

## STANDARD SALES TERMS & CONDITIONS

### ALL NIAGARA BOTTLING, LLC, SALES ARE EXPRESSLY CONDITIONED UPON BUYER'S STRICT ACCEPTANCE OF THESE TERMS AND CONDITIONS

**1. Terms & Conditions of Sale.** Niagara Bottling, LLC, (hereinafter referred to as "Niagara" or "Seller") hereby limits acceptance of all purchase orders and/or purchase requests to the Buyer's strict acceptance of the terms and conditions as set forth herein.

**2. Pricing.** Buyer agrees that Niagara retains the right to change and/or increase pricing for Goods upon written or oral notice to the Buyer. Such pricing changes shall apply to all orders that have not yet been delivered (as of the time of notice) to Buyer or Buyer's designated agent.

**3. Payment Terms.** The price for the purchase of Niagara's products (hereinafter "Goods") is as set forth on the face of Niagara's Sales Order or Sales Invoice. Payment of the full purchase price is due pursuant to the payment terms set forth on Niagara's Sales Order or Invoice. Terms are FOB point of origin (i.e., Niagara's bottling facility). Risk of loss shall pass upon Niagara's tender of Goods to the carrier. In addition to the purchase price of the Goods, Buyer shall pay any and all shipping, transportation, freight, rigging, delivery and/or drayage costs, as well as any and all other costs associated with the shipping and/or delivery of the Goods purchased pursuant to this Agreement. Buyer shall also be responsible for the cost of all Private Labels (i.e., non-NIAGARA™ brand labels). Invoices not paid when due shall be subject to a late charge equal to 1.5% of the amount of the invoice per month, or the highest lawful rate which may be charged to Buyer, whichever is higher. Net payment terms and discount periods shall be calculated from the Invoice date (as opposed to the actual delivery date and/or the date Buyer actually receives Niagara's invoice). Buyer's payment shall be deemed made upon Niagara's receipt of such funds. Unless specifically indicated otherwise by Niagara in writing, all prices offered to customer are for full truckload deliveries ONLY, and such pricing shall not be valid in the event of "mixed truckloads". "Mixed truckloads" for the purpose of this provision include, but are not limited to, truckloads that consist of products of different size, products with different labels, and/or products with different closures. In the event Buyer does not strictly abide by the payment terms set forth herein, then Niagara shall, as a nonexclusive remedy, and in its sole discretion, have the right to either place a hold on all adequate prior financial arrangements, if applicable, and upon Seller's compliance with all terms of agreement, including payment terms and credit limits. Niagara's subsequent acceptance of payment shall not be deemed a waiver of any kind.

**4. Delivery.** Buyer will be notified of the approximate delivery and arrival date(s) of the Goods ordered, but Seller does not guarantee nor warrant a particular day of delivery, and Buyer does not rely on a specific delivery date in purchasing the Goods that are the subject of this Agreement. In the event of non-delivery, Buyer's exclusive remedy shall be a refund of only those monies actually paid for the undelivered load. Delayed loads may not be cancelled and/or deemed "undelivered loads" unless and until such delay exceeds 30 days.

**5. Acceptance.** Buyer agrees to immediately inspect all incoming Goods upon delivery. Buyer further agrees that within three (3) calendar days from delivery of the Goods to Buyer, Buyer shall notify Seller in writing of any nonconformity, defect or problem with the Goods or any other items delivered to Buyer. Buyer agrees that Buyer's failure to provide written notice to Seller within said time period shall constitute Buyer's unequivocal acceptance of the Goods and agreement and acknowledgment that there is no nonconformity, defect or problem with the Goods.

**6. Security Interest.** Buyer hereby grants to Seller a security interest in the Goods sold pursuant to this Agreement to secure payment of the purchase price, delivery and shipping costs, and all other fees or amounts which are due to Seller. At Seller's request, Buyer shall execute and pay the necessary filing fees for any financing statements including a UCC-1 statement in a form which is satisfactory to Seller. Buyer will execute all other instruments deemed necessary by Seller. Buyer further grants to Seller a security interest in and to all proceeds, increases, replacements, additions and accessions to the Goods. Seller's security interest in the Goods sold pursuant to this Agreement shall terminate upon Buyer's full and final payment of all sums due and owing. A copy of this Agreement may be filed with appropriate state authorities, at any time by Seller, as a financing statement in order to perfect the security interest. Until such time as Seller's security interest in the Goods is terminated, Buyer shall use any and all means necessary to ensure that Goods sold to Buyer pursuant to this Agreement are preserved, safeguarded, and kept in their original condition free of defects or contamination. Buyer hereby agrees the security interest granted herein is in all the Buyer's present and after-acquired property.

**7. Financing.** In the event Seller, in its sole discretion, approves of Buyer's purchase of Goods pursuant to a credit or

financing transaction, Buyer hereby represents and agrees that it shall execute the necessary financing documents including, but not limited to, a promissory note and security agreement which secures the purchase price of the Goods with all tangible and intangible assets owned by Buyer.

**8. No Offset.** Payment of the purchase and all sums due to Seller shall be made in full pursuant to the terms herein without any deduction or credit. Any deduction, credit, discount or rebate which is due to Buyer shall be remitted to Buyer by check within a reasonable time after Seller's receipt of the full purchase price. Buyer's failure to pay the full amount when due, without any deduction, offset or credit, shall constitute a material breach of this Agreement.

**9. Expenses.** Buyer shall be liable for and shall pay all expenses, including, but not limited to, all expenses of freight, handling, storage, and insuring. The sales prices does not include any amount for duties, or for present or future sales, excise or other similar tax which may be applicable to the sale of the Goods or the use thereof by Buyer. Buyer agrees to pay all such taxes and duties including interest and penalties thereon. If Seller is required to pay such taxes to any taxing authority, Buyer will promptly reimburse Seller within fifteen (15) days for the amount paid and such payments shall constitute secured payments for the purposes of this Agreement.

**10. Right of Access.** Until such time as Seller's security interest in the Goods is terminated, Seller shall have the right to enter onto any of the property of Buyer to enforce its security interest in the Goods, make an inventory of the Goods, and/or to examine the condition of the Goods as well as the manner in which the Goods are stored and kept. Buyer hereby grants Seller an express right of access to the property of Buyer, and hereby agrees that in the event the Seller or its representative enters onto the property of Buyer pursuant to this Agreement, such access shall be deemed to be with the express consent of Buyer and therefore shall not constitute trespass for criminal or civil purposes. Buyer agrees that Seller shall have the right to obtain the cooperation of any governmental agency, legal enforcement agency, or other administrative agency in obtaining access to Buyer's property as provided herein.

**11. Insurance Requirements.** Until such time as Seller's security interest in the Goods is terminated, Buyer shall keep the Goods insured against loss by fire, theft and other causes in an amount and under a form of policy sufficient to cover all Goods then in the possession of the Buyer. Buyer shall pay all premiums or other expenses of the insurance. In case of failure to procure or maintain such insurance, Seller shall have the right but not the obligation to obtain such insurance and

the amount so paid shall be immediately due and payable by Buyer to Seller as additional costs incurred.

**12. Indemnity.** Buyer agrees to defend, indemnify and hold Seller harmless from and against all claims arising out of or in any way related to this Agreement, and agrees to indemnify the Seller for any liability, loss, cost, expense, or other damage (including reasonable attorney fees) brought about by an injury or loss of any kind suffered by any person, entity or property as a result of any act, neglect, default, omission of either the Seller or Buyer or any of their agents, employees, resellers, distributors, retailers or other representatives, excluding the sole negligence or intentional misconduct of the Seller or the Seller's employees. This provision shall survive any termination of this Agreement and/or the Seller's security interests, as provided herein.

**13. Responsibility for Damaged Goods.** In the event the Goods received by Buyer or Buyers customer, reseller or otherwise are allegedly damaged, contaminated or defective in any way, Buyer shall give written notice to Seller of such alleged defect, damage or contamination within three (3) days of delivery of the Goods. In the event such notice is not given, Buyer hereby assumes full responsibility for any alleged damage, contamination, or defects relative to the Goods, and further acknowledges that Goods received pursuant to this Agreement were delivered by Seller in good and acceptable condition. In the event Buyer or Buyers customer, reseller or otherwise discovers any Goods which are allegedly damaged, contaminated or defective, and Buyer gives Seller notice within the specified time as set forth above, Seller shall, at Seller's sole option and as Buyer's exclusive remedy, either repair or replace the Goods. Buyer further agrees and understands that certain impurities are inherent in spring and/or well water, and hereby agrees to defend, indemnify and hold Seller harmless from damages, liability, loss, cost, and/or expenses related to such impurities.

**14. Return of Goods.** Unless Seller shall have authorized or permitted, in writing, the return of any Goods, Seller shall not be obligated to accept any returns, exchanges or provide any credits for any Goods or part thereof. In the event Seller, in its sole discretion, allows the return of any Goods purchased pursuant to this Agreement, Buyer shall be obligated to pay a restocking charge equal to 20% of the purchase price.

**15. Confidentiality.** Buyer acknowledges and understands that Buyer may come into possession of information or data which constitute trade secrets, know-how, confidential information or are otherwise considered to be secret of Niagara (hereinafter " Confidential Information"). In consideration of the receipt of such Confidential Information, Buyer agrees to maintain such Confidential Information in the utmost of confidence, use such Confidential Information

solely in connection with the intended business relationship established hereunder and take all measures reasonable and appropriate to protect such Confidential Information. Buyer agrees to maintain the Confidential Information in confidence and shall not, nor shall it permit its employees, agents, and/or subcontractors to sell, transfer, publish, disclose, display or otherwise make accessible the documentation, or any copies thereof, or the services, in whole or in part, to any third party, or use the documentation or services for its own benefit or the benefit of others. Buyer recognizes and acknowledges that any breach or threatened breach of this Agreement by Buyer may cause Niagara irreparable harm for which monetary damages may be inadequate. Buyer agrees, therefore, that Niagara shall be entitled to an injunction or other equitable relief (with bond or other security) to restrain Buyer from such breach or threatened breach. Furthermore, should Buyer breach this Agreement and disclose Niagara's Confidential Information to a third party who incorporates the Confidential Information into its products and/or services, Buyer understands and acknowledges that Niagara's remedies shall be broad and include, but not limited to, an injunction or other equitable relief (with bond or other security), recover monetary damages from Buyer for the breach or threatened breach of this Agreement or seek disgorgement of any and all profits from the third party or parties who received Niagara's Confidential Information and any other remedy at law or in equity from any breach or threatened breach of this Agreement in order to place Niagara in the position it would have been but for the breach or threatened breach of this Agreement.

**16. Solvency of Buyer.** Buyer represents that it is financially solvent and that they have the financial means to carry out their respective obligations under this Agreement. In entering into this Agreement, Seller is reasonably relying on Buyer's representation of financial solvency in order to further conduct business relations with Buyer.

**17. Disclaimer of Express and Implied Warranties and Consequential Damages.** IN NO EVENT SHALL NIAGARA BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS REVENUES, BUSINESS INTERRUPTION AND THE LIKE), ARISING FROM OR RELATING TO THE SUPPLY OF THE GOODS, THE CONDUCT OF BUSINESS UNDER OR BREACH OF THIS AGREEMENT, ANY PURCHASE ORDER, NIAGARA'S CANCELLATION OF ANY PURCHASE ORDER OR ORDER(S), AND/OR THE TERMINATION OF BUSINESS RELATIONS WITH BUYER, REGARDLESS OF WHETHER THE CLAIM UNDER WHICH DAMAGES ARE SOUGHT IS BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, STATUTE, REGULATION OR ANY OTHER

LEGAL THEORY OR LAW, EVEN IF NIAGARA HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. NIAGARA'S LIABILITY, IF ANY, SHALL BE LIMITED TO THE LESSER OF THE COST OF REPAIR OR REPLACEMENT VALUE; PROVIDED HOWEVER, THAT UNDER NO CIRCUMSTANCES WILL LIABILITY EXCEED THE AMOUNTS PAID BY BUYER TO NIAGARA UNDER THIS AGREEMENT. Niagara shall not be liable for any damages or claims caused by or which arise out of or relate to the acts or omissions of a third party.

**18. Default.** Buyer shall be in default under this Agreement on the occurrence of any of the following events or conditions: (1) Default in payment or performance of the payment terms included herein, including, without limitation, Buyer's secured payment obligations, (2) Any warranty, representation, or statement made by or on behalf of the Buyer, either to Seller or any third party which proves to have been false in any material respect when made or furnished, (3) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the Goods, assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency law by or against the Buyer prior to termination of the Seller's security interest, and/or (4) Failure of Buyer to provide necessary insurance and/or proof of the same as required herein.

**19. Remedies for Default.** On the occurrence of any event of default, Seller may declare all secured payments due and payable immediately and may proceed to enforce payment and exercise any and all rights and remedies provided by the California Commercial Code as well as other rights and remedies either at law or in equity possessed by Seller. Seller may require Buyer to assemble the Goods and/or make it available to Seller at any place to be designated by Seller. On the occurrence of any default, Seller shall have the right to enter onto any of the property of Buyer to regain possession of the Goods. Expenses of retaking, holding, preparing for sale, selling, or the like shall be paid by Buyer. Upon Buyer's default, Seller may regain possession and dispose of the Goods and apply proceeds received from the sale or other disposition of the Goods to the secured payments, and to payment of attorney fees and legal expenses incurred by Seller as a result of Buyer's default.

**20. Waiver of Default.** Seller's acceptance of partial or delinquent payment, or the failure by Seller to exercise any right or remedy shall not be a waiver of any obligation of Buyer or right of the Seller, shall not be a modification of this Agreement or of any of Buyer's obligations under this Agreement, and shall not constitute a waiver of any other similar default that occurs later.

**21. Arbitration/Governing Law/Venue.** The parties expressly acknowledge and agree: (i) any and all claims, disputes or controversies between the parties will be resolved exclusively by confidential, final and binding arbitration, and not by court action; (ii) the arbitration shall be conducted by a single arbitrator in accordance with the Commercial Arbitration Rules and Mediation procedures of the American Arbitration Association (“AAA”) effective on the date of loss; (iii) each party will pay half of any administrative fees (including, but not limited to, arbitrator’s fees and expenses) and each party will be responsible for its own costs and fees, including, but not limited to, attorneys’ fees (notwithstanding the foregoing, the prevailing party shall be entitled to recover pursuant to any prevailing party attorneys’ fees or other costs provision included in this Agreement); (iv) this Agreement is governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the “FAA”) to the extent it is not inconsistent with this Agreement (to the extent the FAA is inconsistent with this Agreement, this Agreement shall be governed by and interpreted in accordance with the laws of the State of California only, without reference to or application of principles concerning conflicts of laws of any jurisdiction); (v) Venue for arbitration proceedings shall be at a AAA location in San Bernardino County, California only (if it is deemed by AAA that venue shall be in a court, or in the event that venue is otherwise appropriate in a court (e.g., entry of an arbitral award as a judgment), venue shall be in the state of federal courts located in the County of San Bernardino, State of California, only).

**22. Private Label Content.** Buyer shall be responsible for all Private Label Content which means any and all content that is incorporated into or displayed on the Product Packaging including, without limitation, any intellectual property, trademarks, service marks, trade names, trade dress, copyrights, patent markings, distinctive features, descriptions, pictures, letters, numbers, logos, artwork, product claims, representations, warranties, disclaimers, disclosures, statements, nutritional facts, ingredient list, words, phrases, advertising slogans or the like, whether provided or owned by Customer or licensed by Customer from a third party. Product Packaging means any and all components enclosing, encasing, and surrounding the Product including, without limitation, wrapping materials, plastics, shrink film, labels, bottle components, and caps, that can be used to display Product Label Content is in compliance with all applicable federal, state and local laws, regulations and ordinances (whether criminal, civil, administrative or otherwise). Such laws include, but are not limited to, those dealing with or in any way related to misbranding, adulteration, trademarks, defective or improper warnings, customs, tradenames, intellectual property of any kind, copyrights, international label compliance and/or nutritional laws. Buyer represents

that it has title and/or license to use any and all trademarks and any other intellectual property rights used on or in conjunction with Private Label Goods, and that it has the right to transfer such title and license to Niagara, as required herein. Buyer agrees to defend, hold harmless and indemnify Niagara for any claims, damages or losses (including reasonable attorney fees) arising out of or related to any breach of this provision. Buyer further acknowledges that in producing Private Label Goods, Niagara may, from time to time, produce overages and/or surplus and Buyer hereby grants Niagara the right and license to transfer, sell, dispose of and/or donate any such Private Label Good overages or surplus to any third party, in its sole discretion. Under no circumstances shall Niagara be liable for, and Buyer shall indemnify, defend and hold Niagara harmless from and against, any and all third party claims, suits, demands, actions, settlements, costs and fees (including reasonable attorney fees), liabilities, losses and expenses of any kind whatsoever (“Claims”), including, but not limited to Claims for death, personal injury, or property damage, arising out of, resulting from or otherwise in connection with the Buyer’s Product Label Content that is either displayed on or incorporated into the Product Packaging, including, without limitation, any Claims; (i) that the Private Label Content infringes on the intellectual property of another; (ii) for misbranding, false or misleading advertising (including, but not limited to, comparative, environmental) unfair competition, unfair business practices, or adulteration in connection with the Private Label Content; (iii) for defective, deceptive, missing, or improper warnings in the Private Label Content; (iv) that the Private Label Content violates any nutritional content or ingredient disclosure laws..

**23. Attorneys’ Fees.** In the event that litigation, judicial process or any other action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees and costs.

**24. Independent Review.** Each party hereto acknowledges and represents that it has fully and carefully read this Agreement and is entering into this Agreement as a free and voluntary act.

**25. Insurance.** Buyer shall obtain and maintain, at its expense for so long as Niagara shall provide goods hereunder, a policy or policies of Commercial General Liability insurance (including product and completed operations, personal and advertising injury and contractual liability coverage) covering Niagara, with a minimum of \$2,000,000 per occurrence. For Buyers whose employees enter Niagara’s premises, Buyer shall also obtain and maintain, at its expense, and for so long as such employees shall conduct such operations, a policy or policies of Worker’s Compensation Insurance with statutory limits and Automobile Liability Insurance with a minimum of \$2,000,000 coverage limits for each accident, including

owned, non-owned and hired vehicles. Buyer agrees to add Niagara Bottling, LLC by policy endorsement as an "additional insured" on each of the above policies, excluding Buyer's Worker's Compensation policy.

**26. Trademark.** This Agreement provides Buyer with a limited and nonexclusive right to use the NIAGARA trademark for the sole purpose of reselling NIAGARA brand Goods. Any other use of Niagara's trademark is hereby expressly prohibited.

**27. Food Drug and Cosmetic Act.** The Goods provided hereunder are guaranteed, as of the date of shipment, (i) to be unadulterated and/or not misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended (the "Act"); and (ii) not to be Goods which may not, under the provisions of section 403 or 505 of the said Act, be introduced into interstate commerce. The aforementioned warranty shall not apply to Goods that are damaged, tampered with, improperly stored, or otherwise altered subsequent to delivery. Improper storage includes, but is not limited to, storing in direct sunlight, in an environment that is above Room Temperature, or in the proximity of solvents, cleaners and/ or chemicals. Room Temperature is defined by the US Pharmacopeia as being between 59-86 degrees Fahrenheit. Many countries have regulations governing sales, distribution, and/or use of Goods which may vary from U.S. requirements. Unless expressly acknowledged in writing, Niagara disclaims any warranty or guarantee that any label, packaging and/ or Goods complies with international regulations. THE WARRANTIES AND REPRESENTATIONS SET FORTH HEREIN ARE IN LIEU OF ANY OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY RESPECTING THE GOODS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER'S SOLE AND EXCLUSIVE REMEDY IN CONTRACT, TORT OR UNDER ANY OTHER THEORY AGAINST SELLER RESPECTING THE GOODS OR ACTIONS ARISING OUT OF THIS AGREEMENT ARE AS DESCRIBED HEREIN AND NO OTHER REMEDY (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL DAMAGES) SHALL BE AVAILABLE TO BUYER. SELLER SHALL HAVE NO FURTHER OBLIGATION OR LIABILITY WITH RESPECT TO THE GOODS OR THEIR SALE AND USE, AND SELLER NEITHER ASSUMES NOR AUTHORIZES THE ASSUMPTION OF ANY OBLIGATION OR LIABILITY IN CONNECTION WITH THE GOODS. Buyer is expressly prohibited from making warranties or representations to third parties beyond what Seller has represented herein.

**28. Distribution Outside of U.S.** In the event the Customer sells or distributes Product outside of the United States, the Buyer expressly acknowledges, understands and agrees to the following:

(a) Buyer is solely responsible for ensuring compliance of Product with all applicable federal, state and local laws, regulations and ordinances (whether criminal, civil, administrative or otherwise) for territories outside of United

States. Examples of possible regulations include, but are not limited to, Product Packaging compliance and compliance with any Product registration, distribution and/or sale requirements.

(b) Buyer assumes responsibility for ensuring that all content displayed upon the Product Packaging complies with all applicable federal, state and local laws, regulations and ordinances (whether criminal, civil, administrative or otherwise) in the country for which the Product is intended to be distributed. Such laws include, but are not limited to, those dealing with or in any way related to misbranding, deceptive and/or misleading advertising and intellectual property rights.(c) Buyer understands, acknowledges and agrees that Niagara does not provide regulatory or legal Product Packaging guidance or review for Product intended to be sold outside of the United States and also does not provide, and is not responsible for, translation of non-English or multilingual labels.

(d) For any sales or distribution of the Product outside of the United States, Buyer hereby agrees to indemnify, defend and hold Niagara harmless from and against any and all claims, loss, costs, expense, damages(including reasonable attorney fees), demands, suits, actions or proceedings of any kind or nature arising out of or related to; (i) any allegations of product liability arising from Buyer or its agents representing the Product warranties beyond those covenants made by Niagara herein; (ii) any allegations of product liability arising from improper storage or other types of post-shipment damage or alteration; (iii) a breach by Buyer of any of its representations, warranties, covenants or obligations under this Section 37; (iv) any damage or degradation of any Niagara-owned Brand arising out of or in any way related to Buyer's sale or distribution of the Product; or (v) misbranding, false/misleading advertising (including, but not limited to, comparative, environmental, unfair competition and/ or unfair business practice claims), adulteration, defective or improper warnings, trade names, trademarks, trade dress, intellectual property rights, customs, and/or nutrition laws, arising out of or related to the Product and/or Product Packaging

**29. Foreign Corrupt Practices Act.** Buyer is fully familiar with the United States Foreign Corrupt Practices Act (the "FCPA"), Mexico's Federal Anti-Corruption Law on Public Procurement ("Ley Federal Anticorrupción en Contrataciones Públicas", or the "LFACP"), and any other applicable laws or regulations related to bribery and corrupt practices (collectively, "Global Anti-Corruption Laws"). Buyer has complied, and will continue to comply, fully with the Global Anti-Corruption Laws in its business dealings involving Niagara. During the term of this Agreement, neither Buyer nor any of its agents or employees has authorized, offered, or made, and will not authorize, offer, or make, payment of money or anything of value, whether directly or through a third party, to any public-sector official (no matter the rank of such person), political party, political party official, candidate for political office, employee of a state-owned or state-

controlled entity, employee of a public international organization, or any commercial entity with which they are doing business in furtherance of this Agreement (each a "Covered Person") or to any close family relative (i.e. parent, grandparent, spouse, child, grandchild, sibling) of a Covered Person for the purposes of improperly (a) influencing any act, decision or failure to act by any Covered Person in his or her official or professional capacity, or (b) inducing a Covered Person to use his or her influence to affect any act or decision of any government body, public international organization, or commercial entity, or (c) securing any improper advantage, in each case in connection with Buyer's business dealings with Niagara. Buyer agrees to maintain accurate books and records detailing its business dealings with Niagara and agrees to make such records available to Niagara or to Niagara's designee for review and analysis during the term of this Agreement and for three years after expiration of this Agreement.

**30. Prison Labor.** Buyer warrants that it does not utilize and hereby agrees not to utilize prison labor in either its operations or the production of its products or to hire or use any personnel whatsoever in violations of the laws of the United States. Buyer shall notify Niagara immediately if Buyer either currently utilizes, or subsequently implements the utilization of, prison labor in connection with its business. Buyer shall comply with all federal, state and local laws, including employment laws, governing the utilization of prison or convict labor.

**31. Force Majeure.** Niagara shall not be liable in any respect and shall not be deemed to be in default of its obligations hereunder where such failures on the part of Niagara shall be caused directly or indirectly by any matter beyond the control of Niagara including, but not limited to, the following: Power outages, labor shortages, material shortages, storms, acts of God, riots, civil insurrection, floods, strikes, lockouts, epidemics, landslides, earthquakes, fires, storms, hurricanes, washouts, arrests, civil disturbances and explosions, equipment breakdowns or failures, war, and any other causes whether of the kind enumerated or otherwise beyond Niagara's reasonable control.

**32. Miscellaneous.** This Agreement constitutes the final, complete, exclusive and entire integrated Agreement among the Parties respecting the Goods which are the subject hereof, and that any terms set forth in Buyer's purchase order or other confirming memoranda shall be of no force or effect. Any amendment, addendum, or revision to this agreement shall be valid only if in writing and signed by the Parties. This Agreement constitutes a personal contract and the Buyer shall not transfer or assign the Agreement or any part thereof without the prior written consent of Niagara. This Agreement does not authorize the Buyer to act as the agent or legal representative of Niagara for any purpose whatsoever. Buyer

is not granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf or in the name of Niagara or to bind Niagara in any manner. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the Parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the Parties. This document shall be deemed to have been mutually drafted by the parties hereto. Any ambiguity in the interpretation of this Agreement shall not be construed or interpreted against either party. Buyer acknowledges that Seller may maintain a copy of these documents in electronic form and agrees that a copy reproduced from such electronic form or by any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original. Furthermore, Buyer agrees that a copy of these documents shall be admissible evidence irrespective of the best evidence rule or any other state or federal evidence rules.