

TERMS AND CONDITIONS  
OF  
FLORIDA BOTTLING, INC. (d/b/a LAKEWOOD JUICE COMPANY) ("Purchaser" or "Buyer")

Definitions and Parties

Supplier shall mean the supplier, seller, vendor or party to the Purchase Order other than Buyer

Order Fulfillment

1. No verbal changes. Purchase Orders may only be amended, modified or changed by a written document signed by both parties.
2. Confirmation of Purchase Orders. Confirmation of Purchase Orders must be given within two (2) business days of receipt. Such confirmations must include confirmation of pricing, payment terms, freight terms, and delivery date. Supplier may not make any substitutions of Product of any kind without the prior written consent of Buyer.
3. Shelf Life. Vendor agrees that all products delivered shall have a remaining shelf-life of at least twenty-four (24) months unless otherwise agreed to in writing by the parties.

Compliance Confirmation of Purchase Orders

4. Compliance with Specifications. Supplier shall not ship any order until all specifications meet Buyer's Purchase Order and Buyer's specification sheet. Supplier acknowledges that Supplier is in possession of Buyer's product specification, including all parameters for delivery.
5. Sample Approval. Prior to the effectiveness of the Purchase Order, Supplier must provide Buyer with a sample of the Products covered by a Purchase Order for Buyer's approval. If Buyer does not approve of the sample, the Purchase Order shall be null and void, and Buyer shall have no obligations or liabilities to Supplier, including no obligation to accept deliver of the Products or make any payments to Supplier.
6. Subcontractors. Supplier shall ensure that all of its suppliers, vendors, and subcontractors shall comply with these Terms and Conditions. Supplier shall be liable for any breach of these Terms and Conditions by any Supplier Party (as defined herein).
7. Certifications. Required certifications and statements must be current, submitted, and approved prior to the fulfillment of a Purchase Order, including but not limited to third-party Quality Systems Audit, Organic Certificate, Kosher Certificate, Insurance, Non-GMO Certificate, and Certificate Letter Continuing Guarantee, Supplier Questionnaire, among others. Supplier shall notify Buyer of any loss of or lapse in any of the foregoing certifications. Supplier is solely responsible for the costs and fees relating to maintaining the foregoing certifications.
8. Compliance with Laws. Supplier represents and warrants to Buyer that the Products will (a) be manufactured, harvested, produced, packaged, labeled, distributed, tested, stored, shipped and/or delivered, marketed and/or advertised, sold and/or invoiced in compliance with all

applicable international, federal, state and local laws, statutes, codes, treaties, ordinances, judgments, decrees, directives, injunctions, orders of any court, arbitrator or regulatory authority, rules, regulations, guidances, interpretations and authorizations of any regulatory authority applicable to either of the parties, the transactions contemplated hereby, and/or the Product, including, but not limited to, all quality standards regulations and good manufacturing practices, including, but not limited to: (1) the United States Food, Drug and Cosmetic Act (21 U.S.C. §301 et. seq.), including the regulations promulgated thereunder (FDCA); (2) the Juice HACCP Regulation (21 C.F.R. §120 et. seq.); (3) the Food Safety Modernization Act, including the regulations promulgated thereunder (FSMA) (P.L. 111-353); (4) the Food Additive Amendment of 1958, including the regulations promulgated thereunder; (5) the Food Allergen Labeling and Consumer Protection Act of 2004; (6) the U.S. Federal Fair Packaging and Labeling Act of 1966, including the regulations promulgated thereunder; and rules, regulations and guidances issued by the US Food and Drug Association (FDA) or other regulatory authority (collectively, the “Applicable Laws”); (b) not be an article which may not, under the provisions of Section 404 of the FDCA, be introduced into interstate commerce; (c) not be adulterated or misbranded within the meaning of the Applicable Laws to which the Product is shipped; (d) not contain any food additive, pesticide or other substance which is unsafe for human consumption within the meaning of any Applicable Laws; and (e) not infringe any right of any third party, including, but not limited to any intellectual property rights.

Supplier further represents and warrants that (a) it has complied with all laws and regulations related to employment, including but not limited to the Fair Labor Standards Act and that the Products are not sourced from entities that engage in human trafficking (as defined by the United Nations and generally thought of as the recruitment, transportation, transfer, harboring or receipt of persons by threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim); and (b) Supplier, and its affiliates, contractors, subcontractors, suppliers, vendors, and their employees, officers, directors, agents and other representatives (individually, a “Supplier Party,” and, collectively, the “Supplier Parties”) will comply with all applicable anti-corruption Laws (including the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act of 2010 and the Canada Corruption of Foreign Public Officials Act) and that no Supplier Party has made any payments in connection with these Terms and Conditions which could violate any applicable anti-corruption Laws.

9. Inspection. Standard inspection of the Product will be performed within 48 hours upon delivery by Buyer’s or recipient’s quality control department. Any non-conformance due but not limited to temperature delivery, missing seals, spoilage, missing paperwork, among others will be within 72 hours<sup>1</sup> reported via e-mail by Buyer [or recipient]<sup>2</sup> to Supplier. However, there may be times where non-conformance or spoilage is not immediately visible and Buyer will need to report as soon as it becomes evident.
10. Reimbursement of Losses. Supplier agrees to reimburse Buyer and/or the Buyer Indemnified Parties (as defined herein) from any losses resulting from Supplier's failure to deliver Product in

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<sup>1</sup> **Note to Draft:** Is this timing reasonable?

<sup>2</sup> **Note to Draft:** If the product is delivered to a third party, does the third party report to you and then you report to Supplier or does the third party report directly to the Supplier?

conformity with the Purchase Order. In the event that Supplier fails to deliver the Product in conformity with the specification, the Purchase Orders, or these Terms and Conditions, and Supplier is not able to cure such failure within **[forty-five (45) days]**<sup>3</sup> after delivery of written notice to it specifying the nonconformity and requiring remedy of the nonconformity, Buyer shall be free to purchase the Products from any other supplier to replace such undelivered or nonconforming Products for so long as such failure shall continue, and to pursue such other remedies as may be available at law or equity. In such event Supplier shall be solely responsible for all reasonable costs of cover incurred by Buyer, including without limitation, costs of testing, storage, return freight and insurance, disposal or resale of non-conforming Product, shelf space recovery costs and expenses, including, but not limited to any slotting fees or free fills, and any difference in price for substitute the Products purchased by Buyer. Nothing contained in this paragraph 10, or in this Agreement, shall in anyway indicate that Supplier is the exclusive supplier of the Product to Buyer. Buyer is free to purchase the Product from any other supplier at anytime.

#### Logistics

11. Sanitary Food Transportation Act: Supplier acknowledges Buyer shall reject any Products (including Products subject to the Perishable Agricultural Commodities Act) for violations of the Sanitary Food Transportation Act of which Buyer is aware, including failure to maintain required records. Supplier assumes responsibility for ensuring Products rejected by Buyer are not sold or distributed unless a qualified individual determines the Products is safe consistent with 21 CFR § 1.908. For purposes of this paragraph the terms shipper, carrier, loader and receiver mean those terms as defined in 21 CFR § 1.902. Supplier acknowledges Buyer shall not serve as shipper, carrier or loader unless expressly agreed to in writing by Buyer. In circumstances where Buyer arranges for transportation, Supplier shall not be responsible for serving as shipper, or carrier unless Supplier is acting as a motor carrier for the Products. In the event that the Supplier is acting as a loader, Supplier assumes the responsibilities of providing the carrier with all necessary sanitary specifications for the carrier's vehicle and transportation equipment to prevent the Products transported from becoming unsafe consistent with 21 CFR §1.908(b)(1) and providing operating temperatures for Products that require time/temperature control for safety consistent with 21 CFR § 1.908(b)(2).
12. Freight Charge Approvals. Supplier should not ship orders until Buyer's logistics team has approved freight charges and has provided delivery appointment information.
13. Delivery Hours. Hours for receipt of Products are subject to change, and it is the responsibility of the Supplier Party to confirm the times during which delivery will be accepted, including any protocols for the delivery.
14. Delivery Refusal. Third party storage has the right to refuse deliveries not in conformance with the Sanitary Food Transportation Act.
15. Delivery Requirements. Supplier shall provide all documents necessary to comply with Applicable Laws (the "**Necessary Documents**"). In addition, Supplier shall meet the following requirements (the "**Requirements**"): In the event that Supplier fails to provide the Necessary

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<sup>3</sup> **Note to Draft:** What is a reasonable cure period in your industry?

Documents, meet the Requirements, or otherwise take any actions or fail to take any actions that delay delivery of the Products to Buyer or its recipients, then any payment terms, including any payment discounts will be extended by thirty (30) days from the date that Buyer or recipient receives the Products that meet the Requirements, and include the Necessary Documents. For example, assume the following facts: (i) payment terms are net 30 from date of invoice; (ii) the invoice date is February 1<sup>st</sup>; (iii) the Products are scheduled to be delivered on February 10<sup>th</sup>; (iv) the Products arrive without the Necessary Documents; (v) the Necessary Documents are provided on February 15<sup>th</sup>, then the payment will be due net 30 from February 15<sup>th</sup> not February 1<sup>st</sup>.<sup>4</sup>

- Inland transportation requires Certificate of Analysis (with chemical, physical, sensory parameters and microbiological results) per lot, Bill of Lading, Packing List or Drum Manifest, and Weight Tickets (when applicable) on or before this order's arrival
- Ocean shipments additionally require FDA Notice, Importer Security Filings, 10+2 Completed Form, and Commercial Invoice.
- Transaction Certificate required per load.
- Tanker trucks must follow Juice Product Association Guidelines, have a type 5 kosher wash and an organic final rinse with ambient temperature water. Temperature at the time of loading must be confirmed by driver and signed in Bill of Lading.
- Each shipment shall include a statement of country of origin for the Products delivered.

#### 16. Palletization

- If Products are delivered on pallets, Supplier must utilize food quality 4-Way American Standard 40" x 48" pallets.
- If Products are not delivered on pallets, Supplier must inform the Buyer logistics team as anticipatory coordination is required. Labor charges for unloading may be assessed.

#### Product Liability Insurance

##### 17. Compliance with insurance requirements. Seller is required to provide product liability insurance proof of coverage with the following limits:

- General Liability including (including contractual liability, products liability, distributor liability, bodily injury and property damage insurance): \$1,000,000 (each occurrence)/\$2,000,000 with Buyer as and additional insured.
- Auto Insurance coverage of \$1,000,000 (applicable only when delivering Product)
- Umbrella Liability coverage of \$1,000,000
- Workers Compensation, Employers Liability: Statutory coverage of \$500,000
- Product Recall coverage of \$500,000 with Buyer as an additional insured

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<sup>4</sup> **Note to Draft:** Does this example accurately reflect what we discussed?

## Legal

18. Confidentiality. As used in these Terms and Conditions, the term “Confidential Information” shall mean non-public, secret, proprietary, or confidential written, oral or electronic information, including, but not limited to all trade secrets formulas, processes, equipment, specifications, company policies and procedures (including, but not limited to, product recall and special situations procedures), warehouse locations, logistics, financial information, marketing information, customer lists, know-how, and business data which Buyer considers to be proprietary and confidential. Supplier agrees that the Confidential Information is and will remain the property of Buyer. For the avoidance of doubt, Confidential Information shall include all information disclosed to Supplier by Buyer, whether prior to or after any contract or agreement had been entered into by the parties, and even if such information is disclosed by a third party, including, but not limited to recipients of the Products on behalf of Buyer, Supplier shall treat as confidential and shall not use, disclose or otherwise make available any Confidential Information of Buyer to any person other than employees, attorneys and consultants of Supplier solely for the purposes of and in accordance with these Terms and Conditions; provided, however, that Supplier shall disclose Confidential Information of Buyer only to those employees, attorneys, consultants and other affiliates who have a need to know and who are under proper burden of confidentiality. This paragraph 18 shall survive the term of any agreement between the parties.
19. Supplier acknowledges that its obligations hereunder are necessary and reasonable in order to protect Buyer and the business of Buyer, and expressly agrees that monetary damages would be inadequate to compensate Buyer for any breach or threatened breach by Supplier of any covenants and agreements set forth herein. Accordingly, Supplier acknowledges that any such breach or threatened breach will cause irreparable injury to Buyer and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Buyer will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages. No bond or other security will be required in connection with such injunctive relief. This paragraph 18 shall survive the term of any agreement between the parties.
20. No Infringement. Supplier represents and warrants that all Products and their manufacture, packaging, sale, use, consumption, and resale, and any other related materials and services provided by Supplier, shall not infringe any patent, copyright, trade secret, or other intellectual property or other right of any third party, including any moral rights of authors or creators.
21. Force Majeure. Neither party shall be liable for delay in performance or failure to perform when such delay or failure is due to unforeseen causes beyond its control and without its willful fault, including but not limited to, acts of God, acts of terrorism, governmental action, fires, floods, hurricanes, earthquakes, epidemics, quarantine restrictions, riots, insurrections, strikes, freight embargoes, destruction of Buyer’s plant due to unforeseen events, or unusually severe weather. A plant breakdown by Supplier is not considered conditions for delay or failure of performance.
22. Warranty. Supplier expressly represents and warrants that the Products provided pursuant to any Purchase Order shall (1) conform to Buyer’s specifications; (2) be merchantable; (3) be free from defects in materials and workmanship; (4) be fit and sufficient for the purpose for which the Products are intended and/or which is stated on any packaging, labeling or advertising; (5) be

delivered free of liens or encumbrances of any kind; and (6) be manufactured, harvested, produced, processed, packaged, labeled, distributed, tested, stored, shipped, marketed, sold and/or invoiced in compliance with the Applicable Laws. Any shipment found to be in violation of these representations and warranties may be rejected by Buyer.

23. Indemnity. Supplier shall indemnify, defend and hold Buyer, its parents, subsidiaries, affiliated corporations, distributors, retailers, customers or end-users and their respective officers, directors, managers, members, shareholders, employees and agents (individually, a "Buyer Indemnified Party," and collectively, the "Buyer Indemnified Parties") harmless from and against any and all liability, costs, expenses, losses, claims and damages (including court costs and attorneys' fees) (collectively, "Damages") suffered or incurred by any Buyer Indemnified Party, either directly or in connection with a third party claim or otherwise as a result of or otherwise arising from or in connection with, directly or indirectly, (1) (a) any breach or default in the performance by any Supplier Party of any covenant or agreement of Supplier contained in these Terms and Conditions (including the exhibits hereto); and (b) any breach or inaccuracy in any representation or warranty made by Supplier herein, (2) any acts or omissions by any Supplier Party, and (3) the Products, including, but not limited to: (a) claims for property damage, personal injury or death; (b) claims by regulatory authorities; (c) claims for refunds or credits due to the weight of the package or poor product quality; (d) claims arising out of the use of herbicides, pesticides or other chemical products of any kind in connection with the Products; (e) claims relating to defect in the packaging, labeling, packing, shipping and/or invoicing of Products; and (f) Damages arising out of any Product investigation or recall, which shall include, without limitation, Damages arising out of (i) the preparation of all consumer notices related to any recalled Products, (ii) Buyer responding to and preparing any consumer or press inquiries and announcements, (iii) Buyer responding to and coordinating with FDA any recall of which FDA is notified, and (iv) Buyer hiring any independent expert to conduct a health hazard evaluation. This indemnification shall not apply to Damages, which were caused solely by the gross negligence of Buyer.
24. Recalls. If Supplier becomes aware of any potential Product quality, safety or labeling defect or error, Supplier shall notify Buyer promptly in addition to any notification required by Applicable Law. Supplier shall consult with Buyer regarding any evaluation and decision to place the Product on hold, to retrieve such Products or to recall Products due to suspected quality, safety or labeling defect or error. Supplier shall have a system in place to enable Supplier to trace promptly the entire history of a particular lot of Product while in Supplier's possession. Supplier agrees to provide to Buyer, upon request, a full reconciliation of all Products packaged, stored and shipped by Supplier. If any regulatory authority requires the recall of a Product or if Buyer or Supplier wish to voluntarily recall a Product, Buyer and Supplier shall coordinate such recall consistent with Buyer's reasonable standards, and with industry standards and requirements, as applicable. Supplier will reimburse Buyer for all costs and expenses incurred by Buyer resulting from any recall, except to the extent the recall was caused by the negligent acts or omissions of Buyer.
25. Books and Records. Supplier will keep and shall cause all Supplier Parties to keep records of its business relating to the Products, as required by Applicable Law. Buyer, or its audit representatives, shall have the right at any reasonable time or times to examine, audit and copy such records.

26. **Regulatory Audits.** Supplier will inform, and shall cause the Supplier Parties to inform Buyer of any audit, inspection report, deficiency letter or written regulatory compliance observation, which contains any significant adverse findings that relate to the Products or the facilities used to manufacture, harvest, produce, process, package, test or store the Products, within one (1) business day of receipt of notice from such regulatory authority. Buyer shall have the right to have representatives present at Supplier Party's premises (i) whenever work is being conducted on behalf of Buyer; and/or (ii) during an audit or inspection by a regulatory authority that is directly related to the Product. Supplier shall provide Buyer, within two (2) business days of receipt, with copies of the audit findings, inspection reports, deficiency letters or written regulatory compliance observation that relate to the Products of the facilities used to manufacture, harvest, produce, process, package, test, or store the Products. Supplier shall develop and deliver to Buyer, for its approval an action plan within five (5) business days of receiving any adverse audit findings, inspection report, deficiency letter or written regulatory compliance observation. Buyer shall have three (3) business days from receipt of such action plan to provide written approval of such plan or propose any modifications to Supplier. If the action plan is directly related to the manufacturing, harvesting, producing, processing or testing of the Products then Supplier shall, as soon as practical, implement such action plan, as modified by Buyer. If the action plan is directly related to the facilities or the storage of the Products, then Supplier shall, as soon as practical, implement such plan, but is not required to incorporate Buyer's proposed modifications, however, Supplier must provide Buyer with a reasonable written explanation explaining why such proposed modifications were not adopted. All costs with respect to any mandatory or voluntary corrective actions shall be borne by Supplier. Notwithstanding the foregoing, Supplier shall notify Buyer's designated quality assurance representative immediately by telephone of the occurrence and results of any such inspections or audits or any other information which indicates the presence of (a) toxins or allergens in any of the Supplier Parties' facilities which are or may be considered by health authorities as being indicative of either unsanitary practices or public health concern, or (b) any harmful bacteria (including without limitation e. coli, Salmonella or Listeria) present in any of any of the Supplier Parties' facilities or in any raw materials or finished Products wherever located.
27. **Quality Audit.** Buyer shall have the right, upon reasonable notice to any Supplier Party and during regular business hours, to inspect and audit the facilities being used by any Supplier Party to manufacture, harvest, package, test and/or store the Products, including all ingredients or raw materials incorporated therein, to assure compliance by Supplier with these Terms and Conditions, Buyer's Specifications, and Applicable Laws. Each Supplier Party shall, within fifteen (15) calendar days, remedy or cause the remedy of any deficiencies, which may be noted in any such audit or, if any such deficiencies cannot reasonably be remedied within such fifteen (15) calendar day period, present to Buyer a written plan to remedy such deficiencies as soon as possible. Failure to comply with the requirements of this paragraph 26. Supplier acknowledges that granting Buyer certain audit rights shall in no way relieve Supplier of any of its obligations under these Terms and Conditions, nor shall such provisions require Buyer to conduct any such audits.
28. **Attorneys' Fees.** In the event Buyer is the prevailing party in any suit, action, or other proceeding arising under or relating to these Terms and Conditions, Buyer will be entitled to recover its

reasonable costs, expenses, and attorneys' fees in addition to all other remedies available to Buyer at law or in equity.

29. Entire Agreement. These Terms and Conditions (including all Purchase Orders) is the parties' entire agreement with respect to Products, and supersedes any prior agreements, oral or written, with respect to subject matter hereof. If there is a conflict between these Terms and Conditions any Purchase Order, or any other agreement between the parties relating the subject matter contained herein, the terms of these Terms and Conditions will control. Any amendment, modification or change to these Terms and Conditions must be in writing and executed by Buyer. The provisions set forth in paragraphs 3, 4, 8, 10, 18, and 22-29, inclusive, shall survive the termination of any purchase order or other contract or agreement between the parties.