole discretion, (i) repair said part and Seller shall reimburse Niagara for any and all expenses incurred, (ii) return the product for a full refund, or (iii) purchase said part from an entity other than Seller (or the OEM) and the Seller's warranty shall

cover those costs. Seller's warranty shall include all costs of shipping, handling, freight, duties and 3<sup>rd</sup> party storage costs (if any), as well as all labor costs associated with warranty work. In the event Niagara sells the goods and/or equipment which are the subject of this Purchase Order, Seller's warranty shall be transferable.

1. Seller warrants that in the course of performing any services it shall not infringe any copyright, patent, trade secret or other proprietary right of any third person and that the use, copying or other exploitation of the any deliverables by Niagara or any authorized third party shall not constitute an infringement of any copyright, patent, trade secret on the other proprietary right of any third person.
5. **Lot or Bulk Quantity Purchases of Fungible or Similar Goods:** In the event of manufacturing or other cost savings for any reason, such as from reduced component or raw materials costs, fluctuating exchange rates, or increased purchases of goods by Niagara, a portion of such savings shall be passed on to Niagara, and the parties shall negotiate in good faith to determine the portion to be passed on to Niagara. If such negotiation is not successful, Niagara shall have the right to immediately terminate the contract without further obligation to purchase from Seller. Similarly, Seller agrees to remain competitive in the industry relative to pricing of goods. In the event the average industry pricing is reduced, Seller agrees to remain competitively priced relative to the goods purchased pursuant to the Purchase Order, thereby providing corresponding price reductions to Niagara. In the event Seller refuses or fails to provide such corresponding price reductions, Niagara shall have the right to immediately terminate the contract without further obligation to purchase from Seller.
6. **Applicable Law/ Seller's Terms:**
  - a. The parties agree that jurisdiction for the purpose of all issues of law, fact or equity arising out of and/or in any way related to the Purchase Order, or any additions, amendments or supplements thereto, shall be in the state or federal courts located in the State of California, only, and venue for the purpose of such proceeding shall be in the County of Orange, only. The interpretation of the Purchase Order, as well as any dispute related to or arising from the Purchase Order, shall be governed by California law.
  - b. If, for any reason whatsoever, any one or more of the provisions of the Purchase Order shall be held or deemed to be inoperative, enforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering any such provision inoperative, unenforceable, or invalid in any other case or of rendering any of the other provisions of the Purchase Order inoperative, unenforceable, or invalid.
  - c. Seller agrees that the terms of the Purchase Order and these terms, in conjunction with all express written and oral warranties made by Seller, are the final, sole, entire and exclusive agreement between the parties respecting the goods, services and/or transaction which is the subject hereof, and that any terms set forth in Seller's sales invoice or other confirming sales memoranda, whether additional, supplemental or contrary to the terms set forth herein, shall be of no force or effect. Seller agrees that Niagara's acceptance of goods shall not act as acceptance of Seller's terms and conditions as set forth in Seller's sales invoice and/or any other confirming sales memoranda of the Seller. In the event Seller does not agree to the terms set forth herein, Seller may reject Niagara's Purchase Order (as set forth herein) and refrain from selling such goods and/or services to Niagara.
- d. In the event a court of law deems that the Purchase Order does not constitute a valid contract pursuant to the California (or other state's) Commercial Code, and/or a valid confirmation of agreement relative to the subject goods, then this document shall be deemed to be Niagara's offer to enter into a unilateral contract, which Seller can accept only by performance (i.e., delivery of goods and/or performance of services). In this case, Niagara's offer to purchase the goods and/or services specified herein is expressly conditioned upon Seller's agreement to the terms and conditions set forth herein. Any terms set forth in Seller's sales invoice or other confirming sales memoranda, whether additional, supplemental or contrary to the terms set forth herein, shall be of no force or effect (either as a counter offer, rejection of Niagara's offer, or to supplement or alter the terms of this agreement). By accepting Niagara's offer as set forth herein by delivering goods and/or performing services, Seller agrees that these Standard Terms & Conditions, in conjunction with all express written and oral warranties made by Seller, are the final, sole, entire and exclusive agreement between the parties respecting the goods, services and transaction which is the subject hereof. No course of prior dealings between the parties and no industry custom shall be relevant to supplement or explain any term used in this contract.
- e. In the event goods (as opposed to services) dominate the Purchase Order in terms of total compensation paid, the Purchase Order, in addition to the terms and conditions set forth herein, shall serve as a written contract for the sale of goods pursuant to the California (or other state's) Commercial Code and all Niagara remedies, as set forth in California's Commercial Code, Article 2 (sale of goods), including, but not limited to, remedies relative to defective and/or nonconforming goods shall apply to this sale, notwithstanding anything set forth in Seller's Invoices or other confirming memoranda. Seller further agrees that due to the complex nature of goods which may be the subject of the Purchase Order, Niagara shall not be deemed to have accepted the goods (as defined in California's Commercial Code) which are the subject hereof until it has had sufficient time to ascertain the conforming nature of the same. Notwithstanding any other provision of the Purchase Order, nothing herein shall be deemed to limit Niagara's available legal or equitable remedies, regardless of whether goods or services dominate the Purchase Order in terms of total compensation paid.
- f. **THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS AGREEMENT.**
7. **Seller Representations and Obligations:**
  - a. In the event the Purchase Order is for the purchase of equipment (as opposed to consumable goods), and unless provided otherwise on the face of the Purchase Order, Seller shall fully and completely install, commission and start-up all Equipment which is the subject of the

Purchase Order at no additional cost. For the purposes of the Purchase Order, "install, commission and start-up" shall encompass all that is necessary to achieve and maintain guaranteed and/or represented performance levels. All equipment shall be OSHA compliant as installed, without further modification.

- b. Seller represents, in conjunction with its obligations set forth herein, shall at all times perform services and supply goods (including, but not limited to, equipment and raw materials) which are in compliance with all applicable state laws, statutes and regulations pertaining to worker safety standards, including, but not limited to, those enforced by Cal OSHA and OSHA (including ANSI standards). All Seller service technicians, employees and/or agents shall abide by the aforementioned laws while performing services pursuant to, or related to the Purchase Order. Seller shall defend and indemnify Niagara for and against any and all claims or suits arising out of or related to Seller's breach of this provision.
- c. Notwithstanding any other term to the contrary herein, Seller represents and warrants that all services performed pursuant to the Purchase Order and/or which are in any way related to the Purchase Order, shall be in conformance with prevailing standards in the industry. Seller further represents and warrants that all service personnel assigned to perform services which are the subject of the Purchase Order, which are incidental to the goods, and/or which in any way relate to the Purchase Order shall be qualified and appropriately trained and instructed in order to ensure that all Seller obligations are satisfied in accordance with the Purchase Order.
- d. In the event the Purchase Order includes any services, Seller understands, acknowledges and agrees that any necessary tools and or rigging equipment shall be provided as part of the Purchase Order. Additionally, Seller is required to fully clean up after work is done and shall be responsible for disposal of any and all installation and/ or shipping material and any fees for disposal containers. Vendor is expressly advised not to leave tools or other such items on-site and if Seller, in its sole discretion chooses to do so, they do so at their own risk and hereby agree to hold Niagara forever harmless against any and all claims for lost or stolen items.
- e. All goods (including, but not limited to, equipment and raw materials) that come into contact with Niagara's products (i.e., bottled water) or which in any way relate to Niagara's products shall be food grade, and shall be safe from a consumer safety standpoint. Seller agrees that no goods sold pursuant to the Purchase Order shall create a consumer safety hazard. Seller further agrees that all goods which are the subject of the Purchase Order shall comply with all Federal, State and local laws and/or regulations pertaining to the bottling of potable water (including, but not limited to, Title 21 of the Federal Code of Regulations). Seller shall defend and indemnify Niagara for and against any and all claims or suits arising out of or related to Seller's breach of this provision, except to the extent caused by Niagara's sole negligence.
- f. All equipment, including but not limited to PLC's, variable frequency drives and other electronic devices, shall include power conditioning protection other than circuit protective components (i.e. fuses and circuit

breakers) for all machine controls and machine control components to ensure that all such equipment and data remains in tact and undamaged in the event of power surges or voltage fluctuations.

- g. All PLC's or other electronic display equipment must be supplied with both English and Spanish language options. Additionally, all equipment manuals, instructions, documents or otherwise shall also be available in both English and Spanish, at no additional cost to Niagara.
- h. All equipment, regardless of source of power, must be new, UL-listed, and compliant with all federal, state and local statues, laws, ordinances, safety codes, rules and regulations, including, but not limited to California Title 24 energy efficiency standards. Seller shall provides all drawings, calculations, engineering specification and any and all other documents necessary to enable permitting and shall obtain any and all permits necessary for construction and operation of equipment that is the subject of the Purchase Order. Unless otherwise stated on the Purchase Order, price shall include permitting and installation.
- i. Seller agrees that spare parts and service shall be made available to Niagara, at Seller's regularly listed price, unless and until Seller is no longer in business, dissolved, declared insolvent in a court of competent jurisdiction or otherwise ends its operation. This provision shall survive any termination of the Purchase Order and shall be available in the event cancelation, dispute or otherwise.
- j. Seller acknowledges and agrees that equipment shall be operated 24 hours a day, 7 days a week, 365 days a year, except during pre-planned downtime for original manufacturer recommended preventative maintenance. Notwithstanding any equipment specifications to the contrary, Seller represents that all equipment shall operate properly in the actual operating conditions (including but not limited to, high ambient temperatures, altitude, humidity, etc.) of the delivery destination as listed on the Purchase Order.
- k. Seller hereby expressly represents:
  - i. In the hiring of any employee for the manufacture of supplies, performance of work, or any other activity required with respect to the Purchase Order, Seller, Seller's subcontractors and/or any person acting on behalf of Seller or Seller's subcontractors shall not, by reason of gender, race, creed, or color, discriminate against any person who is qualified and available to perform the work to which the employment relates. Furthermore, Seller nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required with respect to the Project on account of gender, race, creed or color.
  - ii. Seller and its subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy shall contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
  - iii. Seller shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform on the Project.

- iv. Seller and its subcontractors shall furnish all necessary employment documents and records (e.g., employee handbook and sexual harassment policy) to and permit access to their books, records, and accounts by any State entity for the purposes of investigation, to ascertain compliance with provisions of these nondiscrimination/sexual harassment clauses. If Seller or its subcontractors do not possess documents or records reflecting the necessary information requested, Seller or its subcontractor shall furnish, upon request, such information.
8. Intellectual Property:
- a. Ownership of, and all right, title, and interest in, the Deliverables shall vest in Niagara. Seller shall and, where applicable, will have its associates, employees, subcontractors, and agents, disclose and furnish promptly to Niagara any and all Deliverables, as defined in Section 16, Vendor Deliverables, originated or developed by Seller or by any of its associates, employees, subcontractors, or agents as a result of Services performed hereunder.
- b. Seller expressly acknowledges that the Deliverables are specially ordered by Niagara and shall be a "work for hire" under United States copyright laws. If a court of competent jurisdiction determines that the Deliverables are not made for hire, then Seller hereby transfers and shall be deemed to have assigned all rights, title and interest in and to the Deliverables to Niagara, including any copyright, trademark, trade secret, patent or other proprietary rights under the laws of the United States or of any other jurisdiction, and the rights to sublicense or transfer any and all rights assigned hereunder to third parties in perpetuity. Seller shall assist and cooperate with Niagara, and execute all appropriate documents, to perfect Niagara's right in the Deliverables. Seller shall acquire from its associates, employees, subcontractors or agents such assignments, rights and covenants as to assure that Niagara shall receive the rights provided for in this paragraph, it being understood that Niagara may desire to copyright, patent and/or market, in whole or in part or in conjunction with other information, the product of the Services.
- c. Seller shall keep the Deliverables in confidence and shall use the Deliverables only for the purpose of this Agreement and for no other purpose, except upon written permission of Niagara.
- d. Seller represents and warrants that all Deliverables created or delivered hereunder shall be original, and that it possesses all rights necessary to effectuate the transfer of rights contemplated above. However, to the extent that the Deliverables includes material previously developed or copyrighted by Seller or third parties and not originated hereunder, Seller shall so notify Niagara and grant to or obtain for Niagara an unrestricted, royalty-free license to use, make, practice, copy and create derivatives of, and create products embodying any ideas incorporated in and grant sublicenses for, such material. The licenses so granted shall include Niagara's right to grant sublicenses for such materials.
9. Inspection and Acceptance: Notwithstanding any California (or other State's) Commercial Code provision to the contrary, Niagara's examination of goods prior to contracting, and/or Niagara's refusal to perform such examination, shall not act as a waiver, limitation or exclusion of any express or implied warranty, even if such examination may have, should have, or would have revealed such defects.
10. Cancellation: Niagara shall have the right, in its sole discretion, to cancel the Purchase Order for any reason prior to delivery. Seller understands, acknowledges and agrees that no fees of any nature (including, but not limited to restocking) shall be applicable. In the event Seller has delivered pursuant to the Purchase Order and Niagara, in its sole discretion, is dissatisfied with Seller's performance, Niagara is entitled to reject, cancel or provide timely revocation of acceptance of the Purchase Order without penalty by so advising Seller. Payment of any invoice shall not be deemed a waiver of Niagara's right to reject, cancel or revoke acceptance of any Products. Seller shall bear all expenses and risks of unpacking, examining, repacking, storing, holding and/or reshipping and returning any Products rejected (or whose acceptance is revoked) by Niagara. Timely revocation shall be sixty (60) days from delivery or discovery of non-conformance, whichever is later, or in the event that equipment is installed by Seller or third party, sixty (60) days from installation completion date.
- Subsequently, upon Niagara's return of the equipment, and at Niagara's option, Seller shall refund to Niagara, or Niagara may offset refund against amounts it owed to Seller, minus any design or specialty charges. Seller agrees that Niagara's exercise of any right or remedy provided in the Purchase Order does not preclude any other right or remedy, all of which are cumulative and not exclusive of any other that may be available to Niagara, whether provided by law, equity, statute or otherwise.
11. Indemnification:
- a. Seller agrees to hold Niagara harmless from and against any and all claims arising out of or related to the Purchase Order and/or the goods or services which are the subject of the Purchase Order, including but not limited to any bodily injury or property damage claims, and agree to indemnify Niagara for any liability, loss, cost, expense, or other damages (including reasonable attorney fees) brought about by any injury of any kind suffered by any person or property as a result of any act, neglect, default, omission of either the Seller or Niagara or any of their agents, employees, or other representatives, excluding the sole negligence or intentional misconduct of Niagara or Niagara's agents, employees, or representatives.
- b. In the event of a workman's compensation claim or action (whether threatened, pending or completed, civil, criminal, arbitrational administrative or investigative) for bodily injury arising out of or related to the equipment or services which are the subject of the Purchase Order ("Workman's Compensation Claim"), Niagara shall notice Seller and Seller shall forfeit any defense obligations owed to Niagara. Notwithstanding the foregoing, Niagara shall be permitted to settle any Workman's Compensation Claim and Seller shall fully indemnify Niagara for any and all damages and/or expenses (including, but not limited to, attorney's fees, witness fees, judgments, fines and amounts paid in settlement and any other amounts that Niagara becomes legally obligated to pay) because of any Workman's

Compensation Claim.

- c. Where applicable, Seller agrees to defend and indemnify Niagara from any and all claims of Seller's subcontractors for payment. Furthermore, Seller agrees that when subcontractors are used, Seller shall obtain and provide to Niagara a conditional release and agrees that Niagara is entitled to withhold final payment from Seller unless and until Niagara is provided said conditional release.
  - d. If this section is construed by a court of competent jurisdiction to require indemnification over and above that which is permitted by applicable law or public policy, the parties intend that the Purchase Order be judicially modified to afford Niagara the maximum indemnification allowed. This provision shall survive any purported termination of the Purchase Order.
  - e. Seller shall indemnify, defend and hold Niagara harmless, its customers, resellers and distributors and their respective directors, officers, employees, agents, successors and assigns against and in respect of any and all losses or liabilities (including damages, costs, expenses and reasonable attorney's fees) that result from or relate to any claims, litigation, suit, action, investigation, or proceeding brought by or on behalf of any third party alleging that the exercise by Niagara or any authorized third party of any rights granted to Niagara hereunder, including, but not limited to, the Deliverables, infringe(s) any patent, copyright, trade secret or other intellectual property right of any third party.
12. Waiver: Niagara's delay, failure or partial exercise of any provision herein or waiver of any breach, right or remedy contained in or granted by the Agreement shall not be deemed a waiver of any breach, right or remedy unless expressly stated as such by Niagara in writing signed by an authorized representative of Niagara, and then such waiver shall be limited solely to its specific terms. A valid waiver in accordance with this provision shall not be construed as a waiver of any subsequent breach or failure of the same term or condition or a waiver of any other term, condition, right or remedy in this Agreement.
13. Insurance: Niagara requires all vendors to name Niagara Bottling, LLC as an additional insured and waive all rights of subrogation against Niagara. Vendor hereby acknowledges that Niagara will not be required to submit payment until the requirements of this provision have been complied with.
14. Seller Deliverables:
- a. "Deliverables" means the technical information, computer or other apparatus programs, specifications, art, plates, negatives, designs, drawings, records, documentation, reports, materials, concepts, plans, inventions, discoveries or adaptations, creative works, data and other knowledge, works of authorship or other creative works, ideas, know-how, knowledge or data, written, oral or otherwise expressed, developed or acquired by Seller hereunder, or by its authorized subcontractors or agents, to be delivered to Niagara, including, but not limited to, all bottle and design services work, closure molds, and blow molding equipment.
  - b. Seller agrees to provide any and all drawings, schematics and/or technical information related to the Deliverables to Niagara upon request. Seller represents and warrants that it has taken all necessary actions to ensure that any and all inventions created by Seller's agents, affiliates and/or assigns are in fact the exclusive property of Seller or have been appropriately assigned to Seller through appropriate invention assignment agreements or any other such agreements, and that such agreements restrict any and all licensing and/or use of the Deliverables.
  - c. Seller represents, warrants and agrees that it has not granted and will not grant to others any right of use relative to the Deliverables, and/or any other rights inconsistent with the rights granted herein. Seller agrees to execute and deliver to Niagara any requested transfers, assignments, bills of sale, and other documents as may be required to effectuate this transfer, and perform all lawful acts, including the giving of testimony, that might be necessary or desirable for obtaining, sustaining, reissuing or enforcing all intellectual property rights in the United States and throughout the world for the Deliverables, including, but not limited to, copyrights, trademarks, patents, and trade secrets. In full consideration of Seller's transfer, Niagara covenants and agrees to pay Seller purchase price for the Deliverables as shown on the face of the Purchase Order, without further compensation.
  - d. Blow Molding Equipment: To the extent Deliverables include blow molding equipment or other bottle related molds or equipment, Seller represents and agrees that the bottles made by such molds or equipment shall be warranted to ensure correct bottle fill volume for the bottle's designated fill height. Seller further agrees to be solely responsible for reviewing the designated perform size to ensure compliance with this provision.
  - e. Label Vendors: For avoidance of doubt, all Deliverables for art, plates, negatives and/ or designs prepared for Niagara by Supplier or Supplier's printer, lithographer, or bag, box or carton manufacturer shall be and remain the property of Niagara and in the event of termination of this Purchase Order by either party, Seller shall cease using such Deliverables and promptly return all such items to Niagara. It is expressly agreed and understood that these items (and shipping) are inherent in the cost of doing business, and Niagara shall not provide compensation or otherwise reimburse Supplier for these items.
  - f. Seller shall re-perform, as no cost to Niagara, any Deliverables which Niagara deems defective or not suit for the ordinance purpose.
15. General Terms:
- a. The Purchase Order shall be binding upon and inure to the benefit of the parties hereto and their respective Assignees.
  - b. The Purchase Order shall not be assigned by Supplier, without the prior written consent of Niagara.
  - c. Any amendment, addendum, or revision to this agreement shall be valid only if in writing and signed by the parties.
  - d. Any ambiguity in the interpretation of this agreement shall not be construed or interpreted against either party.
  - e. In no event (whether in tort, contract, negligence, strict liability or otherwise) shall Niagara be liable to Seller for the payment of any consequential, indirect, incidental or special damages. Under no circumstances (whether in tort, contract, negligence, strict liability or otherwise) shall Niagara's liability exceed the purchase price set forth on the face of the Purchase Order.
  - f. In the event of any dispute arising out of or related to the Purchase Order, the parties shall, within thirty (30) days

of such dispute, meet to discuss potential amicable resolution of this dispute. During this time period, Niagara shall not be in breach due to nonpayment of any invoice. This provision shall not be interpreted to release, postpone or alter any Seller obligation set forth herein.

- g. Seller shall not print, publish, or otherwise distribute, or use any written, advertising or promotional material using the name of Niagara, or directly or indirectly identify Niagara or its products unless Niagara has furnished the material to Vendor and expressly approved in writing, the use of the same.
- h. Vendor hereby acknowledges and agrees certify that these goods hereunder sold were produced in compliance with all applicable requirements of sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under section 14 thereof.

- i. Seller agrees not to hire nor solicit for hire any Niagara personnel for the duration of the Purchase Order, project or contract and for a period of one (1) year thereafter. To the extent a Niagara employee contacts Seller regarding employment, this provision may be waived by Niagara, provided Seller first obtains Niagara's written approval.
- j. Seller represents that it has not and agrees that it will not in connection with the transactions contemplated by the Purchase Order, or in connection with any other business transactions involving Niagara make any or transfer anything of value, directly or indirectly, to any person, Director or employee of Niagara. It is the intent of the parties that no payments or transfers of value shall be made which have the propose or effect (real or perceived) of bribery, acceptance of or acquiescence in kickbacks or other improper means of obtaining business.