

## STANDARD PURCHASE TERMS AND CONDITIONS

These Standard Purchase Terms and Conditions (the “Agreement”) control all purchases made by Niagara Bottling, LLC (“Niagara”). The supplier of goods and/or services to Niagara (“Seller”) acknowledges that the terms of this Agreement may be different from those of Seller’s quotation, invoice, proposal, confirming sales memoranda or other documentation (“Seller Documentation”). In the event Seller demands inclusion of any terms other than those expressly set forth in this Agreement, Seller shall notify Niagara in writing within 48 hours of receipt of any associated order from Niagara. Seller will send any such notice to [legalnotices@niagarawater.com](mailto:legalnotices@niagarawater.com) and via certified mail to 1440 Bridgegate Drive, Diamond Bar, CA 91765 USA. Failure to provide Niagara with such notice shall constitute Seller’s express (1) acquiescence to and acceptance of this Agreement; (2) acknowledgement that the Agreement exclusively governs and controls the parties’ relationship; and (3) recognition that any other terms included in or appended to any Seller Documentation shall be of no force or effect and are hereby superseded by the Agreement. Niagara and Seller are each a “Party” to this Agreement and collectively the “Parties” to this Agreement. Except to the extent the face of Niagara’s ordering document specifies otherwise, the following shall be applicable and control:

### 1. SCOPE OF AGREEMENT AND ORDERS.

#### a. Scope of Agreement and Purchase Orders.

This Agreement controls any purchase order placed with Seller by Niagara (a “Purchase Order”) except to the extent the Purchase Order expressly incorporates overriding terms and conditions by reference. All goods (“Goods”) and/or services (“Services”) on a Purchase Order are subject to this Agreement. In the event Seller does not agree to the terms set forth herein, Seller may reject Niagara’s Purchase Order and refrain from selling the Goods and/or Services thereunder to Niagara.

#### b. Unilateral Contract.

In the event a court of competent jurisdiction deems that the Agreement does not constitute a valid contract, then the Agreement 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) and subject to the terms and conditions set forth herein. No course of prior dealings between the Parties and no industry custom shall be relevant to supplement or explain any term used in the Agreement.

#### c. Purchase Order Cancellation.

Niagara shall have the right in its sole discretion to cancel a Purchase Order for any reason prior to delivery. Seller understands, acknowledges and agrees that no fees of any nature (including, but not limited to cancellation, restocking, or otherwise) shall be applicable and hereby waives the right to recover any such fees. In the event Seller has delivered pursuant to the Purchase Order and Niagara, in its sole and absolute 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 and shall not be liable for payment. Payment of any invoice shall not be deemed a waiver of Niagara’s right to reject, cancel or revoke acceptance of any Goods and/or Services performed. Seller shall bear all expenses and risks of unpacking, examining, repacking, storing, holding and/or reshipping and returning any Goods rejected (or whose acceptance is revoked) by Niagara. Timely revocation shall be one hundred eighty (180) days from delivery or discovery of non-conformance, whichever is later, or in the event that equipment is installed by Seller or a third party, one hundred eighty (180) days from the installation completion date. Subsequently, upon Niagara’s return of the Goods, and at Niagara’s option, Seller shall refund to Niagara, or Niagara may offset its refund against amounts

it owes to Seller, minus any design or specialty charges.

Seller agrees that Niagara’s exercise of any right or remedy provided in the Agreement 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.

#### d. Packing / Delivery.

The delivery location of the Goods and/or Services (the “Facility”) shall be as indicated on the Purchase Order. Seller shall suitably pack and clearly mark the Goods in accordance with Niagara’s instructions and deliver the Goods to the Facility within the delivery timeframe indicated on the Purchase Order. Seller shall ship all Goods transported over water using seaworthy packaging. Niagara may, in its discretion, determine Seller to be in material breach of the Agreement in the event Seller fails to conform to the packing and delivery requirements, and in such case Niagara may (i) immediately terminate the Agreement without further notice to Seller and with no further obligation or liability of Niagara, (ii) withhold any payment then due and owing to Seller, and/or (iii) pursue any and all remedies against Seller available to it in law and/or equity including all damages suffered by Niagara.

#### e. Timing.

Unless a different time period is set forth on the face of the Purchase Order: (i) all in-stock Goods shall be delivered within twenty-four (24) hours from the time of Niagara’s submission of the Purchase Order; (ii) any Services shall be performed within twenty-four (24) hours from the time of Niagara’s submission of the Purchase Order; and (iii) all not-in-stock Goods shall be delivered within three (3) days from the time of Niagara’s submission of the Purchase Order. **Time is of the essence** relative to all Seller obligations.

#### f. Risk of Loss / Title.

If a shipping term is not otherwise specified on the Purchase Order, the Goods are sold DDP (Incoterms 2020) the Facility. Risk of loss shall pass to Niagara upon Niagara’s acceptance of the Goods at the Facility. Title to the Goods shall pass to Niagara upon the sooner of delivery of the Goods to Niagara or Niagara’s payment for such.

#### g. Paid Stock.

Seller shall bear all risk of loss, injury or destruction to Goods for which Niagara has paid but Seller has not delivered to Niagara (“Paid Stock”) while the Paid Stock is warehoused with Seller. Seller shall obtain and maintain insurance insuring the Paid Stock against loss, damage or destruction due to accident, theft, fire, flood, abuse or vandalism or other hazards

commonly covered by extended coverage insurance. Seller shall grant Niagara a security interest in the Paid Stock and execute such financing statements, security documents and other instruments as Niagara shall deem appropriate to protect Niagara's ownership of the Paid Stock against claims of creditors of Seller or third parties. Seller agrees to indemnify, defend and hold Niagara harmless from and against the payment of any sum of money and against any expenses whatsoever, including attorney's fees and court costs, which Niagara may be called upon to pay or incur resulting from any loss or damage to the Goods while warehoused with Seller or resulting from a creditor's or other third party's claim of interest, lien or right in or to any Paid Stock warehoused with Seller.

- h. New Developments / Upgrades. If Seller develops new technologies or upgrades applicable to the scope of supply and commercializes the same, Seller will act in good faith to offer them to Niagara at a fair and equitable price.
- i. Electronic Data Interchange. Niagara may require electronic transmission and/or receipt of data via electronic data interchange ("EDI") formats, including but not limited to purchase order, inventory, and/or transaction data. Seller shall comply with any Niagara EDI reporting requirements at no additional cost to Niagara. Niagara requiring EDI of a particular data shall not be deemed to require all future data of same type to be through EDI unless so specified by Niagara. Seller warrants the accuracy of any and all EDI data it provides to Niagara.
- j. Change Control Procedure. Niagara may at any time upon written notice to Seller revise the Services or Goods in a manner which does not materially change the scope of the Services or Goods. Niagara may also request a material change in the scope of the Services or Goods or date of performance agreed to by the Parties. Within five (5) days after receipt of such a request, Seller shall submit to Niagara a written proposal, including time and costs, to address Niagara's requested changes. If the proposal is accepted in writing by Niagara, Seller shall perform the modified Services and provide the applicable modified Services or Goods subject to such proposal in accordance with the terms and conditions of this Agreement. The corresponding order shall be revised accordingly and mutually agreed to by the Parties.

## 2. PRICING AND PAYMENT.

- a. Purchase Price. All fees and charges are as stated in the applicable Purchase Order. All prices are in US Dollars unless otherwise stated on the Purchase Order. The total purchase price excludes any applicable sales or use tax for which Niagara shall be responsible but includes any other taxes and all fees, shipping costs, duties, deposits, tariffs and other costs and charges (including without limitation any costs and fees that may be imposed by government authorities outside the U.S.) ("Seller Charges") for which Seller shall be responsible. Seller will promptly reimburse Niagara for any Seller Charges Niagara may pay.
- b. Pricing. Seller warrants that the prices specified in any Purchase Order are as low as any net prices given by Seller to any other customer for goods or services of like

grade and quality in like quantities, and Seller agrees that if at any time during the term of this Agreement lower net prices are quoted under similar conditions, said lower net prices shall be from that time substituted for the prices herein. Seller shall make Goods and/or Services available to Niagara at Seller's regularly listed price unless and until Seller is no longer in business, dissolved, is legally declared insolvent, or otherwise ends its operation. This provision shall survive any termination of a Purchase Order and shall be available in the event cancellation, dispute or otherwise.

- c. Seller to Pass Along Savings. In the event of manufacturing or other cost savings for any reason, such as from reduced component or raw materials costs, fluctuating exchange rates, reduced average industry pricing, 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 Agreement without further obligation to Seller.
  - d. Invoicing / Payment Terms. Seller will invoice Niagara electronically upon shipment of the Goods or performance of the Services. Except to the extent otherwise expressly stated in a Purchase Order, payment terms shall be 2%/15, net 60 days of Niagara's final acceptance of the Goods or Services or receipt of undisputed invoice, whichever is later.
  - e. Overdue Payments and Disputed Amounts. Seller shall promptly notify Niagara in writing of any overdue payments. Within twenty (20) business days from receipt of such notice (the "Cure Period"), Niagara will pay any undisputed amounts and notify Seller of any amounts that are subject to a good faith dispute. Payment of undisputed fees within the Cure Period shall be deemed paid on time. For the purposes of determining the timeliness of Niagara's payments (including cure payments), payment shall be deemed effective on the date Niagara forwards the payment to an ACH payment processor or on the date of postmark (as printed on the payment envelope by Niagara's electronic postal meter). In the event of a good faith dispute, Niagara may withhold all disputed sums until the Parties resolve the dispute, and such withholding shall not be deemed to constitute a breach of this Agreement.
  - f. Set-Off. If Niagara has a claim against Seller or Seller owes Niagara for any damages, rebates and/or credits, Niagara may deduct or set off such amounts from amounts due to Seller by Niagara.
- ## 3. SERVICE TERMS.
- a. Service Levels. Except as may otherwise be described in a Purchase Order, Seller shall maintain a 99% service level (the "Service Level"), which means that Seller completely fulfills all Purchase Orders on or before the due date 99% of the time. Seller shall be in breach if Seller fails to maintain the Service Level for any two consecutive weeks. Seller's continued failure to meet the Service Level after notice of non-compliance from Niagara shall constitute a material breach, giving rise to Niagara's right to terminate the Agreement, cancel all outstanding

Purchase Orders, withhold any payment then due, and pursue all other available remedies and damages.

- b. Tools / Cleanup. Any necessary tools, tarps, ladders, rigging equipment or the like related to the delivery of the Services shall be provided by Seller at no additional cost to Niagara. Seller shall fully clean up to Niagara's satisfaction 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. Niagara is not responsible for any of Seller's tools which may be left onsite.

4. DELIVERABLES.

- a. Definition. "Deliverables" means the technical information, improvements, intellectual property, computer or other apparatus programs, specifications, art, plates, negatives, equipment, processes, methods, recipes, formulae, articles of manufacture, designs, 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, whether or not protectable under applicable patent, trademark or copyright laws, developed or acquired by Seller hereunder, or by its authorized subcontractors or agents, to be delivered or otherwise provided to Niagara, including, but not limited to, Equipment, bottles, closures, molds, and their respective designs, blow molding equipment and other equipment.
- b. Drawings and Inventions. 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 Deliverables 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 by any parties other than Niagara.
- c. Ownership and Right to Use. Seller hereby irrevocably and perpetually assigns to Niagara ownership of, and the entire right, title and interest in and to, the Deliverables, including any intellectual property rights embedded in or otherwise associated with the Deliverables. Seller shall and, where applicable, will have its associates, employees, subcontractors, and agents, disclose and furnish promptly to Niagara any and all Deliverables originated or developed by Seller or by any of its associates, employees, subcontractors, or agents as a result of Services performed or Goods sold pursuant to the Agreement. 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 the transfer and/or assignment of the Deliverables, and the intellectual property rights embedded in or otherwise associated with the Deliverables, 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's 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 hereby warrants that the bottles made by such molds or equipment shall ensure correct bottle fill volume for the bottle's designated fill height. Seller further agrees to be solely responsible for reviewing the designated preform size to ensure compliance with this provision.
- e. Label and Shrink Wrap Sellers. For avoidance of doubt, all Deliverables for art, plates, negatives and/or designs prepared for Niagara by Seller or Seller's printer, lithographer, or bag, box or carton manufacturer shall be and remain the property of Niagara and in the event of termination of the Agreement 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 Seller for these items.
- f. Re-performance. Seller shall re-perform, at Seller's sole cost, any Deliverables which Niagara deems defective or not suitable for their ordinary and intended purpose.
- g. Work for Hire. 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 Goods or Services.

- h. Confidentiality. Seller shall keep the Deliverables in confidence and shall use the Deliverables only for the purpose of the Agreement and for no other purpose, except upon written permission of Niagara.
- i. Transfer of Rights. 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 include 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, perpetual, royalty-free license to use, make, practice, copy and create derivatives of, and create products embodying any ideas incorporated in such material. The licenses so granted shall include Niagara's right to grant sublicenses for such materials.
5. **TERMS APPLICABLE TO EQUIPMENT PURCHASES**. This section applies to Goods that are equipment ("Equipment").
- a. Installation / Commissioning. Where the Services include installation and or commissioning of Equipment and except to the extent otherwise indicated on the Purchase Order, (i) Seller will begin installation of the Equipment within no more than one (1) week after arrival of the Equipment at the Facility; (ii) the Project Layout, Scope of Supply, and Timetable for the installation shall be as set forth in the applicable Purchase Order; and (iii) promptly upon completion of installation Seller will begin commissioning the Equipment in accordance with the Scope of Supply and Timetable. Niagara is permitted to make packaging changes throughout commissioning and up to the commencement of the acceptance test as described in the Purchase Order.
- b. Power / Protective Components. 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, machines and data remains intact and undamaged in the event of power surges or voltage fluctuations. All Equipment, regardless of source of power, must be new, UL-listed, and compliant with all applicable laws, including, but not limited to California Title 24 energy efficiency standards.
- c. Electronic Display Equipment. All PLC's or other electronic display equipment will be supplied with both English and Spanish language options.
- d. Equipment Operation. Seller warrants that all Equipment or machines purchased 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 and shall be capable of operating 24 hours a day, 7 days a week, 365 days a year, non-functioning only during pre-planned downtime for original manufacturer recommended preventative maintenance.
- e. Maintenance Manuals. Seller will provide maintenance manuals, in both English and Spanish and hard copy and soft copy forms, at the time of delivery of the corresponding Equipment.
- f. Training. Seller agrees to use good faith and commercially reasonable efforts to work with Niagara to devise detailed, line item training for newly hired and existing employees of Niagara to maximize Niagara's reimbursements for training dollars offered by local, state and federal authorities in a form satisfactory to Niagara and consistent with any training described in a Purchase Order. Seller acknowledges that this training is an added value to Niagara and shall be at no additional cost to Niagara, and Seller agrees to comply with any reasonable requests by Niagara to effectuate the training.
- g. Seller's Obligations at the Facility. Seller shall at all times (i) cause its personnel to follow the internal directives and policies of Niagara; (ii) perform its obligations in compliance with all applicable laws, rules and regulations relating to worker safety and similar matters, including but not limited to those enforced by state OSHA regulators and with Niagara's confidentiality, safety and GMP requirements; (iii) cooperate with Niagara with respect to scheduling repairs or maintenance down times; and (iv) cause its subcontractors to comply with the preceding provisions.
- h. Niagara's Obligations at the Facility. Niagara shall provide Seller with reasonable access to the Facility, Niagara's personnel, and subcontractors as necessary for Seller to perform its installation, start-up, warranty, and other obligations hereunder.
- i. Packaging Materials. Niagara acknowledges that the Equipment will only operate with the packaging materials described on the Purchase Order. Seller acknowledges that the purchase price includes any and all change parts and programming necessary to operate with the packaging materials described in the Purchase Order. Upon request of Niagara, Seller will provide Niagara with quotations on parts and labor for necessary changes to Equipment in order to accommodate additional or different packaging materials.
- j. Raw Material Quality Requirements. Any Raw Material Quality requirements described in the Purchase Order are expressly incorporated by reference and all Equipment shall conform to the use of any raw materials specified therein. Seller shall be solely responsible for all downtime that occurs if the raw material specifications are within tolerance during said downtime.
- k. Upgrades. Seller expressly warrants and guarantees with respect to the Equipment, which for purposes of this clause includes any third party equipment included therein or provided by Seller, that if during the Goods Warranty Period Seller develops an upgrade to a component of the Equipment that is readily installable on the Equipment and such upgrade was developed by Seller

for the principal purpose of remedying a known, widespread flaw or problem with the Equipment (even if not rising to the level of a defect covered by warranty) that affects such Equipment's performance or potential durability, then Seller shall offer such upgrade to Niagara free of charge (freight and labor included). For the avoidance of doubt, Seller shall have no obligation to develop or provide to Niagara any such upgrade for any purpose other than as contemplated above.

- l. Liens. Seller shall keep the Facility and Equipment free and clear of construction, mechanics and similar liens and encumbrances.
  - m. Spare Parts. Seller shall (i) provide Niagara with a comprehensive list of all critical spare parts for all Equipment no later than completion of installation of each respective piece of Equipment; (ii) use a good faith and commercially reasonable effort to provide Niagara the full list of spare parts needed for the line and deliver to Niagara a spare parts kit (which shall consist of parts mutually agreed upon by the Parties); (iii) sell Niagara non-warranty spare and replacement parts in Seller's then current product range at the list price minus the greater of the discount granted to Niagara on the original parts or 20% (for spare parts purchased outside of any Seller Maintenance Agreements); and (iv) deliver available stock parts to an international carrier within 24 hours of Niagara's order, except during major holidays, such as Easter, Christmas and New Year's.
6. ACCEPTANCE. Niagara may evaluate the Goods and Services to determine whether they meet the requirements specified in the Purchase Order or as otherwise agreed upon by the Parties in writing (the "Specifications"). In the event Niagara determines in its sole discretion that Goods or Services do not meet the Specifications, Niagara may reject such upon notification to Seller in writing along with the reasons for such rejection. Seller shall correct and resubmit to Niagara any rejected Goods or Services within five (5) calendar days of receiving such notification, and Niagara shall re-evaluate such Goods or Services to determine whether the resubmitted Goods or Services meet the Specifications (the "Correction Process"). If Seller does not, in Niagara's determination, remedy the Goods or Services, Niagara may elect to allow Seller to repeat the Correction Process until Niagara accepts the Goods or Services or Niagara may at any time cancel that particular Purchase Order, with Niagara having no further liability or obligation, and Seller shall immediately refund all sums previously paid by Niagara related thereto. Upon accepting any Goods or Services and upon Seller's written request, Niagara shall provide a written notice of acceptance to Seller ("Acceptance").
7. LIQUIDATED DAMAGES. In the event that the Goods and/or Services are not delivered in accordance with the project timeline, Niagara's damages will be liquidated (and deducted from the purchase price) in the amount of 1% of the purchase price, per day, up to 5% of the purchase price, until the Goods and/or Services are

delivered; provided, however, that Seller will not be responsible for delays beyond its reasonable control and which could not be avoided by exercise of due care (e.g., Acts of God, storms, floods, strike). The Parties agree that the damages set forth herein are liquidated damages, and do not constitute a penalty.

8. WARRANTIES. All warranties related to the Goods include third party goods or equipment included with the Goods or otherwise provided by Seller, and all Goods warranties shall be transferrable in the event Niagara sells the Goods.
- a. Warranties. Seller expressly warrants and represents that:
    - i. Applicable Laws. Seller, the Services, the Goods, any packaging or pallets for the Goods, and the use of the Goods and Services, shall conform with all applicable federal, state, and local statutes, laws, rules, regulations, ordinances, codes, interpretive rules and regulatory opinions in the country in which the Goods are manufactured, delivered to Niagara, and/or used by Niagara, and any country in which Seller does business ("Applicable Laws") as may be amended from time to time, including without limitation, health safety laws, environmental laws, employment and labor laws and their reporting requirements, laws restricting heavy metal content, the Fair Labor Standards Act, and Executive Orders 11246 (Sections 202 and 203) and 11701.
    - ii. Goods. The Goods will: (1) meet or exceed the specifications in the applicable Purchase Order; (2) be new and transferred free and clear of any liens or encumbrances; (3) be free from defects in materials and workmanship for a period of twenty-four (24) months commencing two weeks after Niagara's final acceptance (the "Goods Warranty Period"); (4) be manufactured, assembled, installed, commissioned and performed in accordance with prevailing industry standards; (5) be fungible, merchantable, and fit for the intended purpose of this Agreement; (6) not be adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, as amended ("FDCA Act") or any state laws; (7) will not be articles which may not be introduced into Interstate Commerce under the provisions of Section 404 and 505 of the FDCA Act; (8) be free of any carcass, cadaver, body parts, limbs, organs, tissue, bones, tails, teeth, skin, fur/hair, excrement, droppings, bodily fluids (including, without limitation, blood, urine, saliva, and semen), feces or similar contaminants from any human, animal or insect; (9) if a color additive, be from a batch certified in accordance with the FDCA Act or exempt from such certification; (10) comply in all respects with the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), including without limitation, not containing any Proposition 65 listed chemicals in a concentration or level requiring a warning statement; (11) if such Goods are intended to or will come into contact with Niagara's products (i.e., bottled beverages) or which in any way relate to Niagara's products, be food grade and not create a consumer safety

- hazard; and (12) if intended as ingredients in food, be either food additives approved by the U.S. Food and Drug Administration, Generally Recognized as Safe (GRAS), or otherwise authorized for use in food in the United States under the Federal Food, Drug and Cosmetic Act, as amended.
- iii. Services. Seller will perform the Services using new, quality materials in a professional and competent manner consistent with applicable industry standards, and all Services will be performed by qualified and appropriately trained personnel. Seller warrants all Services for a period of one year from the completion of such Services.
  - iv. Precise Specifications. Seller has reviewed Niagara's precise specifications, needs and requirements and acknowledges that Niagara is relying upon Seller's expertise and recommendation in purchasing the Goods and Services.
  - v. Non-Infringement. Neither the Goods, Services, nor use thereof will infringe any patent, copyright, trademark, service mark, trade secret, proprietary or other intellectual property rights of any third party.
  - vi. Fair Labor Practices. Seller, Seller's representatives and/or any person acting on behalf thereof shall not use slave or trafficked labor in the manufacturing or production process of the Goods or Services. All labor used in the manufacturing or production process shall comply with Applicable Laws. Slave or trafficked labor includes but is not limited to forced labor, bonded labor, involuntary servitude, and child labor.
  - vii. Anti-Discrimination / Harassment. Seller, Seller's representatives and/or any person acting on behalf thereof shall not discriminate against any person by reason of gender, sexual orientation, age, race, religion, or color in Seller's manufacture of supplies, performance of work, employment practices, or any other activity related to the Agreement, Goods, or Services. Additionally, Seller and its agents 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. 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.
  - viii. Supplier Quality Expectations. Supplier will adhere to the Supplier Quality Expectations as set forth at [www.niagarawater.com/Resources/Documents/SupplierExpectationsGuide.pdf](http://www.niagarawater.com/Resources/Documents/SupplierExpectationsGuide.pdf), as may be updated by Niagara from time to time.
    - b. Goods Warranty Period. In the event the Goods cannot be fully utilized by Niagara for a period of time during the Goods Warranty Period due to the Goods' non-conformance with the warranty, the Goods Warranty Period shall be extended by that same period of time. In the event Niagara becomes aware of a latent defect after the end of the Goods Warranty Period, but the defect arose during the term of the Goods Warranty, Seller shall acknowledge, accept and honor Niagara's corresponding warranty claim.
- c. California Commercial Code. All warranties implied by California's Commercial Code, including California's implied warranties of merchantability and fitness for a particular purpose, shall apply to the Agreement, 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. 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. Under no circumstances shall Niagara's conduct in "signing off" on Goods or Services waive, eliminate or modify Seller's warranties or liability hereunder. Seller agrees and acknowledges that it is the expert with regard to its Goods and/or Services in question, and that Niagara shall not be deemed to have assumed responsibility for errors and/or problems contained in or associated with the Goods or Services and/or implementation of the same.
  - d. Remedies.
    - i. Correction. Promptly upon receipt of notice of a breach of warranty, patent nonconformity, problem, or other damage or defect of any kind, Seller will correct such at no cost to Niagara as soon as commercially reasonable, including without limitation (1) with respect to Goods, shipping Niagara conforming in-stock Goods within twenty-four (24) hours, and using best efforts to expedite the fabrication and delivery of any Goods that are not readily in stock within five (5) days; and (2) with respect to Services, at Niagara's sole discretion promptly re-perform the Services at a time to be determined by Niagara or refund to Niagara the entirety of the fees paid for the non-conforming Services. In the event re-performance of the Services does not correct the non-conformity, issue or problem to Niagara's sole satisfaction, Seller shall refund Niagara the entirety of the fees paid for said Services. Any replaced Goods shall be deemed subject to the warranties, representations and guarantees hereunder beginning on the date the replaced Goods are accepted by Niagara.
    - ii. Alternate Remedy. If Seller cannot replace, repair or remedy defective Goods within a reasonable period of time as required by Niagara's business necessity, Niagara may, in its sole discretion, (i) repair or modify said Goods and Seller shall reimburse Niagara for any and all expenses incurred, (ii) return the Goods for a full refund, or (iii) purchase said Goods from another entity at Seller's cost, including all costs of shipping, handling, freight, duties and

- third party storage costs (if any), as well as all labor costs associated with warranty work.
- iii. **Goods Hold and Destruction.** Any Goods furnished by Seller which Niagara believes do not comply with the specifications applicable thereto, and that Niagara rejects as non-conforming and/or defective, shall be held for Seller at Niagara's facility for no more than thirty (30) days after Niagara's email notification to Seller. Within the same thirty (30) days, Seller must; (i) inspect the Goods (if Seller so chooses), (ii) provide Niagara with written disposition instructions, and/or (iii) remove the non-conforming Goods from Niagara's premises, at Seller's sole expense. In the event that the Seller fails to provide disposition instructions to Niagara or remove the non-conforming Goods upon the expiration of the thirty (30) days or dispute the alleged non-conformance, Niagara may discard, scrap or dispose of the Goods in Niagara's sole discretion at Seller's sole expense. In the event that Niagara discovers nonconforming and/or defective Goods under the threshold of \$250.00, Niagara shall have the right to dispose of such Goods as Niagara sees fit, in Niagara's sole discretion, including but not limited to destruction of the Goods.
- iv. **Third Party Damages.** In the event Seller provides nonconforming or defective Goods, and such Goods cause Niagara to fail to meet its customer obligations, Seller shall be responsible for making Niagara whole, which includes but is not limited to reimbursing Niagara for the costs associated with late delivery and any fines/fees charged by Niagara's customers.
- v. **Cover.** In the event that Seller is unable to perform any obligation under this Agreement, Niagara shall be entitled to purchase substitute performance, and Seller will be liable for any additional and/or incremental costs incurred by Niagara.
- vi. **Cumulative Nature of Remedies.** No one remedy is intended to be exclusive; remedies are cumulative and may be combined as needed to make the aggrieved Party whole. Niagara expressly reserves all rights available at law and/or in equity, in addition to the remedies specified above.
- e. **Survival.** Seller's warranties shall survive delivery to and acceptance by Niagara and shall not be deemed waived by reason of Niagara's payment for the Goods or Services. No attempt by Seller to disclaim, exclude or modify any warranties shall be of any force or effect.
9. **FORCE MAJEURE.** In the event of storms, acts of God, riots, civil insurrection, flood, strike, war or any other force majeure event that reduces or otherwise limits Seller's production or delivery capabilities, Seller shall (i) inform Niagara immediately; (ii) use best efforts to meet its commitments to Niagara in accordance with the Agreement; and (iii) to the extent partial performance is possible, provide a proportion of Goods or Services owed to Niagara no less than the proportion of goods and services it provides to Seller's similarly situated customers.
10. **PERMITS, INSPECTION, AND AUDIT.** Seller shall provide all drawings, calculations, engineering specifications and any and all other documents necessary to enable permitting. Seller shall obtain and maintain at its sole cost and expense all permits, licenses, cover certifications, and registrations required to provide the Goods and Services as well as for construction and operation of any Equipment. Niagara shall have the right to inspect any Seller facility in which the Goods are produced upon twenty-four (24) hour notice to Seller. Upon request by Niagara, any duly authorized representative of Niagara shall, until three (3) years after final payment under the Agreement, have access to and right to examine directly pertinent books, papers, documents, accounts and records of Seller involving transactions related to the Agreement. Seller shall maintain a binder on-site with physical copies of the SDS (Safety Data Sheet) documents for all chemicals provided and/or used by Seller. For any Seller-provided chemicals left on-site after the contractor demobilizes, Seller shall turn over a binder with the SDS documents to the Niagara Project Manager.
11. **RELATIONSHIP OF THE PARTIES.** Seller shall act as an independent contractor and not as an agent or employee of Niagara. Nothing contained in this Agreement is intended to give rise to, or gives rise to, a partnership, joint venture, agency, fiduciary, employment, or other relationship between the Parties or imposes upon the Parties any of the duties or responsibilities of partners, joint venturers or employer-employee, beyond the relationship of independent parties to a commercial contract. Each Party shall be responsible for compliance with all laws, rules and regulations applicable to it, and Seller is responsible for the compliance of its employees, subcontractors and other agents with all laws, rules and regulations, including without limitation wage and hour laws.
12. **ASSIGNMENT.** The Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective assignees. This Agreement shall not be assignable by Seller without the prior written consent of Niagara in Niagara's sole discretion.
13. **SUBCONTRACTING AND ADDITIONAL PARTIES.**
- a. **Subcontracting.** Upon Niagara's prior written consent Seller may at its own expense use subcontractors, provided that Seller shall continue to be the primary contact for Niagara and shall be solely responsible for the acts, errors or omissions of the subcontractor. Seller shall be solely responsible for payment to the subcontractor and for all labor, equipment, or material provided by the subcontractor, and Seller shall defend, indemnify and hold Niagara harmless from and against any claims by the subcontractor arising out of or relating to Seller's use of such subcontractor. Seller will include a provision in all of its agreements with subcontractors stating that such subcontractors will look solely to Seller for payment of all fees and costs related to any Services or Goods provided under the Agreement and will under no circumstances look to Niagara for payment.
- b. **Additional Parties.** In the event Seller utilizes any party ("Additional Party") for the purpose of performing Services or providing Goods to Niagara, regardless of that party's

legal designation of contractor, subcontractor, materials supplier, agent, or otherwise, Seller shall submit to Niagara written notice of (i) each Additional Party, (ii) the duties each Additional Party will undertake, (iii) the amount of compensation each Additional Party is to receive from Seller, and (iv) Seller's compensation schedule and payment terms with the Additional Party. Seller's provision of this notice to Niagara is a condition precedent to Niagara's payment. All payments made by Niagara are conditioned upon Niagara's receipt of a conditional waiver and release executed by Seller and an unconditional waiver and release executed by each Additional Party. Seller agrees to defend, indemnify and hold Niagara harmless from any and all claims of any Additional Party for payment. Seller shall remain at all times fully liable for all Additional Parties, and warrants that it shall ensure that Additional Parties comply with and adhere to all warranties, representations, obligations, terms and conditions contained herein.

14. **POLICIES, LAWS, AND PRISON LABOR.**

- a. **Policies.** Seller shall maintain in effect and enforce policies and procedures designed to ensure compliance by Seller and its representatives, subsidiaries, affiliates and parent companies with anti-corruption laws, anti-money laundering laws and applicable sanctions.
- b. **Global Anti-Corruption Laws.** Without limitation on the foregoing, Seller warrants that: (i) it is familiar with the United States Foreign Corrupt Practices Act (the "FCPA"), Mexico's Federal Anti-Corruption Law on Public Procurement (the "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"); (ii) has complied, and will continue to fully comply with the Global Anti-Corruption Laws in its business dealings involving Niagara; (iii) neither Seller nor any of its agents or employees will 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 the 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 (1) influencing any act, decision or failure to act by any Covered Person in his or her official or professional capacity, or (2) 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 (3) securing any improper advantage, in each case in connection with Seller's business dealings with Niagara. Seller will maintain accurate books and records detailing its business dealings with Niagara and make such records available to Niagara or to Niagara's designee for review and analysis during the term of the Agreement and for three years after expiration of the Agreement.

- c. **Prison Labor.** Niagara does not utilize prison labor in either its operations or the production of its products. Seller shall notify Niagara immediately if Seller at any time utilizes prison labor in connection with its business. Seller shall comply with all Applicable Laws, including employment laws, governing the utilization of prison or convict labor.
- d. **Good Manufacturing Practices for Contractors.** Niagara's Good Manufacturing Practices set forth at [www.niagarawater.com/Resources/Documents/Good\\_Manufacturing\\_Practices\\_for\\_Contractors.pdf](http://www.niagarawater.com/Resources/Documents/Good_Manufacturing_Practices_for_Contractors.pdf) apply to any seller that enters onto Niagara's premises.
- e. **Niagara Supplier Code of Conduct and Supplier Quality and Expectations Guide.** Seller shall at all times comply with the requirements provided under the Niagara Supplier Code of Conduct and Supplier Quality and Expectations Guide set forth at the following link: [www.niagarawater.com/Resources/Documents/NBLCode\\_ExpGuide.pdf](http://www.niagarawater.com/Resources/Documents/NBLCode_ExpGuide.pdf).

15. **PUBLICITY AND SOLICITATION.**

- a. **Publicity.** Seller shall not without the prior written approval of Niagara use Niagara's name, logos, insignia, brands, trademarks, trade names, or service marks, or otherwise issue any publicity releases or make any public statement(s) (including without limitation in the form of news releases, advertising or solicitation materials, or blog or social media postings) relating to this Agreement, the existence of the Agreement, or the Goods or Services to be provided hereunder.
- b. **Non-Solicitation.** Neither Seller nor any subsidiary of Seller shall directly or indirectly solicit for employment or provide employment services to any employee of Niagara during the term of the Agreement and at any time that Niagara purchases Goods and/or Services from Seller and for a period of one (1) year thereafter.

16. **CONFIDENTIALITY.**

- a. **Confidential Information Definition.** "Confidential Information" means all information received by Seller or its Agent from Niagara of a confidential nature including but not limited to Niagara's processes, services and products, information relating to research or development, inventions, machines, engineering, equipment, technology, manufacturing processes, proprietary algorithms, marketing, merchandising and selling information, data, accounting and financial information, and information on end users, customers, and potential customers that is (a) clearly marked "confidential" and/or "proprietary" or with similar designation, or (b) disclosed in a manner in which Niagara reasonably communicated, or Seller should reasonably have understood under the circumstances, that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used. The existence of and terms and conditions of this Agreement are also Confidential Information.
- b. **Confidentiality Obligations.** In the course of dealing between the Parties Seller may acquire Confidential Information from Niagara. Seller shall take all commercially reasonable affirmative steps to prevent

disclosure of the Confidential Information and maintain all Confidential Information, whether obtained either directly or incidentally and regardless of its form, confidential and safe from accidental or purposeful disclosure to any third party. Seller will disclose the Confidential Information only to those of its employees, directors, agents, attorneys, consultants, representatives, brokers, subcontractors, or independent contractors (“Agents”) who have a direct need to know the Confidential Information to perform and comply with the terms and conditions of this Agreement. Seller shall be responsible and liable for any unauthorized disclosure by its Agents of Niagara’s Confidential Information. Seller shall make all reasonable efforts (including the design and implementation or use of an existing procedure for handling Confidential Information) to safeguard the Confidential Information from disclosure to unauthorized individuals and for as long as the information disclosed remains Confidential Information.

- c. Exclusions. Confidential Information does not include (i) information generally available to the public through no fault of Seller, its employees or associates; or (ii) information already known to Seller as demonstrated by prior written records in Seller’s possession at the time that the Confidential Information was received, provided that the source of such information was not bound by a known confidentiality agreement with Niagara. The non-disclosure obligations do not apply to the extent Seller is legally required to disclose information by order from a governmental or judicial entity, provided that Seller notifies Niagara prior to such disclosure (to the extent the order does not preclude such notification).

#### 17. INDEMNIFICATION.

- a. Indemnify and Hold Harmless. Seller agrees to indemnify, defend, and hold Niagara, its affiliates, directors, associates, agents, and representatives harmless from and against any and all claims arising out of or related to the Purchase Order, the Agreement, or the Goods and/or Services that are the subject thereof, including but not limited to: (i) any bodily injury or property damage claims, and 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, Seller’s agents, employees, affiliates, subcontractors, or any third party for whose actions Seller is responsible, or Niagara, Niagara’s agents, employees, affiliates, subcontractors or other representatives; (ii) any negligent act, misfeasance, or nonfeasance by Seller, or Seller’s agents, employees, affiliates, subcontractors, or any third party for whose actions Seller is responsible; (iii) any harm, injury, damage, or loss arising out of or in connection with the Goods or Services provided; (iv) Seller’s breach of its obligations under Section 4 (Deliverables); or (v) third party consumer claims, suits, and/or demands, including costs and expenses of investigation and settlement and attorneys’ fees and expenses, to the extent such claims arise from: (a) any act or omission by Seller, Seller’s agents, employees, affiliates,

subcontractors, or any third party for whose actions Seller is responsible, relating to or affecting the condition, quality, or character of any Goods or Services provided; or (b) trademark, copyright, trade dress, or patent infringement. Seller acknowledges and agrees that Seller must receive Niagara’s express written approval prior to settling any claim or lawsuit. Niagara reserves the right at any time to control its own defense.

- b. Worker’s Compensation. In the event of a worker’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 Goods and/or Services that are the subject of the Purchase Order (“Worker’s Compensation Claim”), Niagara shall notify Seller and Seller shall fully defend and hold Niagara harmless. Notwithstanding the foregoing, Niagara shall be permitted to settle any Worker’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, arising from, or in connection with any Worker’s Compensation Claim.
- c. Judicial Modification. If Seller’s indemnification obligations under the Agreement are 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 Agreement be judicially modified to afford Niagara the maximum indemnification allowed. This provision shall survive any purported termination of the Agreement.
- d. Third Party Claims. Notwithstanding the provisions of Section 4 (Deliverables), Seller shall indemnify, defend and hold harmless Niagara, 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 Goods, Services, or Deliverables, infringe(s) any patent, copyright, trade secret or other intellectual property right of any third party.
- e. Notice of Claims. Should Seller receive (or become aware of) any demand, service of process, notice, action, settlement, summons, complaint or the like from or by a third party alleging that a party hereto is responsible for some injury, act, omission, breach, negligence, claim, loss, violation of law, settlement, cost, expense, obligation, liability, damage, recovery, deficiency or otherwise, including, without limitation, interest, penalties, reasonable attorney fees and costs that arises out of, results from, or in any way relates to the subject matter of the Purchase Order, the Agreement, or the Goods and/or Services that are

subject thereto, then Seller shall immediately (but no later than five (5) business days after receipt, or becoming aware, of a third party claim) provide Niagara with written notice regarding each third party claim of which Seller is or becomes aware. Seller covenants and agrees that should Seller fail to provide Niagara with timely written notice regarding any third party claim, Seller hereby generally and expressly waives, relinquishes and releases, and agrees to hold harmless, Niagara from and against any and all claims capable of being asserted by Seller against Niagara in connection therewith.

18. **LIMITATION OF LIABILITY.** In no event shall Niagara be liable for any punitive, exemplary, special, incidental, indirect or consequential damages of any kind (including, but not limited to loss of profits, loss of reputation and/or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship and/or dealings between Niagara and Seller, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence, strict liability or otherwise, and regardless of whether Niagara has been advised of the possibility of such damages at the time of contracting or otherwise. Under no circumstances (whether in tort, contract, negligence, strict liability or otherwise) shall Niagara's liability exceed the amounts paid to Seller by Niagara under the Agreement for the Goods or Services giving rise to the liability.
19. **TERM AND TERMINATION.**
  - a. **Term.** The Term of this Agreement shall commence as of the date of a Purchase Order and continue for the duration of the rights and responsibilities under such Purchase Order and any other Purchase Order.
  - b. **Termination.**
    - i. **Termination for Convenience.** Niagara may terminate the Agreement or a Purchase Order in whole or in part for convenience upon thirty (30) day written notice to Seller.
    - ii. **Substitute Procurement.** In the event that Niagara is able to procure the Goods from another supplier at better pricing than provided by Seller or if another supplier is better able to achieve the technical specifications required by Niagara, then Niagara may terminate the applicable Purchase Order upon thirty (30) days' notice to Seller.
    - iii. **Niagara Customer Satisfaction.** In the event that Niagara, or Niagara's customers are dissatisfied with the Goods, Niagara may immediately terminate the applicable Purchase Order upon notice to Seller, or unilaterally adjust any volume commitments hereunder.
    - iv. **Effect of Termination.** Termination of the Agreement terminates all Purchase Orders under the Agreement. Termination of one or more Purchase Orders shall have no effect on any other Purchase Orders or this Agreement. Termination by Niagara for breach of Seller's performance obligations shall relieve Niagara of all payment obligations related to such performance, and Niagara expressly reserves all rights and remedies hereunder in such instance. In the event of Niagara's termination for convenience Niagara

shall pay for all conforming Goods and Services subject to the termination up to the date of termination.

20. **NOTICES.** Unless otherwise provided for herein, all notices and other communications required or permitted to be given to or made upon any Party hereunder shall be in writing and shall be deemed given, if delivered personally or by certified or registered mail or air courier, on the date of such delivery to such Party or its respective successors and permitted assigns at the addresses listed in the related Purchase Order or to such other address as either Party may hereafter in writing notify the other Party. If to Niagara, the notice shall be sent to the attention of the Legal Department and include email notification to [legalnotices@niagarawater.com](mailto:legalnotices@niagarawater.com).
21. **INSURANCE.** For as long as Seller owes any obligation to Niagara and/or any statute of limitations for any potential claim that Niagara may have against Seller remains unexpired, Seller shall maintain at its own expense, and shall require its agents, representatives or subcontractors who may perform work associated with this Agreement to maintain, all insurance and/or bonds required by statute, law and this Agreement with insurance limits no less than the minimum insurance requirements as described in Attachment A, attached hereto and incorporated herein by reference.

For the avoidance of doubt, the insurance requirements do not serve as a limitation on Seller's liability. Seller shall furnish Niagara with a certificate evidencing compliance with this section and providing for thirty (30) days written notice to Niagara in the event of cancellation. All certificates of insurance shall be emailed to [certracking@marshmma.com](mailto:certracking@marshmma.com) and shall name Niagara Bottling, LLC and its members, parents, directors, subsidiaries, employees, agents, representatives, affiliates and assigns as an additional insured by policy endorsement (on the Comprehensive General Liability Policy and Automobile Liability in the event Seller operates motor vehicles upon Niagara's premises) and waive all rights of subrogation against Niagara and Niagara's members, parents, directors, subsidiaries, employees, agents, representatives, affiliates and assigns. For any claims relating to this Agreement, Seller's insurance shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by Niagara. Seller hereby acknowledges that naming Niagara Bottling, LLC and its members, parents, subsidiaries, directors, employees, representatives, agents, affiliates and assigns as an additional insured by policy endorsement is a condition precedent to payment by Niagara.

Certificate Holder and Additional Insured Policy Endorsement: Niagara Bottling, LLC and its members, parents, subsidiaries, directors employees, representatives, agents, affiliates and assigns, 1440 Bridgegate Drive Diamond Bar, CA 91765 USA

22. **AGREEMENT AND INTERPRETATION.**

- a. Entire Agreement. This Agreement, inclusive of any exhibits and/or schedules attached hereto and/or incorporated herein, is an integrated document and any terms and conditions included in any shipping order form, bill of lading, invoice, quote, proposal, receipt or similar document exchanged between the Parties, that conflict with and/or are in addition these terms and conditions of this Agreement shall be of no force or effect. Notwithstanding the foregoing, the Parties expressly acknowledge that quantities, pricing and specifications included on any Purchase Order shall control in the case of any conflict with the terms and conditions herein. In no event shall Seller terms and conditions apply to this Agreement. This Agreement is intended by the Parties to supersede any and all existing agreements between Seller and Niagara in existence as of the Effective Date as to the subject matter hereof. This Agreement may be modified only by a written document specifically identifying this Agreement and signed by an authorized representative of each Party. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THE AGREEMENT.
- b. California Commercial Code. In the event Goods (as opposed to Services) dominate a Purchase Order in terms of total compensation paid, the Agreement shall serve as a written contract for the sale of Goods pursuant to the California (or other state's) Commercial Code and all 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 be available to Niagara and apply to this sale, notwithstanding anything set forth in Seller's invoices, proposals, documentation, emails, credit applications or other confirming sales memoranda. Seller further agrees that due to the complex nature of the Goods that may be the subject of the Agreement, 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 Agreement, 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.
- c. Headings. The titles or section headings of the various provisions of this Agreement are intended solely for convenience and ease of reference and shall not in any manner amplify, limit, modify or otherwise be used in, the interpretation of any such provisions.
- d. No 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. No particular waiver shall 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 the Agreement.
- e. Severability. Any provision, or portion thereof, of this Agreement that is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction only, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions, or portion of such provision, hereof in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction.
- f. Survival. All covenants, conditions, warranties, uncompleted obligations and indemnifications contained in this Agreement which may involve performance subsequent to any termination of this Agreement, or which cannot be ascertained or fully performed until after termination of this Agreement shall survive. Without limiting the generality of the foregoing, all obligations regarding confidentiality shall survive termination for two years, and Seller's indemnity and insurance obligations shall survive for as long as Seller owes any obligation to Niagara and/or any statute of limitations for any potential claim that Niagara may have against Seller remains unexpired.
- g. Interpretation. 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.
- h. Dispute Resolution and Attorney's Fees. In the event of any dispute arising out of or related to the Agreement, inclusive of a Purchase Order, the Parties shall within thirty (30) days of such dispute meet in person to discuss potential amicable resolution of the 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 of Seller's obligations. In the event the Parties are unable to adequately resolve any claim or dispute through dispute resolution and legal proceedings arise out of or relating to this Agreement, Niagara shall be entitled to recover all reasonable fees and expenses (including, without limitation, costs of investigation, reasonable attorneys' fees and litigation costs and expenses) incurred should Niagara prevail in such proceedings.
- i. Governing Law and Venue. This Agreement is to be governed by and interpreted in accordance with the laws of the State of California, USA without giving effect to its principles of conflict of laws. Any action or proceeding arising out of or in relation to this Agreement shall be resolved in the County of Los Angeles, California.

## Attachment A to Purchase Terms and Conditions

### Minimum Insurance Requirements

For as long as Seller owes any obligation to Niagara and/or any statute of limitations for any potential claim that Niagara may have against Seller remains unexpired, Seller shall maintain at its own expense, and shall require its agents, representatives or subcontractors who may perform work associated with the Agreement to maintain, all insurance and/or bonds required by statute, law and the Agreement with insurance limits no less than the minimum insurance requirements as described below.

**1. CARRIERS.** The following requirements apply to carriers, including but not limited to Finished Goods Carriers (transporters of finished goods to customers or 3PL), Spring Water Haulers, Resin Haulers (transporters of resin to Niagara facilities or 3PL storage facility), and Raw Material Haulers (transporters of raw materials to Niagara facilities or 3PL).

Workers Compensation Employers Liability <input type="checkbox"/> Per accident-bodily injury by accident <input type="checkbox"/> Policy Limit by disease <input type="checkbox"/> Per employee-bodily injury by disease	Statutory  \$500,000 \$500,000 \$500,000		
General Liability	\$2,000,000 \$5,000,000	Occurrence Aggregate	Niagara named as Additional insured
Auto Liability	\$3,000,000		Niagara named as Additional insured
Cargo Liability	\$100,000		

**2. STORAGE.** The following requirements apply to all storage providers, including but not limited to 3PL (third parties providing storage for finished product), Co-Packers (third party producers of finished goods (i.e. bottler)), and Re-Packers (third party providers of reconfigured finished goods).

Workers Com Employers Liability <input type="checkbox"/> Per accident-bodily injury by accident <input type="checkbox"/> Policy Limit by disease <input type="checkbox"/> Per employee-bodily injury by disease	Statutory  \$500,000 \$500,000 \$500,000		
Commercial Property	\$x,xxx,xxx		Value of product stores, Niagara named as Loss Payee
General Liability	\$2,000,000 \$5,000,000	Occurrence Aggregate	Niagara named as Additional insured
Warehouse Legal Liability	\$x,xxx,xxx		Value of product stored
Auto Liability	\$1,000,000		Niagara named as Additional insured

**3. CUSTOMER.** The following shall apply when product is purchased for distribution to an end customer.

Workers Com Employers Liability <input type="checkbox"/> Per accident-bodily injury by accident <input type="checkbox"/> Policy Limit by disease <input type="checkbox"/> Per employee-bodily injury by disease	Statutory  \$500,000 \$500,000 \$500,000		
General Liability	\$2,000,000 \$5,000,000	Occurrence Aggregate	Niagara named as Additional insured
Auto Liability	\$1,000,000		Niagara named as Additional insured

**4. SUPPLIERS.** The following requirements apply to suppliers or Goods and Services.

Workers Com Employers Liability <input type="checkbox"/> Per accident-bodily injury by accident <input type="checkbox"/> Policy Limit by disease <input type="checkbox"/> Per employee-bodily injury by disease	Statutory \$500,000 \$500,000 \$500,000		
General Liability	\$2,000,000 \$5,000,000	Occurrence Aggregate	Niagara named as Additional insured
Auto Liability	\$1,000,000		Niagara named as Additional insured

**5. PROFESSIONAL SERVICES.** The following requirements apply to Consultants, Professional Service Providers, Attorneys, and others who have access to Niagara's confidential information.

Workers Com Employers Liability <input type="checkbox"/> Per acid-bodily inj by accident <input type="checkbox"/> Policy Limit by disease <input type="checkbox"/> Per empl-bodily inj by disease	Statutory \$500,000 \$500,000 \$500,000		
General Liability	\$2,000,000 \$5,000,000	Occurrence Aggregate	Niagara named as Additional insured
Professional Liability Coverage (E&O)	\$5,000,000		
Auto Liability	\$1,000,000		Niagara named as Additional insured