



BANZA LLC

TERMS AND CONDITIONS OF PURCHASE

(Effective March 2019)

1. **Applicability.** These Banza LLC Terms and Conditions of Purchase (these “*Terms and Conditions*”), together with (i) any additional terms or conditions set forth in the initial purchase order issued by Buyer to Seller (as those terms are defined below) (the “*Purchase Order*”), (ii) any written supply agreement executed by Buyer and Seller relating to the Goods (as defined below) (the “*Supply Agreement*”); (iii) any other document in which these Terms and Conditions are attached or are incorporated in by reference, and (iv) any attachments, instructions or requirements furnished to Seller by Buyer (collectively, this “*Contract*”) apply to the purchase by Banza LLC (“*Banza*”) or one of its affiliates, subsidiaries, or divisions who is identified in the Supply Agreement or from whom a Purchase Order was issued (“*Buyer*”) of the goods and related services described in the Purchase Order (the “*Goods*”) from the seller party to whom the Purchase Order is addressed or who is otherwise a party to a signed agreement with Buyer for the Goods (“*Seller*”).

2. **Offer and Acceptance; Precedence.**

(a) Seller has read and understands this Contract. If Buyer and Seller are parties to a signed agreement relating to the Goods and incorporating these Terms and Conditions, Seller has accepted this Contract. If Buyer and Seller are not parties to a signed agreement, Seller accepts this Contract, and forms a binding agreement with Buyer, by doing any one of the following: (i) acknowledging its acceptance of the Purchase Order in writing; (ii) commencing any work under this Contract (including, without limitation, shipping the Goods); or (iii) engaging in any other conduct which recognizes the existence of a contract with Buyer with respect to the subject matter of this Contract. Seller’s failure to return an acknowledgment copy of a Purchase Order, even if expressly requested by Buyer, will not preclude acceptance in accordance with the foregoing terms.

(b) Unless otherwise agreed in writing with Buyer, Seller agrees that Seller’s acceptance is expressly limited to the terms of this Contract. Any additional or different terms proposed by Seller (whether in Seller’s quotation, proposal, acknowledgement, invoice or otherwise and whether or not delivered prior to, at, or after entry into this Contract or delivery of a Purchase Order) are expressly rejected by Buyer, are not part of this Contract, and are not binding on Buyer without the express prior written acceptance of such terms by Buyer’s authorized representative. Any reference in this Contract to any quotation, proposal, or any other similar document provided by Seller is solely for the purpose of incorporating the description and specifications of the Goods contained in such document, but only to the extent that such description and specifications do not conflict with the description and specifications contained in this Contract. No employee or other representative of Buyer is authorized to make any oral contract of commitment for the purchase of Goods or to modify or change the terms of the Contract unless such modification or change is acknowledged in a signed writing by Buyer’s authorized representative. The parties have agreed and it is their intent that the “battle of the forms” described in Section 2-207 of the Uniform Commercial Code will not apply to this Contract or to any invoice or acceptance form of Seller relating to this Contract.

(c) If there is a conflict in any of the documents making up this Contract, the documents will prevail over each other in the following order of precedence: (i) any document specifically agreed to in writing and signed by the parties; (ii) the terms of any Purchase Order (excluding these Terms and Conditions); (iii) these Terms and Conditions; and (iv) any other requirements or documents that make up this Contract.

3. **Duration.** Unless the Purchase Order (or a separate written agreement executed by Buyer’s authorized representative) specifies otherwise, and subject to these Terms and Conditions, the term of this Contract begins on the Purchase Order date (the “*Effective Date*”) and continues for twelve (12) consecutive months following the Effective Date (the “*Initial Term*”). Thereafter, this Purchase Order will automatically renew for successive terms of twelve (12) months (each a “*Renewal Term*” and together with the Initial Term, the “*Term*”) unless Buyer provides Seller with a non-renewal notice at least sixty (60) days before the end of the Initial Term or any Renewal Term.

4. **Quantity; Delivery; Transfer of Title.**

(a) Unless the Purchase Order (or a separate written agreement executed by Buyer’s authorized representative) requires Seller to manufacture, ship, and/or provide only a specified quantity of Goods, this Contract is a requirements contract under which Seller is required to supply Buyer’s requirements of the Goods. Buyer will determine its requirements based on the needs of Buyer’s customers and market, economic, or other conditions. Buyer may provide Seller with estimates, forecasts, or projection of its anticipated future requirements of the Goods (“*Forecasts*”). The parties agree that all Forecasts, whether delivered prior to or during the Term, are for informational purposes only, are based on information provided to Buyer by Buyer’s customers, do not express an intent by Buyer to purchase any minimum quantity or volume of Goods, are not a commitment by Buyer to purchase any particular quantity of Goods, and are not binding on either Buyer or Seller. Buyer may change the timing of scheduled shipments or direct, temporary suspension of scheduled shipments without entitling Seller to a price adjustment or other compensation.

(b) Time of delivery and quantity are of the essence. Deliveries must be made in the quantities and at the times specified in the subsequent purchase orders that relate to this Contract or otherwise in accordance with Buyer’s written directions delivered by Buyer to Seller from time to time (each, a “*Scheduling Order*”). Seller agrees to accept each Scheduling Order or other written direction issued by Buyer that is consistent with the terms of this Contract. Seller will promptly furnish all properly completed documents and other information required to satisfy all customs, tariffs or other applicable governmental regulations including, but not limited to, customs documentation, and certificates of origin, and any other document required by applicable Laws (as defined below). Should Seller experience or anticipate any delay in performing this Contract, whether or not such delay is excusable under any provision hereof, Seller shall immediately notify Buyer of such delay, its expected duration and the reasons

thereof. Neither such notification nor an acknowledgment by Buyer shall constitute a waiver of any delivery schedule.

(c) Unless otherwise specified on a Purchase Order or agreed to in writing by the parties, Seller must deliver the Goods F.C.A Seller's dock (Incoterms 2010). Title and risk of loss to the Goods passes to Buyer upon receipt of the Goods by Buyer's carrier; provided, however, if Seller is required to contract with the carrier, title and risk of loss to the Goods passes to Buyer upon Buyer's receipt of the Goods.

5. **Packing; Marking; Shipping.** Seller must (a) properly mark, pack, and ship all Goods in accordance with the requirements of Buyer, Buyer's customers, the involved carriers, and any applicable Law; and (b) label and/or tag each package according to Buyer instructions or, if no instructions are provided, in accordance with the prevailing standards of the industry. Markings must be in English unless the Contract specifies otherwise. Prior to shipment of the Goods, Seller must provide Buyer sufficient advance warning and notice in writing (including appropriate labels on the Goods, containers and packaging) of any hazardous, dangerous, or restricted material which is an ingredient in or a part of any of the Goods, together with any special handling instructions as may be necessary to advise carriers, Buyer's customer, Buyer and their respective employees of how to exercise the measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of the Goods, containers, and related packaging shipped to Buyer. Unless otherwise agreed in writing by Buyer or set forth in a Purchase Order, Seller shall bear all costs and expenses of marking, packing, and shipping the Goods.

6. **Inspection; Nonconforming Goods; Recalls.**

(a) All Goods are subject to Buyer's inspection and approval at the destination; provided, however, Seller agrees that Buyer may not perform inspections of incoming Goods and waives any right to require Buyer to conduct such inspections. In addition, Buyer or third parties designated by Buyer may, upon reasonable advance notice to Seller, inspect production processes and property and conduct testing at Seller's premises for the sole purpose of verifying Seller's performance under this Contract. Buyer's inspection, testing or failure to inspect or test the Goods does not constitute acceptance of the Goods, effect any right of Buyer, or relieve Seller of any of its responsibilities or warranties including Seller's obligation of testing, inspection, and quality control.

(b) Buyer may, at its option, reject any Goods that fail to conform strictly to the requirements of this Contract. If Buyer rejects any Goods, Buyer may elect to, without any liability to Seller, at no charge to Buyer, and at Seller's cost and expense (i) require Seller to repair or replace the Goods; (ii) purchase similar Goods from another source and reduce the quantities of the Goods under this Contract (and any corresponding payment); and/or (iii) exercise any other right(s) provided to Buyer in this Contract or available at Law. Seller agrees that Seller will not charge Buyer, and Buyer has no obligation to pay Seller, to make repairs to, or replacements of, any nonconforming Goods. Seller will be liable for all liabilities, damages, losses, costs and expenses associated with Buyer's rejection of the Goods, including, without limitation, any costs associated with inspecting, sorting, testing, repairing or replacing Goods, transportation, effecting cover, or claims by Buyer's customers. Nonconforming Goods shall not be replaced without Buyer's written permission. Nonconforming Goods will be held by Buyer for disposal in accordance with Seller's instructions at Seller's risk. Seller's failure to provide written instructions within ten (10) days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity, shall entitle Buyer, at Buyer's option, to charge Seller for storage and handling, or to dispose of the Goods, without liability to Seller.

(c) Notwithstanding the foregoing, if the Goods (or Buyer's products that incorporate the Goods as a result of the Goods) are subject to removal from the stream of commerce or the subject of a corrective action plan or other remedial action initiated by a government entity, Seller, Buyer, or Buyer's customers (a "***Recall***"), Seller shall be responsible for all matters and costs associated with the Recall, including but not limited to: (i) Consumer notification and contact; (ii) all expenses and losses incurred by Buyer in connection with such Recall (and where applicable, any products with which the Goods have been packaged, consolidated or commingled), including but not limited to refunds to customers (or their end users), lost profits, transportation costs, the costs of Buyer's overhead, systems expenses in processing any Recall, and all other costs associated therewith; and (iii) initial and subsequent contact and reporting of the Recall to any government agency having jurisdiction over the affected Goods that are the subject of the Recall. Seller shall promptly, and in no event later than twenty-four (24) hours after its decision to initiate a Recall or its receipt of a Recall notice from a government entity, inform Buyer of the Recall. Seller shall promptly inform Buyer of its becoming aware of any defect in the Goods that could reasonably be expected to cause damage, illness, injury or death to humans, animals, or property, or the noncompliance of the Goods with any applicable safety or regulatory standard or Law, whether imposed by a government entity or by Buyer. If a government agency initiates any inquiry or investigation relating to the Goods, Seller shall notify Buyer immediately thereof and take reasonable steps to resolve the matter without exposing Buyer to any liability or risk.

7. **Quality.** Seller must meet or exceed all quality requirements of Buyer and any specified customer requirements. Seller acknowledges (i) it has analyze and reviewed Buyer's specifications for the Goods and (ii) Buyer's specifications are sufficient and adequate to manufacture the Goods in compliance with this Contract. If a quality standard is not provided in the Purchase Order or otherwise provided to Seller, Seller must manufacture the Goods to the best available industry standard. In addition, Seller must comply with all quality assurance procedures specified by Buyer. At Buyer's request, Seller will furnish to Buyer, at Seller's cost, test samples of Goods as may be reasonably required by Buyer to determine if the manufacture of the Goods are in accordance with this Section.

8. **Price, Invoices, and Payment.**

(a) **Price.** Unless otherwise provided in this Contract, the prices for the Goods as set forth in the Purchase Order (or otherwise in this Contract) (i) are fixed, (ii) constitute the total prices for the delivery, manufacture, processing, testing, weighing, inspecting, marking, storing, tagging, and/or labeling of the Goods, (iii) are not subject to increase for any reason including, without limitation, changes in market conditions, increases in the cost of material, labor or overhead costs, and (iv) include, and Seller is solely responsible for, all costs and expenses relating to packaging, crating, boxing, transport, loading and unloading, customs, federal, state, provincial and local taxes (including sales, use, value-added and excise taxes), tariffs and duties, insurance and any similar fiscal contribution related to the Goods. If the price listed on the Purchase Order does not include charges or fees that Seller intends to invoice Buyer, Seller must, prior to accepting any Purchase Order for the Goods, notify Buyer in writing to receive an updated

Purchase Order with the correct price listed. Seller's shipment of the Goods is Seller's representation and warranty that the price on the Purchase Order is the total price to be charged to Buyer for the Goods. Seller represents and warrants that the price charged to Buyer for the Goods is at least as low as the price charged by Seller to other buyers who purchase a substantially similar volume of the Goods from Seller.

(b) **Invoices.** Seller must submit all invoices within five (5) days following Seller's delivery of the Goods. Each invoice must be accompanied by an appropriate proof of delivery for the Goods delivery, which may include proof of shipment along with appropriate shipment tracking information to allow Buyer to confirm the Goods were delivered. All invoices must be sent to the address or electronic mail address provided by Buyer in order to be processed for payment. All invoices for delivered Goods must be in English and include, as applicable, the purchase order number, quantity of pieces in the shipment, the price of the Goods, and the total amount due, net weights, Seller's name, and any other information necessary for identification of the Goods delivered. The currency in the invoice must be in U.S. dollars. Seller's submission of an invoice constitutes a written certification that the quantities of Goods and the amounts contained on such invoice are true and accurate and that such Goods have been delivered in accordance with, and Seller is otherwise in compliance with, the terms of this Contract.

(c) **Payment.** Unless otherwise agreed in writing by Buyer or set forth in a Purchase Order, Seller's invoice will be due and payable ninety (90) days following the date that is the later of (i) Buyer's receipt of a complete and verifiable invoice, or (ii) Buyer's receipt of the Goods. Seller agrees to accept payment by check or other cash equivalent including electronic funds transfer. Payment is deemed to be made on the date Buyer's check is mailed or funds transfer is initiated. If a payment date falls on a non-business day in the State of Michigan, the payment due date will be the next business day. Payment of an invoice shall not constitute acceptance of Goods or otherwise be deemed a waiver of any breach of the Contract by Seller (including a breach of any warranty) or any amount otherwise due to Buyer, and does not limit or impair Buyer's right to assert any legal or equitable remedy. Regardless of the items listed on Seller's invoice, Buyer will only be obligated to pay for the Goods listed in a Scheduling Order and in the quantity required by Buyer. Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may direct, of the absence of any liens, claim, encumbrances, or other rights on the Goods.

(d) **Setoff and/or Recoupment.** Notwithstanding the above, all amounts due from Buyer or its affiliates, subsidiaries or divisions ("**Buyer Group**") to Seller or its parent company or their affiliates, subsidiaries or divisions ("**Seller Group**") will be considered net of indebtedness of any member of Seller Group to any member of Buyer Group. In addition to any right of setoff, deduction or recoupment provided or allowed by Law, any member of Buyer Group may, without notice to Seller or any other member of Seller Group, set off against, and deduct and/or recoup from (i) any amounts due or to become due from any member of the Buyer Group to any member of the Seller Group or (ii) any amounts due or to become due from any member of the Seller Group to any member of the Buyer Group, including for damages resulting from breaches by Seller of its obligations under this Contract or any other contract between the parties.

9. **Audit.** Upon request by Buyer, Seller will provide Buyer or its authorized representatives copies of all of Seller's books, records and accounts, in any way related to (i) Seller's performance under this Contract (including Sellers' processes and procedures), (ii) the Goods, or (iii) any payment or other transaction occurring in connection with this Contract, in each case, for the purpose of auditing Seller's compliance with the terms of this Contract, including Seller's charges for the Goods. In addition, Seller will permit Buyer and its authorized representatives with access during regular business hours, or outside of regular business hours upon reasonable request, to Seller's management personnel and facilities to monitor, inspect, and audit Seller's operational performance of this Contract including, without limitation, the quality of the Goods and Seller's manufacturing processes. Seller agrees to cooperate fully with Buyer in connection with any audit or inspection.

10. **Changes.** Seller will promptly make any changes Buyer directs in writing with respect to the Goods or the general scope of this Contract, which may include, as applicable, changes in the recipes, formulae, specifications, processing, inspection, testing, quality control, methods of packing and shipping or the date or place of delivery. If any such change affects the cost or time of performance, Seller must provide Buyer a written notice of a claim for adjustment, along with all sufficient information and documentation in such form and detail as Buyer may direct, regarding the effect on Seller's costs or time of performance resulting from such change within five (5) days after Buyer's notice to Seller of such change. If necessary under the circumstances, the parties will agree on an equitable adjustment (up or down) to the price or delivery terms of this Contract. Seller may not make any changes with respect to the Goods or scope of this Contract without Buyer's prior written consent, which may be given or withheld in Buyer's sole discretion; *provided, however*, if Seller learns of a possible change to the Goods that may reduce the costs to produce the Goods, improve the quality of the Goods, or otherwise may be beneficial to Buyer, Seller will promptly inform Buyer of the possible change in writing.

11. **Subcontracting.** Seller will not subcontract any of its obligations under this Contract without the prior written consent of Buyer. Any such consent of Buyer will not release Seller from, or limit any of, Seller's obligations, responsibilities, or warranties under this Contract. If Buyer approves a subcontractor, Seller warrants and guarantees that such subcontractor's performance will satisfy all requirements applicable to Seller under this Contract. Seller is solely responsible for all means, methods, techniques, sequences and procedures and for coordinating all portions of the work necessary to complete the Contract. Notwithstanding Buyer's approval of a subcontractor, Seller's is solely responsible for all payments due to that subcontractor. The direction and supervision of Seller's and any permitted subcontractor employees rest exclusively with Seller or such subcontractor.

12. **Proprietary Rights.**

(a) **Work Product.** Upon request, and to the extent applicable to the Goods, Seller must furnish to Buyer all concepts, documents, reports, ideas, designs, drafts, models, patterns, recipes, formulae, packaging, samples and any other results produced by Seller specifically related to Seller's performance of this Contract ("**Work Product**"). Work Product does not include concepts, documents, reports, ideas, designs, drafts, models, samples, patents, trademarks, trade names, recipes, formulae, packaging, copyrights and any other results or intellectual property rights produced by Seller prior to accepting the Contract or that Seller can prove by written documentation was produced by Seller without reference to Seller's obligations under this Contract.

(b) Ownership of Work Product; Assignment and Transfer. Unless otherwise agreed in a signed writing by Buyer, all Work Product is solely owned by Buyer. Seller agrees that all copyrightable materials of the Work Product will be deemed a “work made for hire” for the purposes of Title 17 of the United States Code, Section 101 et seq. In the event that (i) any of the Work Product may not be considered “work made for hire,” or (ii) ownership of all right, title and interest to the legal rights in and to the Work Product, including, without limitation, all worldwide copyrights, industrial design rights, trademarks, patents or other intellectual property rights therein, does not vest automatically and exclusively in Buyer, then, without further consideration, Seller agrees to, and hereby does irrevocably, assign, convey, and otherwise transfer to Buyer, and Buyer’s respective successors and assigns, all such right, title and interest, in and to all Work Product and any derivative works thereof. When Goods are made to Buyer’s specifications, the specifications are owned by Buyer and shall not be used by Seller for any purpose except in the performance of this Contract and shall not be disclosed to any other person without Buyer’s written consent.

(c) License. To the extent the Goods incorporate any copyrights, industrial design rights, trademarks, trade secrets, patents or other intellectual property rights (collectively, “*Intellectual Property*”) that is owned, invented, authored, licensed to, or developed by Seller and necessary for Buyer to incorporate the Goods into the products Buyer sells to its customers, Seller hereby grants Buyer and its customers a nonexclusive, royalty-free, irrevocable, worldwide right and license, with the right to grant sublicenses, to use such Intellectual Property, and to make, have made, use, sell, offer for sale, or import into the United States (and all other countries in which Seller may have rights in such Intellectual Property) any processes, services, suppliers, or inventions incorporating or embodying the Goods, for the sole purpose of fulfilling Buyer’s requirements to its customers or in furtherance of Buyer’s responsibilities under this Contract or any contract that relates to the Goods furnished under this Contract. The foregoing license does not permit Buyer to use Seller’s Intellectual Property on a stand-alone basis and does not grant Buyer the right to separately exploit Seller’s Intellectual Property.

13. Confidentiality.

(a) Existing NDA Governs. If a confidentiality agreement or non-disclosure agreement (the “*NDA*”) exists between Buyer and Seller covering the Goods, this Contract, or the relationship between Buyer and Seller, the term of such NDA shall be and is hereby extended to be terminus with this Agreement, and such NDA is incorporated herein by reference and shall govern the use and disclosure of any confidential or proprietary information exchanged between Buyer and Seller.

(b) No NDA. If there is no NDA between Buyer and Seller covering this Contract, the following terms apply: all Intellectual Property and all other confidential and proprietary information provided by Buyer to Seller under this Contract including, without limitation, any samples, drawings, know-how, processes, recipes, formulae, and other technical, business, or financial information, whether provided orally, in writing, by demonstration, or otherwise (collectively, “*Confidential Information*”): (i) is owned by Buyer; (ii) must be kept confidential by Seller and may not be disclosed by Seller to third parties without the express prior written consent of Buyer; *provided, however*, Seller may disclose Buyer’s Confidential Information to Seller’s employees, attorneys, agents, and subcontractors who have a “need to know” the Confidential Information for purposes of carrying out Seller’s obligations under this Contract as long as such individual and entities are bound by confidentiality terms no less restrictive than those contained in this Contract; and (iii) may not be used by Seller other than is required for Seller to perform its obligations under this Contract. The confidentiality restrictions in this Section 13(b) do not apply to information which is (A) already known by Seller prior to the date of this Contract and without breach of the confidentiality restriction that Seller was subject; (B) acquired by Seller from a third party which was not, to the knowledge of Seller, under an obligation to Buyer not to disclose such information; (C) which is or becomes publicly available through no breach by Seller of confidentiality restrictions to which Seller is or was subject; or (D) independently developed by Seller without the use of Buyer’s Confidential Information. Notwithstanding the above, Seller may disclose Buyer’s Confidential Information if required by a judicial or government request, requirement, or order as long as (x) to the extent not prohibited by law, Seller gives Buyer written notice prior to such disclosure and (y) Seller only discloses that portion of Confidential Information required to comply with such requirement, request, or order. Upon the termination or expiration of this Contract, Seller agrees to return, or destroy (to the extent feasible), Buyer’s Confidential Information in Seller’s possession.

14. Warranty.

(a) Seller’s Warranty. Seller warrants to Buyer, its customers, and their end-users that all Goods will: (i) conform, in all respects, to the specifications, standards, drawings, samples, descriptions, quality requirements furnished, specified or approved by Buyer for the Goods or otherwise provided by Seller to Buyer for the Goods; (ii) be useable and merchantable; (iii) be of good quality; (iv) be free from defects, latent or otherwise, in design (unless Buyer’s provided the entire design), materials and workmanship; (v) comply with, and will be manufactured, processed, tested, certified, weighed, packaged, wrapped, inspected, marked, sold, stored, tagged, shipped, labeled, and registered accurately in compliance with, all Laws; (vi) be new, of the highest quality, and conveyed by Seller to Buyer with good title, free and clear of all liens, claims, encumbrances, interests or other rights of Seller or third parties; and (vii) not, either upon delivery or in the future, infringe upon, violate or misappropriate any present or future patent, trademark, service mark, trade secret, copyright, proprietary or other intellectual property right of any third party. Seller acknowledges that Seller knows of Buyer’s intended use of the Goods and expressly warrants that the Goods are fit, safe, and sufficient for the particular purposes intended by Buyer, Buyer’s customers, and their end-users. To the extent Seller is providing a service to Buyer, Seller warrants such service will be performed in a competent and workmanlike manner.

(b) Additional Food Warranties Related to Goods. Without limiting the foregoing, if the Goods constitute food, will otherwise be incorporated into food products sold by Buyer, or are otherwise subject to the Laws described in this Section 14(b), Seller represents and warrants the Goods (i) are not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act (the “*FDCA*”) or any other Laws, in each case, at the time of shipment and delivery; (ii) are not articles which cannot be introduced into interstate commerce under the provisions of the FDCA; (iii) shall comply with and remain in compliance with the Food Safety Modernization Act and all of its implementing regulations (collectively “*FSMA*”); (iv) are otherwise in compliance with any Laws, regulations, or requirements overseen by, enforced by, or under the jurisdiction of the U.S. Food and Drug Administration (“*FDA*”); (v) are free of and, if processed, have been processed since the harvesting of all raw agricultural commodities used therein solely in facilities that do not process or handle, genetically modified organisms or “bioengineered” food or a food that may be

“bioengineered,” as defined in 7 U.S.C. §1639, nuts, soy, animals or animal products, such as but not limited to eggs, honey, gelatin or dairy products, and (vi) unless otherwise agreed in writing by Buyer, (A) have been certified by an independent testing facility to be “gluten-free,” as defined in 21 CFR 101.91(a), (B) have been verified by an independent testing facility having the qualifications and applying standards to certify the Goods do not contain any genetically modified organism (“GMO”), (C) are 100% natural, (D) contain nothing artificial, including but not limited to any “artificial flavor,” as defined in 21 CFR 101.22(a)(1), any “artificial color,” as defined in 21 CFR 101.22(a)(4) or anything “synthetic,” as defined in 7 CFR 205.2, and (E) have a glycemic index that is less than or equal to 55. Seller acknowledges that Buyer represents the products that incorporate the Goods as non-GMO and/or gluten-free and Seller agrees that the Goods do not contain any ingredients that would make Buyer’s products in violation those representations. Seller also represents and warrants to Buyer that Seller is not acting as an “exempt” business under FSMA and that it will only utilize vendors and service providers that comply with FSMA and do not claim exemptions (either complete or partial) even if they are or might be exempt based on the businesses’ size and/or sales within a local marketplace. Buyer shall not serve as the Foreign Seller Verification Program (“FSVP”) importer pursuant to 21 CFR §1.500, nor shall Buyer be declared by Seller or others as the FSVP importer in any entry documentation under any circumstances unless Buyer has expressly and explicitly notified Seller in writing that Buyer shall assume such FSVP and importing responsibilities. In the event of Buyer’s assumption of such responsibilities, Seller hereby agrees to cooperate with Buyer in facilitating compliance with Buyer’s FSVP obligations and other requirements under the FDCA, including but not limited to FSMA. Seller’s cooperation shall include, but not be limited to, providing documents requested by Buyer to facilitate compliance with its FSVP obligations and other requirements under the FDCA, including but not limited to FSMA. Documents to be shared upon request by Seller may include, but are not limited to, FDA registration forms, HACCP (hazard analysis and critical control points) plans, product recall program documentation, Seller company details, Seller specifications hazard and risk analyses, food safety plans, audits reports, food safety records, inspections records and or reports, investigations, reports and other documents from government agencies, review of inspections and reports from third-parties, product or environmental sampling and testing results.

(c) **Incorporation of other Warranties.** All warranties are intended to provide Buyer with protection from all warranty claims brought against Buyer by its customers. This includes, but is not limited to, meeting any customer-required warranties relating to the Goods or products items into which the Goods are incorporated or used in connection with. All customer-required warranties are incorporated into these Terms and Conditions by reference. Seller agrees the warranties provided by Seller to Buyer under these Terms and Conditions (i) are in addition to all other warranties, express or implied, provided by Law; (ii) extend to the Goods’ future performance; (iii) survive Seller’s delivery of the Goods and Buyer’s receipt, inspection, testing, acceptance, use of the Goods and Buyer’s payment for the Goods; (iv) may not be limited or disclaimed by Seller and (v) do not commence until the Goods are received by Buyer’s ultimate end-user (which may be Buyer’s customer or the end users of those customers). Buyer’s approval of Seller’s designs, recipes, formulae, materials, processes, specifications, subcontractors, or similar requirements will not be construed to relieve Seller of any warranties. The warranty period for Seller’s warranties under these Terms and Conditions are the longer (x) the period provided by law or (y) the warranty period required by Buyer’s customers for the products the Goods are incorporated into (including any products supplied by Buyer). Any applicable statute of limitations on Buyer’s claims for breach of warranty will commence no earlier than the date Buyer or its customer discovers the breach of the applicable warranty.

(d) **No Buyer Warranty.** **SELLER ACKNOWLEDGES THAT ANY SPECIFICATIONS, RECIPES, FORMULAE, STANDARDS, SAMPLES, DESCRIPTIONS, OR OTHER QUALITY REQUIREMENTS PROVIDED BY BUYER RELATING TO THE GOODS, AND ANY INTELLECTUAL PROPERTY ASSOCIATED THEREWITH, IS PROVIDED BY BUYER TO SELLER ON AN “AS IS, WHERE IS” BASIS, AND THAT BUYER MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS WHATSOEVER WITH RESPECT THERETO, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE OR ANY OTHER WARRANTIES THAT MAY BE IMPLIED UNDER APPLICABLE LAW, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.**

15. **Information Security.** Seller represents that it currently follows industry best practices to prevent any compromise of its information systems, computer networks, or data files (“**Systems**”) by unauthorized users, viruses, or malicious computer programs which could in turn be propagated via computer networks, email, magnetic media or other means to Buyer. Seller shall immediately notify Buyer if the security of Seller’s Systems is breached or compromised in any way. Seller shall apply appropriate internal information security practices, including, but not limited to, using appropriate firewall and antivirus software; maintaining countermeasures, operating systems, and other applications with up to date virus definitions and security patches; installing and operating security mechanisms in the manner in which they were intended and sufficient to ensure the Buyer will not be impacted nor its operations disrupted; and permitting only authorized users access to computer systems, applications, and Retail Link. Seller shall: (i) use up-to-date antivirus tools to remove known viruses and malware from any email message or data transmitted to Buyer; (ii) prevent the transmission of attacks on Buyer via the network connections between Buyer and the Seller; and (iii) prevent unauthorized access to Buyer systems via the Seller’s networks and access codes. In accordance with all applicable US and international privacy Laws, Seller shall safeguard confidential protected individually identifiable personal information (health, financial, identity) which is received, transmitted, managed, processed, etc. and require its subcontractors or agents to meet the above security precautions.

16. **Buyer Property.**

(a) Seller agrees that Buyer is under no obligation to pay for or otherwise furnish any design work, drawings, tooling, machinery, or other equipment (collectively, “**Property**”) for the proper performance of this Contract by Seller. If, however, Buyer furnishes or otherwise pays for any Property (whether in full or amortized over time), then such Property and all specifications, spare parts, trial parts, ancillary products, and related software, drawings and other documentation relating to such Property (including any replacement thereof, or any additions, attachments, improvements, accessories and repairs related to the foregoing) (collectively “**Buyer Property**”), is and will remain property of Buyer. Seller agrees that all right, title, and interest in Buyer Property is held by Buyer and Buyer Property is being held by Seller on a bailment basis only.

(b) Seller will (i) properly house, maintain, and safely store Buyer Property on Seller’s premises and, at its own expense, keep Buyer Property in good working condition and replace when necessary; (ii) not use, or permit others to use, Buyer Property for any purpose other than for performance under this Contract; (iii) prominently mark Buyer Property as property of Buyer; (iv) refrain from commingling Buyer Property with the

property of Seller or with that of a third party; (v) adequately insure Buyer Property against loss or damage, including but not limited to maintaining full fire and extended coverage insurance for replacement value and naming Buyer as an additional insured and loss payee, as applicable; (vi) take reasonable steps to ensure that Buyer Property does not become subject to any liens or other claims; (vii) not move Buyer Property to another location whether owned by Seller or a third party, without the prior written consent of Buyer, and (viii) upon request by Buyer, provide a written inventory of all Buyer Property.

(c) Upon request by Buyer, Seller shall provide access to permit Buyer to inspect the Buyer Property. Seller must use Buyer Property in a careful and safe manner and shall indemnify, defend and hold Buyer completely harmless against any-and-all claims, liabilities, expenses and damages arising from or related to the installation, use, storage, or repair of the Buyer Property. Upon request by Buyer, Seller must immediately release the Buyer Property, prepare it for shipment, and deliver it to Buyer F.C.A. Seller's Plant (Incoterms 2010), properly packed and marked in accordance with the requirements of Buyer's designated carrier. Seller agrees it cannot hold or retain possession of Buyer Property from Buyer for any reason and Seller will immediately release Buyer Property to Buyer or its designee at any time, with or without cause, and without payment of any kind.

17. **Compliance with Laws.** During the Term, Seller represents and warrant it is in compliance with, it will perform all of its obligations under this Contract in accordance with, and the Goods and any related packaging conform fully to, any applicable statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state or local government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any arbitrator, court or tribunal of competent jurisdiction including, without limitation, the requirements of (as applicable) the FDA, the U.S. Department of Agriculture, the U.S. Environmental Protection Agency, the U.S. Consumer Products Safety Commission, the U.S. Federal Trade Commission, the U.S. Customs and Border Protection, the U.S. Treasury, and the U.S. Department of Labor regulations and any other law or requirement relating to data protection and privacy, wages, hours and conditions of employment, disclosure, subcontractor selection, discrimination, and occupational health/safety (collectively, "**Laws**"). Seller further represents and warrants that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of the Goods under this Contract. In addition, Seller will always be in compliance with, and agrees the Goods have been manufactured in accordance with, the U.S. Fair Labor Standard Act (including, without limitation, Sections 6, 7 and 12 of the U.S. Fair Labor Standards Act). Upon Buyer's request, and without limiting Seller's obligations hereunder, Seller will provide Buyer with: (i) written certification of Seller's compliance with the foregoing; (ii) written certification of the origin of any ingredients or materials in the Goods; and (iii) any additional information regarding the Goods requested by Buyer such that Buyer may comply in a timely manner with its obligations under applicable Law.

18. **Compliance with U.S. Export Control Laws and Regulations.** Seller agrees to comply with all applicable U.S. export control Laws including the requirement for obtaining any export license or agreement, if applicable (collectively, "**Export Controls**"). Without in any way limiting the foregoing, Seller agrees that it will not transfer any Export Controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without authority of an export license, agreement or applicable exemption or exception. Seller shall provide prompt written notification to Buyer in the event of any violation or potential violation of the Export Controls, or the initiation or existence of a government investigation that could affect Buyer or Seller's performance under this Contract.

19. **Force Majeure.** Any delay or failure of either party to perform its obligations under this Contract will be excused to the extent that the delay or failure was caused by an event beyond such party's control, without such party's fault or negligence and that by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, acts of God, acts of a governmental entity, embargoes, explosions, riots, wars, acts of terrorism, fires, floods, epidemics, quarantine, restrictions, or freight embargoes) (each, a "**Force Majeure**"). Notwithstanding anything in this Section 19 to the contrary, (i) labor problems of Seller, its subcontractors and/or its suppliers, including, without limitation, lockouts, strikes and slowdowns (ii) the inability of Seller, its subcontractors and/or its suppliers to obtain power, materials, labor, equipment or transportation, (iii) Seller's or its subcontractor's financial inability to perform, (iv) changes in the cost or availability of materials, components, services, or market conditions, and (v) Seller actions or contract disputes with subcontractors are not, in each case, a Force Majeure and will not, in each case, excuse performance by Seller under this Contract or otherwise excuse performance by Seller on theories of force majeure, commercial impracticability, or otherwise, and Seller expressly assumes these risks. Seller must give Buyer prompt notice of any event or circumstance that is reasonably likely to result in a Force Majeure and the anticipated duration of such Force Majeure. Seller must use all diligent efforts to end the Force Majeure, ensure that the effects of any Force Majeure are minimized, and resume full performance under this Contract. During any Force Majeure, Buyer may, at its option, purchase the Goods from other sources and reduce the quantities (and any corresponding payment) set forth in this Contract without liability to Seller. If requested by Buyer, Seller will, within five (5) days of such request, provide adequate assurances that the delay will not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance (within a commercially reasonable time not to exceed ten (10) days from the date of the request) that the delay will cease within thirty (30) days, Buyer may immediately cancel this Contract without liability to Seller of any kind or nature. Without limiting the foregoing, Seller, at its expense, shall take such actions as are necessary to ensure the supply of goods to Buyer for a period of at least ninety (90) days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts.

20. **Insurance.** Seller must carry and maintain, at its own expense, the following insurance coverage in reasonable amounts: workers compensation, comprehensive general liability (including products/completed operations, contractual liability, person injury, and blanket contractual liability), and, if applicable, automobile liability. Seller will name Buyer as an additional insured under all such insurance policies. Seller must also fully insure any and all property of Buyer which is in Seller's possession (including any work-in-process for which Buyer has paid for whether or not title has passed) against loss or damage to the extent of its insurable value, without deductible, at Seller's cost, and designate Buyer as the loss payee. Without limiting the foregoing, Seller must obtain and maintain, at its own expense, general liability insurance in an amount of at least \$5 million per occurrence or other amount agreed to in writing with Buyer. All insurance coverage shall be primary coverage to Buyer regardless of any other coverage Buyer receives or is entitled to receive. Seller shall provide Buyer with certificates of insurance evidencing the foregoing coverages, which shall provide that they cannot be terminated or coverages reduced without at least 10 days prior written notice to Banza, and shall thereafter provide

such certificates of insurance upon the renewal of such policies and upon five (5) days prior written notice thereof to Banza, together with the underlying policies if requested by Banza.

21. **Event of Default.** The following occurrences shall constitute events of default by Seller (each, an “*Event of Default*”): (i) Seller repudiates, breaches, or threatens to repudiate or breach any of the terms of this Contract or any of its obligations hereunder including, without limitation, Seller’s warranties; (ii) Seller fails to timely perform any of its obligations under this Contract or fails to provide Buyer with adequate and reasonable assurance of Seller’s ability to timely perform any of Seller’s obligations under this Contract including Seller’s ability to deliver Goods conforming to the requirements of this Contract; (iii) Seller conditions the continued full performance of its obligations under this Contract on Buyer’s agreement to modify the terms of this Contract; (iv) Seller becomes insolvent or there is filing of a voluntary or involuntary petition in bankruptcy by or against Seller, or there is an appointment of a receiver or trustee for Seller, or there is an execution of an assignment for the benefit of Seller’s creditors, provided that such petition, appointment or assignment is not vacated or nullified within thirty (30) days of such event; (v) Seller sells all or substantially all of its assets to, or fifty percent (50%) or more of its voting shares are sold (whether directly or indirectly) to an entity that is a competitor of any entity in the Buyer Group (and Seller must immediately notify Buyer of such a transaction). Upon the occurrence of an Event of Default under subsections (i)-(iii) of this Section, such occurrence shall not be deemed an Event of Default if Seller corrects such failure or cures such breach (to the extent correctable or curable) within a commercially reasonable time period (but in no case exceeding fifteen (15) days). All Events of Default will be deemed to occur on the date the specific event occurs and any written notice from Buyer describing an Event of Default is only provided to Seller as a courtesy and will not be deemed to start any cure period unless expressly set forth in the written notice from Buyer.

22. **Termination.**

(a) **Termination.** In addition to any other rights or remedies of Buyer under this Contract or applicable Law, Buyer may terminate this Contract or any of its obligations under this Contract, in whole or in part (i) upon an Event of Default (subject to the provisions of Section 21) (a “*Termination for Cause*”), or (ii) at any time for any reason upon at-least ten (10) business days prior written notice to Seller (a “*Termination for Convenience*”). Buyer shall have the right to a Termination for Cause or a Termination for Convenience notwithstanding the existence of a Force Majeure event. The effective date of any termination will be on the date of Buyer’s written notice of termination or such later date as set forth in the notice. Buyer shall have no obligation to Seller, Seller’s subcontractors, Seller’s suppliers, or any other entity of any kind upon a Termination for Cause. In the event Buyer did not have a right to a Termination for Cause, Seller agrees any termination notice by Buyer to Seller will be deemed a Termination for Convenience. Notwithstanding anything contained herein, and in recognition of Buyer’s commitments to its customers are made in reliance of Seller’s commitments under this Contract, Seller has no right to terminate this Contract.

(b) **Termination Claim.** Upon a Termination for Convenience, (i) Seller shall immediately stop all work under this Contract and shall immediately cause any and all of its suppliers or subcontractors to cease such work and (ii) Buyer will, following Seller’s compliance with Section 22, pay to Seller, without duplication, the price for finished and completed Goods that conform to the requirements of this Contract and delivered to Buyer. Notwithstanding the foregoing, payments made under this Section will not exceed the purchase price that otherwise would have been payable by Buyer for finished Goods that would have been produced by Seller under this Contract on the date of termination pursuant to outstanding Scheduling Order. Buyer will not be liable, and will not be required to make payments to Seller (whether arising for a Termination for Convenience, Termination for Cause, or otherwise) directly or indirectly, on account of claims by Seller’s subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general and administrative burden charges, or any other charges from termination of this Contract or otherwise. Seller shall furnish to Buyer, within thirty (30) days after the effective date of termination, Seller’s termination claim, which shall consist only of the approved items listed above. Buyer may audit Seller’s records before or subsequent to payment to verify Seller’s termination claim. Any payment of a termination claim will not be deemed a waiver of any of Buyer’s other rights arising under this Contract or applicable Law. A termination claim is Seller’s sole and exclusive remedy for a Termination for Convenience. Seller’s failure to timely submit a termination claim shall be a bar to any future action on such claim. Buyer shall have no obligation to Seller, Seller’s subcontractors, Seller’s suppliers, or any other entity of any kind upon a Termination for Cause.

23. **Transition Assistance.** Upon the expiration or termination of this Contract for any reason, whether in whole or in part, Seller agrees to take all actions as may be reasonably required (and requested) to transition the Goods from Seller to a successor supplier. Seller agrees that such transition assistance will include all industry standard transition assistance and Seller shall, upon request and at Buyer’s option, (a) provide all notices necessary or desirable for Buyer to resource this Contract to the successor supplier; (b) provide a sufficient inventory bank of Goods to ensure the orderly transition to the successor; (c) provide to Buyer or the successor supplier all property furnished by or belonging to Buyer or any of Buyer’s customers in as good a condition as when received by Seller, reasonable wear and tear excepted; (d) assign to Buyer any or all supply contracts or contracts for raw material or components relating to this Contract; and (e) continuing supply the Goods to Buyer for up to ninety (90) days after the termination or cancellation of the Contract as the prices in effect at the termination or cancellation of the Contract. Unless otherwise agreed by the parties, Seller’s obligations under this Section 23 will (i) not exceed ninety (90) days after the expiration or termination of this Contract and (ii) continue to be governed by these Terms and Conditions.

24. **Indemnification.** In addition to any other indemnification set forth in this Contract, Seller will indemnify, defend, hold harmless, and reimburse Buyer, its present and future directors, officers, shareholders, members, employees, attorneys, agents, representatives, parents, affiliates, subsidiaries, customers, and their users (each an “*Indemnified Party*”) for, from, and against any and all claims, costs, demands, losses, damages, liabilities, causes of action, judgments, settlements, awards, fines, penalties, assessments, and expenses (including costs of defense, mediation, settlement and reasonable attorneys’ and other professionals’ fees), however described or denominated, incurred by the Indemnified Parties or brought by any third party (including, without limitation, federal, state, or local governmental authorities or Seller’s employees, subcontractors, laborers, agents, and assigns) against an Indemnified Party arising out of, incidental to, or resulting from Seller’s performance of the Contract including (a) any negligent or willful act or omission of Seller or its respective subcontractors, agents, employees or other representatives; (b) Seller’s, its subcontractors’, agents’, employees’ or representatives’ commission of any Event of Default or other breach of any provision of this Contract (including, without limitation, Seller’s warranties or any Recalls); (c) any injury, illness, or death of any person or damage to property as a result of the delivery, sale, resale, labeling, use, or consumption the Goods; (d) Seller’s, its subcontractors’, agents’, employees’ or representatives’ violation of any Law; (e) a request or demand

by Seller to modify or change the terms of this Contract or legal proceedings involving Seller that in the reasonable judgment of Buyer may impact Seller's continued or future performance under this Contract (including, without limitation, if Seller is a party to a court case or proceedings in which Buyer is required to appear, participate, or monitors in order for Seller to continue performance under this Contract); or (f) any seizure, detention or destruction of any Goods, whether under the authority of any governmental authority, court order, or with the commercially reasonable approval of Buyer or Buyer's customer. These indemnity and defense obligations include claims of Seller's employees, agents, contractors and subcontractors and claims alleging or involving Buyer's joint, concurrent, or comparative negligence. Notwithstanding anything contained herein, Buyer shall have the right, at Seller's expense, to select and retain counsel of its choosing in defense of the foregoing and to enter in any settlement or compromise related to the foregoing.

25. **Remedies.** The rights and remedies reserved to Buyer in this Contract shall be cumulative, and in addition to all other or further remedies provided at Law. Without limiting any rights or remedies of Buyer under this Contract or at Law, in the event that Seller fails or refuses to deliver Goods, or otherwise repudiates any provision of this Contract, Seller agrees that Buyer may seek specific performance of Seller's obligations under this Contract (including permanent or temporary injunctive relief) without the need to post a bond or any other type of security. In the event this Contract is issued or renewed after Seller becomes a debtor in bankruptcy, Buyer shall be entitled to all of its attorney's or other professional fees arising from or relating to the bankruptcy case, including for monitoring the case.

26. **General Terms.**

(a) **Notices.** All notices, claims and other communications to Buyer required or permitted under this Contract will be made in writing and will be effective only upon receipt by Buyer at the address specified in an executed agreement between Buyer and Seller, or, if there is no executed agreement, in the Purchase Order. Seller's failure to provide any notice, claim, or other communications to Buyer in the manner and within the time period specified in this Contract will constitute a waiver by Seller of any and all rights and remedies that otherwise would have been available to Seller upon making such notice, claim, or other communication. In addition to any notification obligation in this Contract, Seller will promptly notify Buyer in writing of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any of the following events or occurrences: (i) any failure by Seller to perform any of its obligations under this Contract; (ii) any delay in delivery of Goods under this Contract; (iii) any defects or quality problems relating to the Goods; (iv) any deficiency in Buyer specifications, samples, prototypes or test results relating to this Contract; or (v) any failure by Seller or its subcontractors to comply with applicable Laws.

(b) **No Advertising; Customer Communications.** Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the Goods or use any trademarks or trade names of Buyer in Seller's advertising or promotional materials. Seller may not make direct contact with Buyer's customers with respect to the subject matter of this Contract unless specifically directed to by Buyer or where Seller has obtained Buyer's written permission prior to any contact. In the event Buyer's customer contacts Seller directly, Seller is to immediately notify Buyer and disclose the content of the communication.

(c) **Severability.** If any clause in this Contract is determined by a court of competent jurisdiction to be invalid, the invalidity of such clause shall not affect the validity of the remainder of this Contract.

(d) **Non-Solicitation.** Seller agrees that it will not, without the prior written consent of Buyer, solicit, recruit, hire, or otherwise employ or retain any employee of Buyer to perform any of the Seller's obligations as stated herein. This restriction includes any former employee of Buyer who has performed work for Buyer related to any of Seller's obligations as stated herein any time during the period commencing two years preceding the date of the Contract and ending on the date of Seller's final completion of work under the Contract. Further, during the term of this Contract and for two years thereafter, Seller agrees that it will not, without the prior written consent of Buyer, solicit or recruit or assist in the recruiting or soliciting for employment, including as a consultant, any employee of Buyer. The provisions of this Section will not restrict in any way the right of Seller to solicit or recruit generally, and will not prohibit Seller from hiring any Buyer employee who answers an advertisement directed at a general audience or who otherwise voluntarily applies for hire without having been personally solicited or recruited by Seller.

(e) **Assignment.** Seller may not assign this Contract (by operation of law or otherwise), whether whole or in part, or assign or delegate its rights or obligations under this Contract (by operation of law or otherwise), whether whole or in part, in each case, without Buyer's prior written consent, which may be withheld in Buyer's sole discretion. Any purported assignment in violation of this Section will be null and void and of no force or effect.

(f) **Governing Law; Venue; Statute of Limitations.** This Contract, and all related documents and matters arising out of or relating to this Contract, are governed by, and will be construed in accordance with, the Laws of the State of Michigan, without regard to any conflict of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract. Buyer and Seller each irrevocably and unconditionally agree that the sole and exclusive forum and venue for any legal or equitable action or proceeding arising out of or in connection with this Contract will lie in the United States District Court for the Eastern District of Michigan, the courts in the State of Michigan sitting in Oakland County, and any appellate court with jurisdiction over such courts. Each party hereby irrevocably and unconditionally submits to the sole and exclusive personal jurisdiction of such courts and Seller agrees not to bring any action, litigation, or proceeding in any other court.

(g) **Waiver.** Except as otherwise provided in this Contract, the failure of either party at any time to require performance by the other party of any provision of this Contract shall in no way affect the right to require performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this Contract constitute a waiver of any succeeding breach of the same or any other provision.

(h) **Relationship of Parties.** Seller and Buyer are independent contracting parties and nothing in this Contract will make either party the agent or legal representative of the other for any purpose, nor does it grant either party any authority to assume or to create any obligation on behalf

of or in the name of the other. Seller's personnel will in no event be considered employees of Buyer and Seller will remain responsible for all wages, taxes, benefits, payroll deductions, remittances and other obligations with respect to its personnel. Unless Banza is expressly identified as the Buyer in the Supply Agreement or the Purchase Order, Seller acknowledges and agrees that neither Banza nor any other subsidiary, affiliate, or division of Banza (other than the specified Buyer) will have any liability to Seller under this Contract (including the Supply Agreement and Purchase Order) and Seller hereby waives all claims and demands against such parties.

(i) **No Third Party Beneficiary.** Except as otherwise provided in this Contract, Seller acknowledges and agrees that the rights and interests of the parties under this Contract are intended to solely benefit Buyer and Seller.

(i) **Interpretation.** For purposes of this Contract (i) whenever the word "including" (or any variation thereof) is used, it is deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; (iii) section headings are for convenience or reference only, and do not affect the meaning of this Contract; (iv) references to "Sections," and "Exhibits" (if any) are to sections and exhibits in these Terms and Conditions and attached to these Terms and Conditions unless otherwise indicated; (v) words such as "herein" and "hereunder" refer to Contract as a whole; and (vi) any agreement, instrument, statute, law, regulation or rule defined or referred to herein shall be deemed to mean such agreement, instrument, statute, law, regulation or rule as from time to time amended, modified or supplemented, and includes, in the case of agreements and instruments, references to all attachments thereto and instruments incorporated therein.

(k) **Survival.** Sections 1-2, 4-9, 11-18, 21-25, and 26 (together with any other section or provision that by its terms should survive and remain valid) of the Terms and Conditions shall survive and remain valid after the expiration or termination of this Contract.

(l) **LIMITATION OF LIABILITY.** IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR ANY OTHER THIRD PARTY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR UNDER ANY OTHER LEGAL OR EQUITABLE THEORY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT THIS CONTRACT OR OTHERWISE RELATING TO THE GOODS OR SERVICES, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY OR PROPERTY DAMAGES, ATTORNEY'S FEES OR ANY OTHER RELATED COSTS OR EXPENSES, ANY DIRECT OR INDIRECT LOSS OF PROFITS, REVENUE, OR BUSINESS OPPORTUNITY, DOWNTIME, DELAY DAMAGES OR ANY OTHER ECONOMIC LOSS, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE BY BUYER OR BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

(m) **CONSULTATION WITH COUNSEL.** BUYER AND SELLER ACKNOWLEDGE THAT THEY HAVE BEEN GIVEN THE OPPORTUNITY TO CONSULT WITH COUNSEL OF THEIR CHOICE BEFORE ENTERING INTO THIS CONTRACT AND ARE DOING SO WITHOUT DURESS, INTIMIDATION, OR COERCION AND WITHOUT RELIANCE UPON ANY REPRESENTATIONS, WARRANTIES, OR COMMITMENTS OTHER THAN THOSE REPRESENTATIONS, WARRANTIES, OR COMMITMENTS SET FORTH IN THIS CONTRACT.

(n) **JURY TRIAL WAIVER.** BUYER AND SELLER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF BUYER AND SELLER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONTRACT OR ANY OTHER DOCUMENT PERTAINING TO THIS CONTRACT.

(o) **Entire Agreement.** This Contract, including any attachments, exhibits or supplements attached hereto or incorporated herein by specific reference, constitutes the entire agreement between Seller and Buyer with respect to the subject matter of this Contract and supersedes all prior or contemporaneous oral or written discussions, understandings, representations and agreements. This Contract is being entered into among competent persons who are experienced in business. Therefore, no provision in this Contract may be construed against any party as the drafter. This Contract may only be modified in writing signed by the parties' authorized representatives.

***End of Banza LLC Terms and Conditions of Purchase ***

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