

## **SALES TERMS AND CONDITIONS**

### **I. GENERAL**

The following Terms and Conditions (“Terms”) are applicable to all sales of goods (“Product”) and “Goods”) by DFI Organics, Inc. (“Seller”), a Delaware corporation with registered offices located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 to any individual or entity with whom Seller has executed a sales contract or is negotiating a sale (“Buyer”). The acceptance of any order is expressly conditioned upon Buyer’s consent to these Terms. No interlineations, deletions, modifications or amendments to these Terms shall be binding on Seller unless agreed to and accepted in writing by Seller.

Any other standard contract terms incorporated in a writing signed by the parties in their transactions shall govern unless expressly stipulated otherwise herein.

All sales are subject to written confirmation by Seller. Receipt by Buyer of Seller’s acknowledgment of an order without prompt written objection thereto shall constitute acceptance by Buyer of these Terms.

Buyer must respond to Seller’s notice of acknowledgment or order acceptance within five (5) business days of receipt of such acknowledgment or Buyer will waive its right to cancel the order.

### **II. PRODUCT PRICE QUOTATIONS**

The quotations or tenders are noncommittal and non-binding in nature. No contract shall arise until a written acknowledgment from Seller accepting the Buyer’s order, is sent by Seller to the Buyer. Because no contract is formed until Seller acknowledges Buyer’s order, these Terms shall supersede any and all terms of Buyer. Seller will be entitled to adjust agreed prices on the basis of the average change in the cost price of the goods or services to be delivered and/or activities to be performed by the Seller. The adjustment of agreed prices and rates will apply as of the beginning of the first month after the Buyer has been notified in writing of the adjustment.

Seller shall have the right to charge usage fees for multiple packaging and sustainable materials, or bundling and unbundling fees. All prices quoted by Seller are exclusive of taxes, packaging costs, duties, customs and shipping unless otherwise specified in writing.

The weights, dimensions, capacities, performance ratings, characteristics and other data on Seller’s catalogs, prospectus, circulars, advertisements, price lists and instructions sheets are mentioned only as general information. They are only approximate and shall not bind Seller.

### **III. DELIVERY**

Unless otherwise specified by the parties in writing, the goods are to be delivered “ex works”, at Seller’s place of business (as “ex-works”/ EXW is defined by Incoterms® 2010). In the absence of the designation of other delivery terms in a sales contract, the Incoterms® 2010 apply. The method and agency of transportation and routing will be designated by the Seller. In the event the Buyer

requests alternative shipment or routing, extra packing, shipping and transportation charges thereby resulting will be for the Buyer's account. Seller is not responsible for any damage in shipment

#### **IV. DELAYS IN DELIVERY**

Any specific shipping date designated in writing signed by the Seller shall be interpreted as estimated and in no event shall dates be construed as falling within the meaning of "time is of the essence". The Seller shall not be responsible for any delays in filling orders, nor shall it be liable for any loss or damages resulting from such delays. If a specific shipping date is specified in the order or later agreed to by the Seller, then the Seller shall not be liable for any delays in filling such order caused by delays resulting from any and all conditions beyond the control of Seller, including but not limited to, (a) accidents to or malfunctions of Seller's or Seller's subcontractors' or suppliers' machinery; (b) differences with employees, strikes, or labor shortage; (c) fire, floods, hurricanes or other natural disaster; (d) supplier or subcontractor delays, including any quantity or quality defects; (e) delays caused by an instrumentality of the United States Government or any government or any agency; (f) delays in transportation; (g) restriction imposed by any governmental regulation, whether valid or invalid; or other cause beyond the control of the Seller, or any condition without the sole fault or negligence of the Seller.

Under no circumstances shall Buyer or Buyer's customer be entitled to any damages for Seller's failure to ship on time, and Buyer agrees to indemnify, defend and hold Seller harmless against any costs and expenses related to any claims for lost profits or other consequential damages based on Seller's failure to deliver timely.

If Buyer does not accept or pick up the goods at the date specified in the order or later agreed to by Seller, the delivery of the goods shall nevertheless be deemed accepted by Buyer who shall therefore pay for the goods delivered. The storage of the goods arranged by Seller will be at the risk and expense of the Buyer. Seller shall further be entitled, to the exclusion of any other remedy for the Buyer's failure to take the products, to recover any expenses properly incurred in performing the contract and not covered by payments received for the goods delivered.

#### **V. PAYMENT**

Unless otherwise agreed in writing, the payment for goods shall be received by Seller within seven (7) calendar days net from the date of the issuance of the invoice. Buyer must submit any dispute regarding the invoice to Seller within seven (7) calendar days from the date of the issuance of the invoice. After that time period, Buyer is deemed to have approved the invoice. In the event Seller feels insecure concerning payment by Buyer, Seller reserves the right to require cash or letter of credit or Cash Against Documents or other method in Seller's sole discretion. The price does not include any present or future Federal, State or Local property, sales, use, excise, license, gross receipts or other taxes or assessments which may be applicable to, imposed upon or result from this transaction in connection with these Terms and/or the Products.

The Buyer agrees to pay any such taxes or reimburse payment of such taxes by Seller. In the event payment is not received when due, interest shall be due at the rate of one and one half percent (1.1/2%), or the maximum permitted by law, on the unpaid portion of the invoice sum for each period of thirty (30) days or part thereof from the due date. Seller has the right to refuse to deliver

goods or services if Buyer is past due on any of its debts to Seller. Furthermore, Seller shall have the right to retake all goods immediately unless other written arrangements have been made concerning payment only if Buyer is past due. Buyer agrees to make all goods available, shipping ready, for Seller, within five (5) days of receiving notice from Seller of its intention to retake the goods.

Buyer shall pay all of Seller's costs of collection of any amounts past due, including, but not limited to attorneys' fees, arbitration and/or court costs, witness fees, travel and lodging, and other similar costs. Seller will be entitled to apply payments made by Buyer first to pay those claims it deems appropriate, including interest, late charges, costs of collection, and other similar costs and/or fees.

Buyer, or its affiliates or assignees, will not be entitled to suspend its payment obligations to Seller, claim any right to compensation and/or to offset its payment obligations with any obligations of Seller to Buyer, with such obligations being those set forth in these Terms or other contract between Buyer and Seller. Buyer will not be entitled to dissolve the contract with Seller if Buyer is in default.

If Buyer does not fulfill its payment obligations to Seller completely or within the applicable payment period, Seller will be entitled to suspend its obligations to Buyer completely and/or not to perform them.

## **VI. SECURITY INTEREST**

In order to protect and secure payment of all debts due and owing from Buyer and until Seller has been paid in full, Buyer hereby grants to Seller a security interest in the Products, and all proceeds and all accounts receivables resulting from the sale of the Products. In connection therewith, Buyer hereby authorizes Seller to take all necessary steps to file such financing statements and exhibits with the proper authorities, including the filing of a UCC-1 financing statement.

Until the Buyer has paid for the Products in full, Buyer shall not pledge, mortgage, encumber, or create or suffer to exist a security interest in the Products in favor of any person other than Seller unless written approval of such other security interest is given by Seller. Additionally, Buyer agrees to keep the Products insured to their full value until payment is received by Seller. In the event Buyer sells the goods to a third party before payment in full is received by Seller, Buyer agrees to secure its security interest in the goods at the time of sale to its customer in order to protect Seller's interests to the greatest extent possible.

## **VII. INSPECTION; RETURNS**

Buyer shall inspect the goods immediately upon delivery including, without limitation, the number, weight, quality and condition of the goods at its own risk and expense. Unless Seller receives a written complaint with full particulars from Buyer regarding any defective goods or services or other complaints within five (5) business days from the date the goods or services are delivered, the goods shall be deemed to have been delivered in good condition and that the delivery is accepted. The Buyer agrees that this five-day inspection period is reasonable and allows it

sufficient time to inspect the goods or allow a third-party to inspect the goods. Seller shall have the right to inspect the delivered goods and/or to have the goods inspected by a third-party of its choosing. Buyer agrees to compensate Seller for any costs associated with the inspection if the goods are deemed by Seller to be conforming. Acceptance of the returned goods does not imply acknowledgment by the Seller of the reason for the return. Goods returned by the Buyer to the Seller will remain at the Buyer's risk and the Buyer will owe the agreed amounts until the Seller has credited the Buyer for these goods. The goods accepted by the Buyer from the Seller, which the Buyer has put fully or partly into use, treated, processed or delivered to others will be considered to conform to the contract. Acceptance of the goods shall operate as an absolute and unconditional waiver of any claim relating to defect or non-conformity in the goods.

#### **VIII. LIMITED WARRANTY OF GOODS AND SERVICES; DISCLAIMER AND LIMITATION OF LIABILITY; DAMAGES**

Seller warrants, for one (1) month after delivery, unless indicated to the contrary in writing signed by Seller, that the goods covered by this contract are produced according to usual practices, customs, standards, specifications and tolerances of trade prevailing in the country of origin at the time of production and shall be free from defects in design, material, workmanship and shall conform to Seller's specifications. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ALL OTHER WARRANTIES, AND SPECIFICALLY THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. Goods showing only minor defects, not affecting the function of the goods shall be accepted by the Buyer and shall not give rise to any claim against the Seller. All claims of damages of any kind during delivery are barred unless reported in writing by the Buyer to the Seller, with full disclosure of particulars within five (5) days after delivery as defined herein.

All disputes or claims regarding product quality and condition, including its organic status and origin, shall be conclusively resolved by Seller's Organic Certification and/or the analysis provided by Seller at time of delivery performed by a recognized authority, including, without limitation, the Control Union World Group and/or the USDA National Organic Programme ("NOP") and Control Union Certifications. All certifications or analysis as to quality and condition provided by Buyer or any other party are void and without legal effect. All determinations as to quality and condition provided by Seller are final. Seller expressly disclaims any warranty of quality or condition made by any third-party producer, manufacturer or original seller.

Where a defect in the goods is discovered within one (1) month of delivery from the Seller, the Buyer shall be entitled, at Seller's option, to either credit or replacement of the product. SELLER SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, DIRECT OR INDIRECT COSTS OR LOSSES UNDER ANY CIRCUMSTANCES TO THE BUYER, ANY SUCCESSORS IN INTEREST OR ANY BENEFICIARY OR ASSIGNEE OF THESE TERMS. Seller will not replace where Buyer has rejected the goods or where the defect is the result of use or handling in a manner, circumstances, or for purposes other than those that have been approved or instructed by the Seller.

The maximum liability of Seller under any circumstances shall be the price actually paid by Buyer to Seller for the good that is proven to be defective exclusive of taxes and fees. SELLER's liability with respect to the product sold to BUYER shall be limited to the warranty provided herein. SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES OF LAW, WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKING, ACTS OR OMISSIONS RELATING THERETO.

Without limiting the foregoing, Seller specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, services, down time, shut down or slow down costs, or for any other types of economic loss, and for claims of BUYER's customers or any third party for any such damages. SELLER SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY THIRD PARTY TO ASSUME FOR IT, ANY COMMITMENT OR ASSUMPTION OF LIABILITY OF ANY KIND IN CONNECTION WITH ITS PRODUCTS.

#### **IX. INTELLECTUAL PROPERTY RIGHTS**

All intellectual property rights to, ownership of, and interest in all goods, trademarks, trade names, logos, distinctive marks, designs, and other materials created and/or made available by the Seller hereunder or within the framework of the relationship between Buyer and Seller are vested exclusively in the Seller. The Buyer shall not reproduce, transfer, grant, assign, license or use the goods, distinctive marks, and designs and other materials created and/or made available by the Seller and/or otherwise act as maker of and/or party entitled to such rights, except in accordance with these Terms.

The Buyer shall not remove or alter indications concerning intellectual property rights and concerning the confidential nature of information from goods, services, programs, works, distinctive marks, inventions, designs, models and other materials created and/or made available by the Seller and goods delivered. The Buyer shall not alter, or have altered, modify, or have modified, adapted or otherwise reconfigured, the goods, services, programs, works, distinctive marks, inventions, designs, models and other materials created and/or made available by the Seller.

Seller makes no warranty concerning the appropriateness of the goods or services to the purposes for which Buyer or its customers are acquiring same. Moreover, Seller makes no warranty that the goods or services or intellectual property of Seller does not infringe the rights of third parties.

#### **X. CANCELLATION PRIVILEGES**

Seller may cancel any contract if Buyer is in default of the payment obligations pursuant to a contract between the Parties, or if in the sole judgment of Seller, Buyer's financial condition and responsibility has become materially impaired. In addition, Seller shall have the right to recover damages for nonperformance, and any unpaid installments due on account of this or any other

contract between the parties shall become immediately due and payable. If the Buyer - validly - cancels the contract, the Buyer will be obliged to compensate the Seller for any costs incurred by the Seller in connection with making the offer and entering into the contract and the damage and/or loss arising from the cancellation.

The Seller will be entitled to terminate the contract unilaterally with immediate effect, fully or in part and/or to suspend performance of its obligations under the contract with immediate effect if:

- a. the Buyer has failed to fulfill one or more of its obligations under this or any other contract or sales terms;
- b. Buyer has suspended payments or has sought the protection of the Bankruptcy Courts;
- c. a petition for the involuntary bankruptcy of the Buyer has been filed;
- d. the Buyer's property on Seller's premises has been attached in execution;
- e. a resolution for the dissolution and/or winding up of the Buyer has been adopted;
- f. the enterprise operated by the Buyer has been fully or partly transferred to a third party without consent of Seller.

The Seller will never be liable with respect to the Buyer for any damages arising from termination of the contract or from the suspension of obligations under the contract for the aforementioned reasons. If the contract is terminated, performance of the contract already received by the Buyer and the payment obligations of the Buyer in connection with it will remain. The amounts invoiced by the Seller for performance prior to or upon termination of the contract will be immediately due and payable after termination. Buyer agrees to pay any of Seller's costs, damages, attorneys' fees and other expenses associated with Seller's termination of any contract with Buyer pursuant to the terms of this section.

## **XI. FORCE MAJEURE**

If Seller is temporarily unable to perform this Agreement because of a Force Majeure, it will be entitled to suspend performance of the contract for as long as the Force Majeure lasts. If Seller is permanently unable to perform any of its obligations to Buyer because of Force Majeure, it will be entitled to cancel the specific order with immediate defect and without any damages whatsoever. Buyer agrees to indemnify, defend and hold Seller harmless against any claims made by third parties based on whole or in part on Seller's inability to perform because of Force Majeure.

## **XII. GOVERNING LAW: CONFESSION OF JUDGMENT**

A. Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including statutory, common law and equitable claims) between the Buyer and the Seller arising from or relating to these Terms, their interpretation, or the breach or validity thereof, shall, except to the extent that the Seller is expressly prohibited by applicable law, be governed by the laws of the State of Illinois without reference to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded from application to these Terms and all transactions between Buyer and Seller.

B. For sales in the United States, where permitted, in the event that the Buyer fails to make payment of the amounts as set forth in Section V above or any balance of the Buyer or corresponding cash value not yet delivered, the Buyer hereby irrevocably authorizes and empowers any attorney-at-law of any court of record in the State of Illinois to enter the Seller's appearance in such court, to waive process and service of process and to confess judgment against Buyer for such amounts as may be due the Seller as evidenced by an affidavit signed by an officer of the Seller setting forth the amount then due, together with all costs and attorneys' fees, and interest from the date the confession of judgment is entered at the rate of twelve percent (12%) per annum, or the maximum permitted by law. The Buyer agrees to waive and release all errors and waive all rights of appeal from any judgment entered and further agrees that execution on any judgment entered may be received without delay.

C. Any legal action to enforce the Terms shall be brought either in the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois, Eastern Division. The Buyer hereby consents to the jurisdiction of the courts of or in the State of Illinois in connection with any dispute, controversy, action or other matter relating to or arising out of the Terms and sales contract.

### **XIII. DISPUTE RESOLUTION: LITIGATION**

Unless otherwise provided in an incorporated contract signed by the Seller, any controversy or claim arising out of or relating these Terms and/or sales contract or breaches thereof, shall be determined exclusively by litigation in the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois, Eastern Division as provided herein.

### **XIV. ENTIRE AGREEMENT**

No other terms, conditions, or understanding, whether oral or written, shall be binding upon the Seller unless hereafter made in writing and signed by Seller's authorized representative.

### **XVI. SEVERABILITY**

Should any provision of this Agreement be judicially declared unenforceable, that provision shall be deemed stricken and the remainder shall continue in full force and effect insofar as it remains a workable instrument for effectuating the intents and purposes of the parties. The Parties further agree to renegotiate any so severed provision to bring the same within applicable legal requirements to the greatest extent possible.

### **XVI. ASSIGNMENT**

The Buyer shall not assign or transfer these Terms or any related contract or purchase order without the prior written consent of the Seller. The Seller shall expressly be permitted to assign or transfer, without the prior written consent of the Buyer, the Seller's right to receive any or all of the payment due from the Buyer under these Terms.