

TERMS AND CONDITIONS

IMPERIAL YEAST

1. Applicability.

(a) These terms and conditions of sale (these “**Terms**” or this “**Agreement**”) are the only terms which govern the sale of goods (“**Goods**”) by Yeast Craft LLC, an Oregon limited liability company d/b/a Imperial Yeast (“**Seller**”), to you, the buyer (“**Buyer**”). By checking the box online, the actor represents and warrants that it has the authority to bind Buyer to these Terms, and Buyer hereby acknowledges, accepts, and agrees to be bound by these Terms with respect to all present and future purchases of Goods from Seller. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying electronic or other written communications between the parties (the “**Sales Confirmation**”) and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

(c) These Terms shall apply to all present and future purchases of Goods by Buyer from Seller. Seller has furnished a copy of these Terms to Buyer in response to Buyer’s initial inquiry into the Goods available for sale by Seller. Buyer has therefore had a full and complete opportunity to review these Terms and ask questions. Whether or not these Terms are executed by Buyer, Buyer’s receipt of Goods (whether in connection with Buyer’s initial order or any subsequent order and whether or not Buyer claims that some of the Goods are Nonconforming Deliverables) shall constitute Buyer’s agreement to these Terms.

2. Delivery of the Goods. The Goods will be delivered within a reasonable time after Seller’s receipt of the Sales Confirmation, subject to availability of the Goods from Seller’s third-party suppliers. Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Buyer’s location as set forth in the Sales Confirmation (the “**Delivery Point**”) using Seller’s standard methods for packaging and shipping such Goods. Shortly after the Goods are shipped, Seller will deliver to Buyer an invoice setting forth the cost of the Goods, shipping costs, and any additional costs (“**Invoice**”).

3. Risk of Loss; Buyer’s Obligations. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. If Seller’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay. Buyer is solely responsible for determining whether the yeast trains referenced in the Sales Confirmation are appropriate for Buyer’s intended use.

4. Inspection and Rejection of Nonconforming Goods; Insurance.

(a) Buyer shall inspect the Goods within seven (7) business days following delivery (“**Inspection**

Period”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Deliverables during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. “**Nonconforming Deliverables**” means the delivered Goods do not meet the specifications set forth in the applicable Certificate of Analysis.

(b) If Buyer timely notifies Seller of any Nonconforming Deliverables, Seller may, in its sole discretion, credit or refund the actual costs paid by Buyer for the Goods or provide replacement Goods that meet the specifications set forth in the applicable Certificate of Analysis. For the avoidance of doubt, the phrase “costs paid by Buyer for the Goods” does not relate to the retail value of the products or other finished materials sold by Buyer to customers and only includes actual amounts paid by Buyer pursuant to the applicable Invoice.

(c) Seller carries product recall insurance. Seller recommends Buyer carry sufficient product liability insurance and general liability insurance for their products, including those that incorporate the Goods.

5. Price.

Buyer shall purchase the Goods from Seller at the prices (the “**Prices**”) set forth in Seller’s pricing (the “**Price List**”) in force as of the date of the Sales Confirmation. All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller’s income, revenues, gross receipts, personal or real property, or other assets.

6. Payment Terms.

The Invoice shall include the Prices in accordance with such Price List in force as of the date of the Sales Confirmation. Buyer shall pay all amounts included in the Invoice within thirty (30) days after the later of (a) Seller’s delivery of the applicable Invoice to Buyer, or (b) the end of the Inspection Period. Buyer shall make all payments hereunder by wire transfer, check, or other payment method approved by Seller in writing and in US dollars. Buyer shall pay interest at the rate of 12% per annum on all late payments. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees (whether incurred at trial, on appeal, or otherwise). In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend delivery of any Goods purchased pursuant to a new order if Buyer has failed to pay any amounts when due under any prior orders.

7. Limited Warranty.

(a) Seller warrants to Buyer that for the first pitching only, provided such first pitching occurs within three months from Buyer’s receipt of the Goods (“**Warranty Period**”), such Goods will materially conform to the specifications set forth in the Sales Confirmation and will be free from material defects in material and workmanship. Seller’s warranty does not extend to any repitching of the Goods.

(b) EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 7(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY

RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

(c) Seller shall not be liable for a breach of the warranties set forth in Section 7(a) unless: (i) Buyer gives written notice of the defective Goods, reasonably described, to Seller within ten days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 7(a) to examine the applicable Goods in the same state that they were delivered to Buyer; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

(d) Seller shall not be liable for a breach of the warranty set forth in Section 7(a) if: (i) Buyer makes any further use of such defective Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; (iii) Buyer alters such Goods without the prior written consent of Seller; (iv) Buyer repitches the Goods.

(e) Without limiting Section 4(b), with respect to any Goods subject to a claim under the warranty set forth in Section 7(a), Seller may, in its sole discretion, credit or refund the actual costs paid by Buyer for the Goods or provide replacement Goods that meet the specifications set forth in the applicable Certificate of Analysis.. For the avoidance of doubt, the phrase "costs paid by Buyer for the Goods" does not relate to the retail value of the products or other finished materials sold by Buyer to customers and only includes actual amounts paid by Buyer pursuant to the applicable Invoice.

(f) THE REMEDIES SET FORTH IN SECTION 7(e) SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTIONS 7(A) EXCEPT AS PROVIDED IN PARAGRAPH 4(B) ABOVE.

(g) THE SELLER MAKES NO WARRANTY OF SHELF STABILITY AND MAKES NO WARRANTY REGARDING THE ADDITION OF ANY OTHER INGREDIENT SOURCED BY BUYER OR A THIRD PARTY.

8. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

(c) The limitation of liability set forth in Section 8(b) shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct, (ii) death or bodily injury resulting from Seller's acts or omissions, or (iii) insurance benefits Buyer may be entitled to under Section 4(c) above to the extent such amounts are actually paid by Seller's insurance company. For the avoidance of doubt, with respect to clause (iii) above, the exclusion from Section 8(b) only applies to amounts that are actually paid by Seller's insurance company pursuant to Section 4(c), and in no event will clause (iii) be interpreted to require that Seller pay to Buyer amounts in excess of the limitation set forth in Section 8(b).

9. Term; Termination. This Agreement shall have an term of twelve (12) months beginning with the date of Buyer's first written order for Goods, and renewing for an additional twelve (12) months each time Buyer submits a new order for Goods (whether online, by telephone, or by mail) ("**Term**"). Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. Neither the expiration of the Term nor the termination of this Agreement by Seller shall reduce, modify, or eliminate the limited warranty or limitations of liability contained herein, which shall survive any expiration or termination.

10. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

11. Force Majeure. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of 30 days, Buyer shall be entitled to give notice in writing to Seller to terminate this Agreement.

12. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

13. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

14. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer

upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

15. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Oregon.

16. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Oregon in each case located in the County of Multnomah, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

17. Attorney's Fees. In the event of a dispute regarding the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs (whether incurred at trial or on appeal or administrative review) from the non-prevailing party.

18. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and
(b) if the party giving the Notice has complied with the requirements of this Section.

19. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

20. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Governing Law, Submission to Jurisdiction, and Survival.

21. Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.