

PRIVATE LABEL MANUFACTURING AND SUPPLY TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS GOVERN ALL LSIC PRIVATE LABEL MANUFACTURING AND SUPPLY AGREEMENTS FORMED AFTER MARCH 31st, 2020.

1. Purchase and Sale Obligations.

1.1 General. LSI Chemical (“LSIC”) and Purchaser have entered into a Private Label Manufacturing and Supply Agreement (“this Agreement”) subject to these terms and conditions. As used in these Terms and Conditions “Effective Date” shall mean the Effective Date of this Agreement. Through this Agreement, Purchaser agrees to purchase, and LSIC agrees to sell the products specified in Schedule A (Products) (the “Products”). Purchaser is authorized to resell such Products under Purchaser’s own trademarks and trade name.

1.1.1 Rights in this Agreement vary depending upon the type of formula Product stems from. The Formula types are:

Type A aka “Base Formulas”: Formulas LSIC sells under its own brand name;
Type B: LSIC created variations of Type A formulas;
Type C: LSIC custom blends;
Type D: Variations of Types A-C using Purchaser chosen ingredient(s);
Type E: Purchaser provided blends.

1.2 Formulas. Purchaser acknowledges that LSIC shall formulate and may produce Products based upon the proprietary formulas owned and controlled solely by LSIC. Purchaser acknowledges that all resulting formulas, processes or property developed by LSIC under this Agreement are still the sole property of LSIC. LSIC is the sole owner of Type A-D formulas. These formulas are not available for purchase. If Purchaser requires and pays a separate formulation charge for a Type C formulation, the formulation is the property of the Purchaser.

1.3 Batch Variations. Due to variations when combining it is normal to see slight variations in color, scent and viscosity from lot-to-lot as the raw material ingredients may vary from production lot-to-lot. A Product shall be considered properly manufactured whether or not there is a color, viscosity or scent variance of any degree.

1.4 Minimum Purchase Commitment. Purchaser agrees to order from LSIC for delivery during each Contract Year during the term of this Agreement, the minimum number of Products, per Contract Year, as is specified on Schedule B attached hereto and incorporated herein (the “Minimum Purchase Commitment”). Contract Year shall mean each twelve (12)-month period commencing with the date Products are first available for shipment to Purchaser. The failure to meet the Minimum Purchase Commitment shall not constitute an Event of Default as defined in Section 14.2 (Termination Upon Event of Default) of this Agreement. Failure to meet the Minimum Purchase Commitment (“Low Purchase Volume”) shall cause the price to increase on all Type B-E Product(s) purchased under this Agreement. Purchaser agrees that, in the event of Low Purchase Volumes, Purchaser will pay LSIC the difference between the price negotiated on Schedule B and the price LSIC had offered Purchaser without a Schedule B Minimum Purchase Commitment on all purchases made in the Low Purchase Volume year. Such payment must be made within 30 days of the close of the Low Purchase Volume year.

1.4.1 Example: LSIC offered Purchaser Product at \$200 a case. Instead, LSIC and Purchaser agreed to a Price of \$180 per case, provided Purchaser purchase 1000 cases of product in Year 2 of the Agreement. Purchaser purchased only 900 cases that year. Within 30 days of the end of Year 2, Purchaser must pay LSIC \$18,000 (the \$20/case difference on the 900 cases purchased).

- 1.5 Governmental Rules and Regulations. LSIC's obligation to ship orders to Purchaser under this Agreement shall be subject to LSIC's right and ability to make such sales and obtain required licenses and permits, under all applicable decrees, statutes, rules and regulations of a government and/or agency with competent jurisdiction presently in effect or which may be in effect hereafter.

2 Packaging and Ingredients.

- 2.1 Components. Unless otherwise agreed, LSIC shall provide all selected packaging components and materials, including but not limited to caps, bottles, seals, leak prevention measures, etc. (collectively called the "Components"). Purchaser is solely responsible for verifying that the quality and delivery of all Components used by LSIC in Products meet Purchaser's standards and are appropriate for the Product(s) selected by the Purchaser.

- 2.1.1 Additional steps. All additional steps including, but not limited to master packing, tamper evident seals, shrink wrap, blister packing, lot coding, extra capping, etc., if available, will incur additional fees.

- 2.2 Purchaser Provided Ingredients. If the Purchaser is providing any ingredients to LSIC for use in any formulation, Purchaser shall make available the current MSDS and Certificate of Analysis (COA) for each provided ingredient. Purchaser shall also be responsible for creating any MSDS required for the final product. Purchaser indemnifies LSIC and accepts all financial and other responsibility for any negative effects and outcome when formulations are manufactured using the ingredients stipulated by Purchaser.

- 2.3 Labeling. Labeling is included in LSIC's standard fees unless specifically agreed otherwise. Purchaser shall be completely and solely responsible for all content, including but not limited to health, storage, safety, and use instructions and claims. All labels will be applied by machine or (hand as necessary) and may vary in application quality and acceptance is non-negotiable and assumed accepted as is.

- 2.3.1 Purchaser supplied labels. Purchaser supplied labels must comply with regulatory, statutory and/or LSIC required specifications. Purchasers providing their own labels must submit labels for preapproval of *e.g.* material, label size, roll size, core size, and quantity per roll. Upon approval, Purchaser agrees to deliver at least 10% overage of all Components prior to the start of LSIC services for any particular order. Any delay in the Purchaser provided components will result in a project delay and could incur additional storage fees for any previously delivered components per Section 2.4.

- 2.3.1.1 Clear label stock. The application of clear label stock is normative as is the application of front and back labels. Labels of different stock will incur an additional 10% application fee.

- 2.3.1.2 Variance. Slight label tilting and height variances will not be redone, refunded or credited.

- 2.3.1.3 Label loss. LSIC is not responsible for any quality issues that relate to labels and their application, and Purchaser should allow for a 10% loss on labels.

- 2.4 Unused supplies. Unless otherwise agreed to in writing, upon the later of (a) completion of an order or (b) termination of an Agreement with non-zero minimum purchase amounts any unused Purchaser supplied labels, packaging or ingredients shall be shipped back to Purchaser at Purchaser's expense with the order. Upon signature of a separate Storage Agreement, arrangements can be made for LSIC to warehouse Purchaser property for a period not to exceed twelve (12) months on terms set forth by LSIC for a fee to be determined.

2.4.1 Unused Items. Unless otherwise agreed to in writing, any LSIC-supplied labels, packaging, ingredients or other supplies specifically procured for Purchaser (“Items”) must be used to fulfill a Purchase Order within six (6) months of procurement. If Items are not so used, Purchaser shall be invoiced for all unused Items at a price of COGS+20% with terms of 1%/10 Net 30. Items shall be shipped to Purchaser at Purchaser’s expense only after payment is received.

2.4.1.1 Exception. A minimum purchase commitment constitutes an exception to the timeframes discussed in section 2.4.1. In the event Purchaser and LSIC have entered into an ongoing Agreement with an annual Minimum Purchase Commitment, 2.4.1 shall cause Purchaser to buy unused Items only upon termination, expiration or default of such Minimum Purchase terms.

2.5 Testing. Unless otherwise specifically agreed in writing, Purchaser is solely responsible for testing of any Product(s). With regard to Product(s), blending and combination of ingredients provided or stipulated by Purchaser, LSIC does not conduct any testing (including, for example, efficacy, stability and consistency) without specific authorization and payment by Purchaser. Furthermore, the only Products represented as “safe for use” are Product Types A-C. Despite the above, LSIC offers a wide range of testing services upon request and advance payment by Purchaser.

3. Orders, Payment and Delivery.

3.1 Orders. Purchaser shall order Products from LSIC under this Agreement by submitting to LSIC a written Purchase Order specifying the Products, quantities and requested delivery dates required to enable LSIC to fill the order. Each Purchase Order submitted to LSIC is subject to acceptance by LSIC at its offices to which such order was submitted, and once accepted cannot be refunded, returned, credited, exchanged or cancelled for any reason. Acceptance is defined as the receipt by LSIC of an order, contract, nondisclosure agreement, private label manufacturing agreement and deposit by Purchaser. LSIC shall have no liability to Purchaser with respect to orders which are not accepted by LSIC; provided, however, that LSIC will not unreasonably reject any orders for Products which do not require any modifications or additions, other than the modifications of LSIC's products, if any, specified in Section 4.3. Subject to the foregoing, LSIC may reject, in its sole discretion, any order for customized Products. In the event LSIC has not given Purchaser notice of acceptance or rejection of a Purchase Order within ten (10) business days of receipt thereof, such order shall be deemed accepted. The purpose of the Purchase Order to be issued under this Agreement is for specifying the Products, quantities and requested delivery dates only; no terms and conditions of Purchaser's Purchase Orders, LSIC's order acknowledgment or any other document or instrument of Purchaser or LSIC shall be binding upon the other party or amend or modify this Agreement in any manner.

3.2 Prices. Prices will be based on the current market and are subject to change at any time prior to LSIC’s acceptance of Purchaser’s Purchase Order, with or without notice. All sales are Ex Works (EXW) INCOTERMS 2020, Supplier facility in origin, or such other facility as may be designated by Supplier. Purchaser agrees to separately pay all expenses incurred by LSIC in the shipment and delivery of ordered Products, including without limitation freight charges, import duties and insurance premiums. Purchaser shall determine, in its sole discretion, the price at which Purchaser resells Products to Purchaser's customers.

3.3 Shipment and Delivery. Shipments will be made to the domestic warehouse facilities of Purchaser as designated by Purchaser in advance of each shipment. Shipments will be made as requested by Purchaser’s carrier. In the event Purchaser requests express delivery or shipment by air instead of by truck or by courier service, Purchaser agrees to pay all additional expenses required by such request. LSIC will use commercially reasonable efforts to meet Purchaser's requested delivery schedules for Products. For Purchaser’s first Purchase Order, the latest shipment date shall be 90 days after receipt of Purchase Order, unless delayed by governmental registration restrictions. In any other event, LSIC agrees to ship the ordered quantity of Products within thirty (30) days after receipt of the applicable Purchase Order, unless the quantity of Products ordered in such Purchase Order exceeds the number of products forecasted (pursuant to Section 2.6 (Forecasts)) by twenty-five percent (25%) or greater, in

which case, LSIC agrees to ship those Products ordered in excess of the forecast within ninety (90) days after receipt of such Purchase Order. Should orders for Products exceed LSIC's available inventory, LSIC will allocate its available inventory and make deliveries on such basis as LSIC deems equitable, as agreed to by both parties. Unless otherwise specified in Purchaser's purchase order, LSIC shall be authorized to make deliveries in installments. Purchaser shall make any claims for shortage or damage of Products with the common carrier promptly upon receipt of the order and provide LSIC with written notice of such a claim. Except in the case of negligence on the part of LSIC or LSIC's failure to package Products as set forth below, LSIC will not have responsibility for Products damaged in shipment and Purchaser must handle all claims for damage with the carrier. As between LSIC and Purchaser, Products shall be deemed accepted by Purchaser unless, within ten (10) business days of delivery of the Products, Purchaser affirmatively rejects the Products, by written notice detailing the reasons for rejections. The parties acknowledge that they may mutually agree in writing in the future that the foregoing period of time be modified. Such reasons for rejection may be non-conformance of the Products to the technical specifications described on Schedule A (Products), damage in connection with bodily injury and property damage arising out of any defect in the Products made intentionally, unintentionally or negligently by LSIC during manufacturing and packaging, and the breach of any material provision of this Agreement by LSIC. If no such notice of rejection is received, Purchaser shall be deemed to have accepted delivery provided; however, the acceptance of delivery shall in no way diminish or affect the product warranty given by LSIC in Section 6 (Warranty and Repairs). If Purchaser rejects a shipment, Purchaser shall promptly return a sample of the defective Product to LSIC in accordance with LSIC's instructions, to enable LSIC to, within thirty (30) days, inspect and determine whether the Product is defective; provided that Purchaser shall retain the rest of the Products pending such determination. It is Purchaser's responsibility to properly store and handle all Products pending inspection and/or return. If rejection was timely effected and LSIC determines the Products to be defective, LSIC agrees to repair or replace the Products or cancel an unpaid invoice or refund the amounts paid with respect to such defective Product which is returned to LSIC, at LSIC's option.

- 3.3.1 Shipment Packaging. Unless Purchaser requests otherwise, all Products ordered by Purchaser shall be packed for shipment and storage in accordance with Schedule A (Products). It is Purchaser's obligation to notify LSIC of any special packaging requirements (which shall be at Purchaser's expense).
- 3.4 Payment. Purchaser agrees to pay amounts invoiced under this contract by LSIC without offset or deduction for any reason whatsoever except as otherwise provided in Section 3.3 (Shipment and Delivery). Purchaser agrees to typical LSIC billing terms which typically vary from up-front to Net 60 depending upon Supplier credit and which will typically be outlined in this Agreement. Payments shall be made in U.S. dollars only and shall be made payable only to LSIC by the following forms of payment: bank wire, VISA/MasterCard or American Express, or other approved means. If Purchaser fails to pay any amount when due, Purchaser agrees to pay all costs and expenses, including without limitation reasonable attorney's fees, incurred by LSIC in collecting such overdue amounts, together with interest on such unpaid amount at the lesser of one and one-half percent (1.5%) per month or the greatest amount permitted by applicable law. LSIC reserves the right at any time after Purchaser fails to make any payment within sixty (60) days after the due date, to require payment for all Products delivered hereunder to be made by irrevocable letter of credit. If LSIC elects to have payment made by letter of credit, Purchaser shall select the issuing bank, which must be acceptable to LSIC. Any such letter of credit shall be governed by Uniform Customs and Practice for Documentary Credits (UPC) 500.
- 3.5 Title and Risk of Loss. Title to and risk of loss of the Products shall pass to Purchaser upon the earlier of delivery of the Products to Purchaser or to a carrier at LSIC's point of shipment. Any insurance covering the Product(s) in transit shall be for an amount not less than the full invoice price of the items delivered, with LSIC named as loss payee or additional insured.
- 3.6 Forecasts. Purchaser shall submit a rolling twelve (12)-month sales forecast to LSIC every twelve (12) months on the first day of the calendar month first following the Effective Date of this Agreement. Such sales forecast shall include expected sales quantities per month, order dates, shipping dates and Product requirements. If the most recent forecast becomes materially inaccurate at any time, Purchaser shall

promptly provide LSIC with updated information. The Purchaser shall issue a Purchase Order and purchase the Products included in the first three (3) months of each forecast, in accordance with the provisions of Section 2.1 (Orders).

4. Substitutions and Modifications; Discontinued Products; Quality Assurance.

4.1 Components. Unless otherwise agreed, LSIC shall provide all selected packaging components and materials, including but not limited to caps, bottles, seals, leak prevention measures, etc. (collectively called the "Components"). Purchaser is solely responsible for verifying that the quality and delivery of all Components used by LSIC for the private label products meet the Purchaser's standards and are appropriate for the product(s) selected by the Purchaser.

4.1.1 Additional steps. All additional steps including, but not limited to master packing, tamper evident seals, shrink wrap, blister packing, safety discs, lot coding, extra capping, etc., will incur additional fees.

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4.3 Customization. LSIC agrees to modify LSIC's product in accordance with the technical specifications set forth on Schedule A (Products). LSIC and Purchaser shall collaborate to ensure the proper dilution, specifications, and usability between the base material of LSIC's products and that of Purchaser. Technical specifications of LSIC's products and their modifications according to Purchaser's requirements for the Products are set forth on Schedule D.

4.4 Product Changes. Except with respect to Products ordered pursuant to a Purchase Order which has been accepted by LSIC as described in Section 2.1 (Orders) LSIC shall have the right, at any time and from time to time, to make substitutions and modifications to the Products (substitution of raw ingredients allowable by applicable governmental agencies); provided, however, that LSIC agrees to consider that Purchaser's Customization needs as specified in Schedule A (Products) and Schedule D (Technical Specifications) in making any such substitutions or modifications.

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4.4.1 Notice. In the event that a Party proposes a substitution or modification which affects, in LSIC's reasonable judgment, the form, fit or function of a type D-E Product, LSIC shall offer a sample of the blended Product to Purchaser for review and approval prior to such Product being offered to the Purchaser for purchase.

4.4.2 Purchaser's Rights. Purchaser is prohibited from making substitutions or modification to the Products. Purchaser shall have the right, at any time and from time to time to request substitution and/or modification to the Products. In the event of such request LSIC agrees to review and consider the requested modifications and notify Purchaser whether it is feasible and/or practical to make the modifications requested. In the event LSIC notifies Purchaser the modifications are feasible and practical, it will also notify Purchaser of the estimated modification costs and estimated time for manufacturing the modified Product.

4.5 Discontinued Products. LSIC agrees to notify Purchaser in writing not less than six (6) months in advance of the discontinuance of any Product. In the event LSIC is unable to manufacture the Products for Purchaser (due to bankruptcy, fire, lack of raw materials or other event of *force majeure*), then Purchaser will have the right to manufacture the Products (or have the Products manufactured for Purchaser), and, in exchange, pay a reasonable royalty or license fee for such right. The conditions for the transfer of know-how related to such manufacture shall be agreed upon separately in good faith by the parties.

4.6 Quality Assurance. The Products shall be manufactured in accordance with industry standards. Purchaser shall be permitted to inspect facilities in which the Products are developed and produced upon reasonable advance written notice to LSIC, during business hours at times reasonably convenient to both parties; provided, however, that Purchaser acknowledges that all information obtained in the course of any such inspection shall be deemed proprietary information pursuant to Section 5 (Confidentiality) of this

Agreement. LSIC shall be permitted to inspect Purchaser's storage and handling procedures of the Product upon reasonable advance written notice to Purchaser during business hours at times reasonably convenient to both parties; provided, however, that LSIC acknowledges that all information obtained in the course of any such inspection shall be deemed proprietary information pursuant to Section 5 (Confidentiality) of this Agreement.

5. Confidentiality.

5.1 Confidentiality. LSIC and Purchaser agree that both this agreement and certain information supplied by either Party to the other Party during the term of this Agreement, including, without limitation, the Products, the documentation and the intellectual property and technology underlying the Products (including but not limited to the ingredients, their relative concentrations and techniques for mixing and conditioning that comprise the Product(s)), the information for customization pursuant to Section 4.3 and information contained on Purchase Orders or regarding Purchaser's ordering or delivery patterns is proprietary, secret, confidential and/or non-public. All such information shall be held in confidence by the receiving party, shall be used only for the purposes of this Agreement and shall not be disclosed to any person other than an employee with a need to know the information in order to fulfill the obligations of the receiving party hereunder.

5.1.1 Exclusions. Information shall not be subject to the provisions of this Section 5 (Confidentiality) if shown by recipient's records to be: (i) in the public domain at the time of disclosure or thereafter through no fault of the recipient; (ii) known to the receiving party at the time of disclosure; (iii) disclosed to the receiving party without an obligation of confidentiality by a third party with the legal right to make such free disclosure; or (iv) developed independently by the receiving party by personnel without access to or knowledge of the information disclosed. The receiving party may disclose information to the extent requested or required by a governmental or judicial entity, provided such disclosure is limited to the fullest extent it is permitted to be limited by applicable law.

5.1.2 Documents and copies. All documentation with respect to the Products (except information contained in or for use in manuals, promotional materials or educational materials to be provided to Purchaser's customers), are furnished solely for Purchaser's internal use. Purchaser may make copies of such documentation to satisfy its internal requirements, provided that all such copies include appropriate copyright and proprietary information notices. No other copies or use of such documentation, or any portion thereof, shall be made without the prior written approval of LSIC. From time to time, Purchaser shall provide LSIC with feedback, comments or suggestions regarding the Products (collectively, "Feedback"). Feedback, if any, will be the property of the LSIC and may be freely used by LSIC in LSIC's business.

5.1.3 Termination. Upon termination of this Agreement, each Party shall return or destroy as requested by the other Party all confidential, proprietary or secret information of the other Party in its possession. The obligations of the parties pursuant to this Section 4 (Confidentiality) shall survive the expiration or earlier termination of this Agreement for a period of five (5) years.

6. Intellectual Property Rights.

6.1 General. The Parties agree that LSIC is the exclusive owner of trademarks (including designs and logos), trade secrets, copyrights, specifications, chemical composition and all methods and instructions for their formulation, processing and production, and other intellectual property rights relating to LSIC, the Product(s), Services and Custom Formulation(s), meaning Product Formula types C and D as defined in Section 1.1.1, ("LSIC Intellectual Property"), with the exception of any private label rights granted to Purchaser under this Agreement and excluding any preexisting rights of the Purchaser that the Purchaser provided to LSIC.

- 6.2 Intellectual Property Usage. Purchaser shall not use LSIC Intellectual Property for any other purpose than to perform the terms of this Agreement. In the event that Purchaser wishes to purchase a custom formulation, Purchaser agrees not to attempt to reverse engineer formula. Purchaser also agrees not to seek an alternative source of the same or similar formulation for a period of five years from the date the first Purchase Order of the custom formulation is fulfilled.
- 6.3 Confusion. Purchaser agrees to refrain from any action or to allow any action to be taken to damage LSIC interests and Intellectual Property rights in any jurisdiction where Purchaser does business. Therefore, Purchaser agrees, neither to register nor to assist in registering, any LSIC Intellectual Property rights or other rights (including LSIC's Private Label system, patents, copyrights, trade secrets, trademarks, trade names or symbols) of LSIC or other marks or rights which may be confusingly similar to LSIC anywhere worldwide. Unless specifically granted by LSIC, Purchaser disclaims any right to use or claim ownership of LSIC Intellectual Property.
- 6.4 Trademark Usage. Purchaser agrees that the Products purchased and/or licensed hereunder shall be sold or leased by Purchaser only under the trademarks, trade names or logos (collectively the "Purchaser Marks") of Purchaser.
- 6.5 Notices. Purchaser shall not alter or remove any copyright, trademark, trade secret, proprietary and/or other legal notices of LSIC or third parties contained on or in the Products. The existence of any such copyright notice shall not be construed as an admission, or be deemed to create a presumption, that any publication of such Products has occurred.
- 6.6 Logos. LSIC shall label all Products with Product Labels, as may be specified by Purchaser. Purchaser shall provide LSIC with camera-ready artwork necessary for the labeling of the Products, which shall include, without limitation: Purchaser Marks, Product serial numbers, UPC codes, and such additional information as may be specified by Purchaser. Purchaser shall be responsible for the costs of such labeling. Purchaser shall be responsible for the costs of registration.
- 6.7 Trademark License. Purchaser grants to LSIC a non-exclusive, non-transferable right to use the Purchaser Marks solely on the Products ordered by Purchaser hereunder and associated packaging. LSIC agrees to the following:
 - 6.7.1 to comply with Purchaser's guidelines and instructions regarding use of the Purchaser Marks as communicated to LSIC from time to time;
 - 6.7.2 in the event Purchaser notifies LSIC that such use is not in conformance with Purchaser's guidelines and instructions, to promptly bring such use into conformance;
 - 6.7.3 to ensure that all use of the Purchaser Marks will not reflect adversely upon the good name or good will of Purchaser and that all Products in connection with which the Purchaser Marks are used are of high standard and workmanship and of such nature, style, appearance and quality as shall be adequate and suited to the protection of the Purchaser Marks and the goodwill associated therewith;
 - 6.7.4 not to use the Purchaser Marks as part of, or in combination with, any other names or trademarks without Purchaser's prior written approval;
 - 6.7.5 not to register (or aid any third party in registering) the Purchaser Marks or take any action inconsistent with Purchaser's ownership of the Purchaser Marks in any jurisdiction; and
 - 6.7.6 that all usage of the Purchaser Marks will be on behalf of, and inure to the benefit of, Purchaser.

7. **Warranty.**

7.1 **Warranty.** LSIC warrants that the Product Types A-C will be free from defects in material and workmanship, and will substantially conform to the technical specifications described in Schedule A (Products), in normal use and service for a period and under the terms set forth in Schedule C (Warranty Terms), annexed hereto and made a part hereof. The warranty set forth in this Section 7.1 (Warranty) shall be void to the extent of (i) any modification of a Product by any person or entity other than LSIC, (ii) misuse or abuse of a Product or documentation by Purchaser or Purchaser's customers or end users, (iii) negligence or wrongdoing of Purchaser or Purchaser's customers or end users, (iv) accident, disaster or event of force majeure, (v) use of a Product or documentation in any manner inconsistent with this Agreement, (vi) improper storage of a Product, (vii) use of a Product in combination with products, equipment or software not supplied by Purchaser or (viii) use of a Product in combination with products supplied by Purchaser without LSIC's technical approval. In the event Purchaser believes supplied product does not conform to the above warranty, Purchaser shall return to LSIC a sample of the Product(s) which it claims are nonconforming or defective at Purchaser's expense and safeguard the remaining product pending resolution of the warranty claim. If the Parties agree that the Product(s) are nonconforming or defective, and that the cause is determined to be the fault of LSIC, then LSIC shall have a reasonable time to either (i) cure any nonconforming or defective tender by substituting conforming Product(s) at LSIC expense or (ii) refund Purchaser's purchase price. Either remedy is subject to LSIC's sole discretion. In the event that Purchaser does not inform LSIC in writing regarding any alleged defect in the Product(s) within the ten-day notice period described in Section 3.3 (Shipment and Delivery), Purchaser waives all rights under any applicable law to raise a claim. Purchaser shall pay LSIC for services performed by LSIC not covered by this Section 7.1 (Warranty) at LSIC's then current time and materials rates.

7.2 **Disclaimer.** Except for the warranty set forth in this Section 7 (Warranty) and Section 11 (Representations and Warranties), LSIC disclaims all warranties, whether express or implied, oral or written, with respect to the Products, including without limitation, all implied warranties of merchantability or fitness for any particular purpose. Laws from time to time in force in certain jurisdictions may imply warranties that cannot be excluded or can only be excluded to a limited extent, and this Agreement shall be read and construed subject to any such statutory provisions. Purchaser shall be responsible for any warranty it extends, either directly or indirectly, expressly or by operation of law, beyond the warranty expressly granted in this Section 7 (Warranty). LSIC is not responsible for (i) damages caused by Purchaser's failure to perform Purchaser's responsibilities or (ii) damages due to deterioration during periods of storage by Purchaser longer than those periods set forth in the Product documentation.

8. Consequential Damages Waiver; Limitation of Liability. EXCEPT FOR LIABILITY ARISING UNDER SECTION 5 (CONFIDENTIALITY) AND A PARTY'S OBLIGATIONS UNDER SECTION 12 (INDEMNITIES) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

9. LSIC's Support Obligations.

9.1 **Training.** LSIC agrees to provide to Purchaser product and technical training for Purchaser personnel at LSIC's production facility in Ohio. For product training and technical training, LSIC will provide the training facility, training materials and training personnel. Purchaser shall be responsible for the travel, hotel, and other living expenses of its personnel being trained.

9.2 **Marketing and Promotional Materials.** LSIC shall provide technical consultation to Purchaser for Purchaser's development of its own internal promotional and educational materials. Purchaser shall be solely responsible for the costs of developing promotional and educational materials for Purchaser's customers and end users.

10. Product Recalls.

- 10.1 LSIC shall be responsible for all recalls of Product Types A-C. LSIC agrees to take any and all actions, at its sole cost and expense, which are reasonably necessary and appropriate to effectuate a Product Type AC corrective action, including, without limitation, a Product recall, provided, however that Purchaser agrees to cooperate with LSIC in such action, including, without limitation contacting customers and assisting in the transfer of Products, as directed by LSIC, if necessary. LSIC agrees to respond within a reasonable period to any question or request for information received by Purchaser from its customers pertaining to the production of Product. Each party agrees to provide to the other party all necessary information in its possession arising out of a recall or corrective action program or similar program, including an LSIC quality assurance program. Upon thirty (30) business days written notice, each party shall, at a time and place mutually agreeable to the parties, have the right to audit and inspect the other's facilities and/or records relating to such party's obligations under this Agreement and with respect to the Products. All information that the inspecting party obtains in the course of such inspection or audit shall be treated as "Confidential Information," in accordance with Section 4 (Confidentiality) of this Agreement.
- 10.2 Purchaser shall be responsible for all recalls of Product Types D or E ("Purchaser Recall"). Purchaser agrees to take any and all actions, at its sole cost and expense, which are reasonably necessary and appropriate to effectuate a corrective action aimed at correcting/curing the failures specified in this subsection, including, without limitation, a Purchaser recall, provided, however that LSIC agrees to cooperate with Purchaser in such action, including, without limitation assisting in the transfer of Products, as directed by Purchaser, if necessary. Each party agrees to provide the other party all necessary information in its possession arising out of a recall or corrective action program or similar program, including an LSIC quality assurance program. Upon thirty (30) business days written notice, each party shall, at a time and place mutually agreeable to the parties, have the right to audit and inspect the other's facilities and/or records relating to such party's obligations under this Agreement and with respect to the Products. All information that the inspecting party obtains in the course of such inspection or audit shall be treated as "Confidential Information," in accordance with Section 5 (Confidentiality) of this Agreement.

11. Representation and Warranties. Each party hereby represents and warrants to the other party as of the Effective Date as follows:

- 11.1 Authorization. Such party (i) has the corporate power and authority and the legal right to enter into this Agreement and perform its obligations hereunder, and (ii) has taken all necessary corporate action on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder. This Agreement has been duly executed and delivered on behalf of such party, and constitutes a legal, valid, binding obligation of such party and is enforceable against it in accordance with its terms subject to the effects of bankruptcy, insolvency or other laws of general application affecting the enforcement of creditor rights and judicial principles affecting the availability of specific performance and general principles of equity whether enforceability is considered a proceeding at law or equity.
- 11.2 Absence of Litigation. LSIC is not aware of any pending or threatened litigation (and has not received any communication) which alleges that the Products infringe upon any intellectual property rights of a third party.
- 11.3 Intellectual Property. To the best of LSIC's knowledge, LSIC has sufficient legal and/or beneficial title and ownership under LSIC's intellectual property rights or sufficient license rights necessary for LSIC to fulfill LSIC's obligations under this Agreement and that LSIC is not aware of any communication alleging that LSIC has infringed the intellectual property rights of any third party.
- 11.4 Purchaser's Provisions. In providing to LSIC any and all Product specifications, ingredients, labels, packaging, and materials or any kind, Purchaser represents and warrants that it has the requisite authority to stipulate and provide such specifications, ingredients, labels, packaging, and materials and that such components, either individually or in combination shall not infringe any third-party rights of ownership or use.

11.4.1 Purchaser shall comply with all laws and regulations relating to the conduct of its business in all jurisdictions where it does business.

11.4.2 Purchaser shall comply with all laws and regulations relating to the marketing, sale, and use of the Product in all jurisdictions where it does business.

12. Indemnities.

12.1 By LSIC. LSIC shall indemnify, defend and hold Purchaser harmless from and against any damages, claims, suits, actions, causes of action, demands, liabilities, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) as a result of or arising out of any claim that the Products Type A-C supplied hereunder (a) infringe any patent or valid copyright of a third party; or (b) have caused bodily injury or property damage provided that (i) Purchaser shall have promptly provided LSIC written notice of such claim and reasonable cooperation, information and assistance in connection therewith and (ii) LSIC shall have sole control and authority with respect to the defense, settlement, or compromise thereof. Should any Product delivered hereunder become or, in LSIC's opinion be likely to become, the subject of such a claim under subsection (a), above, LSIC may, at its option, either procure for Purchaser the right to continue purchasing and using such Products, or replace or modify such Products so that they become non-infringing. In the event neither of these options is practicable, LSIC may accept the return of the infringing or potentially infringing Products, in exchange for a refund of the purchase price thereof, amortized over a period of three (3) years. In any such event, LSIC may withhold further shipments of infringing or potentially infringing Products.

LSIC shall have no liability or obligation to Purchaser hereunder with respect to any infringement or claim thereof based upon (i) compliance with designs, plans or specifications of Purchaser, (ii) use of the Products by Purchaser in combination with devices or products not purchased hereunder where the Products would not themselves be infringing, (iii) use of Products by Purchaser in an application or environment for which such Products were not designed or contemplated as specified in Schedule A (Products), (iv) modifications of the Products by anyone other than LSIC where such modifications directly are the cause of the infringement. The foregoing states the entire liability of LSIC with respect to infringement of intellectual property rights by the Products.

12.2 By Purchaser. Purchaser shall indemnify, defend and hold LSIC, its owners, directors, employees, and agents ("Indemnified Parties") harmless from and against any damages, claims, suits, actions, causes of action, demands, liabilities, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) as a result of or arising from i) any breach of this Agreement by Purchaser, independent contractors or agents, (ii) any claim of infringement or for defects related to any specifications, ingredients, labels, packaging, and materials of any kind provided by or stipulated by Purchaser under this Agreement, (iii) injury or death suffered by anyone related to the Product(s), services, or custom formulation(s) due to specifications stipulated or approved by Purchaser or occurring after the Product(s) left the care, custody, and control of LSIC at the delivery destination under this Agreement, (iv) any representations or warranties made by Purchaser to customers or end users which (a) exceed the scope of the representations or warranties made by LSIC to Purchaser pursuant to Sections 7 (Warranty) and 11 (Representations and Warranties) of this Agreement; or (b) contradict the documentation and/or information made available to Purchaser by LSIC regarding specifications, performance and intended use of the Products.

13. **Compliance with Laws.** Purchaser shall comply with all laws, rules, regulations, governmental requirements and industry standards applicable to the purchase, sale, leasing, licensing, marketing, demonstration, installation, servicing, repair or use of the Products supplied to Purchaser hereunder, including, without limitation those relating to the maintenance and availability of records. Without in any way limiting the foregoing, Purchaser shall not export any Product documentation or technical data relating thereto to any jurisdiction without first obtaining all necessary export permits and clearances, and in no event shall Purchaser export any Product in violation of any applicable law or regulation, whether foreign or domestic.

14. Term and Termination.

14.1 Term. Unless earlier terminated pursuant to this Section 14 (Term and Termination) or renewed for one (1)-year terms by written agreement of the parties hereto, this Agreement shall terminate five (5) years from the date of delivery of the last Purchase Order.

14.2 Termination Upon Event of Default. Upon the occurrence of an Event of Default (as defined below), the non-defaulting party, in its sole discretion, shall have the right to terminate this Agreement, in addition to any other remedy or remedies which may be available to it under this Agreement, at law or in equity. In addition, upon the occurrence of an Event of Default by Purchaser, LSIC shall have the right to cancel any or all unfilled orders for Products submitted by Purchaser.

14.2.1 The following events shall be deemed "Events of Default" with respect to the party engage in such activity:

- (a) Either party breaches its obligations under Section 5 (Confidentiality) or;
- (b) Either party fails to perform any of its covenants, obligations or responsibilities under this Agreement which failure remains uncured for thirty (30) days after notice thereof from the non-defaulting party; provided that the non-defaulting party delivers written notice to the defaulting party within ninety (90) days of the alleged default;
- (c) The dissolution, termination of existence, liquidation, insolvency or business failure of either party, or the appointment of a custodian or receiver for either party or any part of its property if such appointment is not terminated or dismissed within sixty (60) days;
- (d) The institution by either party of any proceeding under the United States Bankruptcy Code or any other federal, national or state bankruptcy, reorganization, receivership, insolvency or other similar law affecting the rights of creditors generally or the making by either party of a composition or any assignment or trust mortgage for the benefit of creditors; and
- (e) The institution against either party of a proceeding under the United States Bankruptcy Code or any other federal, national or state bankruptcy, reorganization, receivership, insolvency or other similar law affecting the rights of creditors generally, which proceeding is not dismissed within sixty (60) days of filing.

14.3 Termination for Convenience. Either party may terminate this Agreement upon twelve (12) months prior notice to the other.

14.4 Duties Upon Termination. Upon the termination of this Agreement for any reason whatsoever:

- (a) Purchaser shall pay to LSIC in full within thirty (30) days of such termination, all amounts owed to LSIC. Purchaser shall be entitled to set off and deduct from any money due LSIC under this Agreement, any and all amounts due Purchaser from LSIC; and
- (b) Purchaser shall promptly return to LSIC any and all LSIC-owned Products or other equipment, materials, documentation or data in the possession of Purchaser for whatever reason or purpose, such Products, equipment, materials, documentation and data to be in the same condition as when delivered to Purchaser, reasonable use, wear and tear excepted; and
- (c) LSIC shall promptly return to Purchaser any and all Purchaser-owned equipment, materials, documentation or data in the possession of LSIC for whatever reason or purpose, such equipment, materials, documentation and data to be in the same condition as when delivered to LSIC, reasonable use, wear and tear excepted; and

2.5.1 Purchaser shall buy any unused LSIC-supplied labels, packaging, ingredients or other supplies specifically procured for Purchaser according to the terms of Section 2.4.1.

14.5 Survival. Notwithstanding anything to the contrary in this Agreement, the parties agree that the following provisions shall survive expiration or earlier termination of this Agreement: 5 (Confidentiality), 6 (Intellectual Property Rights), 7 (Warranty), 8 (Consequential Damages Waiver; Limitation of Liability), 10 (Product Recalls), 12 (Indemnities), 14.4 (Duties Upon Termination), and 15 (Miscellaneous).

15. Miscellaneous.

15.1 Force Majeure. LSIC shall not be liable in any respect for failure to ship or for delay in shipment of Products pursuant to accepted orders where such failure or delay shall have been due wholly or in part to the elements, acts of God, acts of Purchaser, acts of civil or military authority, fires, floods, epidemics, quarantine restrictions, war, armed hostilities, riots, strikes, lockouts, breakdown, differences with workers, accidents to machinery, delays in 3rd party transportation, delays in delivery by LSIC's suppliers or any other cause beyond the reasonable control of LSIC. Upon such occurrence, LSIC shall immediately notify Purchaser as soon as practicable of such inability and of the period for which such inability is expected to continue, and any time for performance hereunder shall be extended by the actual time of delay caused by the occurrence; provided, that the LSIC uses commercially reasonable efforts to mitigate any damages incurred by the Purchaser. Products on which delivery is delayed due to any cause within Purchaser's control may be placed in storage by LSIC for Purchaser's account and at Purchaser's risk. Purchaser shall be liable for all costs and expenses incurred by LSIC in storing Products for Purchaser.

15.2 Assignment and Corporate Reorganization. Neither this Agreement nor any rights granted hereby may be assigned by either party voluntarily or by operation of law without the other party's prior written consent (which will not be unreasonably withheld) and any such attempted assignment shall be null and void. For purposes of this Agreement, "assignment" shall be deemed to include the transfer of all or substantially all of the assets of, or a majority interest in the voting stock of, either party, or the merger of either party with one or more entities. This Agreement shall inure to the benefit of and be binding upon any successor or assign of either party.

15.3 Equitable Relief. Nothing in this Agreement will prevent a party from bringing an action for equitable or injunctive relief in any court of competent jurisdiction to compel the other party to comply with its obligations under this Agreement.

15.4 Applicable Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Ohio without reference to the conflict of laws provisions thereof. The Parties consent to the exclusive jurisdiction and venue of the state and federal courts located in the State of Ohio, USA, for any mediation, arbitration, action, suit, or legal proceeding arising in connection with this Agreement.

15.5 Relationship of the Parties. Nothing contained in this Agreement shall be deemed to constitute either party as the agent or representative of the other party, or both parties as joint venture's or partners for any purpose. Neither party shall be responsible for the acts or omissions of the other party, and neither party will have authority to speak for, represent or obligate the other party in any way without prior written authority from the other party.

15.6 Registration. In the event that this Agreement is required to be registered with any governmental authority, Purchaser shall cause such registration to be made and shall bear any expense or tax payable in respect thereof.

15.7 Entire Agreement. This Agreement constitutes the entire agreement between LSIC and Purchaser and shall not be amended, altered or changed except by a written agreement signed by the parties hereto. Any terms and conditions in any Purchase Order or other instrument issued by Purchaser or LSIC or any of

Purchaser's customers in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement shall not be binding on either party and shall not be deemed to amend or modify this Agreement. Each party acknowledges that it is not entering into this Agreement on the basis of any representations not expressly contained herein.

- 15.8 Waivers. No delay or omission on the part of either party to this Agreement in requiring performance by the other party or in exercising any right hereunder shall operate as a waiver of any provision hereof or of any right or rights hereunder; and the waiver, omission or delay in requiring performance or exercising any right hereunder on any one occasion shall not be construed as a bar to or waiver of such performance or right, or of any right or remedy under this Agreement, on any future occasion. In order to be enforceable, a waiver must be in writing and executed by the party against which enforcement is sought.
- 15.9 Notices. Whenever, by the terms of this Agreement, notice, demand or other communication shall or may be given to either party, the same shall be in writing and shall be addressed to the other party at its address first set forth above, or to such other address or addresses as shall from time to time be designated by written notice by either party to the other in accordance with this Section 15.9 (Notices). All notices shall be sent by registered or certified mail, return receipt requested, by delivery or by Federal Express or other comparable courier providing proof of delivery, and shall be deemed duly given and received (i) if mailed, on the tenth business day following the mailing thereof, or (ii) if sent by courier or if delivered, the date of its receipt (or, if such day is not a business day, the next succeeding business day).
- 15.10 Section Heading. Section headings are for descriptive purposes only and shall not control or alter the meaning of this Agreement.
- 15.11 Rights and Remedies. All rights and remedies of either party hereunder shall be cumulative and may be exercised singularly or concurrently. The failure of either party, in any one or more instances, to enforce any of the terms of this Agreement shall not be construed as a waiver of future enforcement of that or any other term. Except for a request for injunctive relief or other provisional remedy which may be sought from a court, any dispute, controversy or claim arising out of or relating to this Agreement, or the breach hereof or thereof, including any claim based on contract, tort or statute, and including any controversy about whether a claim is subject to arbitration or whether this Section is valid or enforceable (any such dispute, controversy or claim, a "Dispute"), shall be resolved in accordance with the procedures set forth in this Section:
- (a)Negotiation. In the event any Dispute arises, each Party shall first promptly provide the other Party with a general written Dispute arises, each Party shall first promptly provide the other Party with a general written statement of its claim(s) and position(s). This statement need not be complete and will not limit the claims of a Party in any further procedure. The statement shall indicate that it is the first statement of a formal dispute resolution process under this Agreement. If the Parties cannot resolve the Dispute within 15 days of receipt of the first of these written statements, a claimant may proceed as set forth below:
- (b)Mediation. If a dispute cannot be settled through negotiation contemplated under Section 15.11(a), the Parties agree to endeavor to settle the Dispute in an amicable manner by mediation administered by the Judicial Arbitration and Mediation Services under its Comprehensive Mediation Rules, before resorting to arbitration under Section 15.11(c). If for any reason, the Dispute is not settled by mediation within 60 days after a Party elects to proceed by mediation (commencing upon the date a Party delivers notice to the other Party of its intention to proceed to mediation), any unresolved dispute shall be settled by arbitration.
- (c)Arbitration. Any dispute not resolved pursuant to section 15.11(a) or 15.11(b) shall be solely and finally settled by arbitration by one arbitrator in accordance with the then-existing Comprehensive Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Services. Each Party agrees that the award of the arbitrator shall be final and non-appealable and shall be the sole and exclusive remedy between or among them regarding any and all claims, counterclaims, issues and accountings presented to the arbitrator, irrespective of the magnitude thereof. All arbitration proceedings shall be conducted pursuant to the Judicial Arbitration and Mediation Services rules in Morrow County, Ohio, as modified pursuant to this Section. The number of arbitrators shall be one, which person shall be neutral, have sufficient business experience and not be a practicing attorney, and

shall be mutually agreed upon by all Parties within 60 days after a written request for arbitration by one Party is delivered to all other parties. In the event that the Parties cannot agree on an arbitrator, the arbitrator shall be selected within 10 days thereafter by the Judicial Arbitration and Mediation Services from a list submitted by the Parties, with each Party having the right to propose two names. If a qualified arbitrator cannot be appointed from the initial list, the process will be repeated every five days thereafter until a qualified arbitrator is selected. Each party agrees to facilitate the arbitration by: (i) making available to each other and to the arbitrator for inspection and extraction all documents, books, records and personnel under their control as the arbitrator shall determine to be relevant to the dispute; (ii) conducting arbitration hearings to the greatest extent possible on successive, contiguous days; and (iii) observing strictly the time periods established by the Judicial Arbitration and Mediation Services rules or by the arbitrator for the submission of evidence and briefs. All papers, documents or evidence, whether written or oral, filed with or presented to the arbitrator shall be deemed by the parties and the arbitrator to be confidential information. No party, expert or arbitrator shall disclose in whole or in part to any other person any confidential information submitted by any other person in connection with any arbitration proceedings, except to the extent (i) required by law or regulation, (ii) reasonably necessary to assist counsel in the arbitration or preparation for arbitration of the dispute or (iii) that such "confidential" information was previously or subsequently becomes known to the disclosing party without restrictions on disclosure, was independently developed by such disclosing party or becomes publicly known through no fault of the disclosing party. The arbitrator shall issue a written explanation of the reasons for the award and a full statement of the facts as found and the rules of law applied in reaching their decision to the parties. Such explanation of the award and the statement of facts shall be treated as confidential information. The arbitrator is empowered to render the following awards in accordance with any provision of this Agreement: (i) enjoining a party from performing any act prohibited or compelling a party to performing act required, by the terms of this Agreement and any order entered pursuant to this Agreement or deemed necessary by the arbitrator to resolve disputes arising under or relating to this Agreement or order; (ii) where, and only where, violations of this Agreement have been found, shortening or lengthening any period established by this Agreement or order; and (iii) ordering such other legal or equitable relief (subject to the limitations on liability set forth herein and therein) or specifying such procedures as the arbitrator deems appropriate, to resolve any dispute submitted to it for arbitration. The arbitration proceeding and the arbitrator shall resolve in their award the extent to which of the parties shall bear the arbitration costs. Each party hereby waives to the extent permitted by law all jurisdictional defenses, objections as to venue and any rights to appeal or to review of such award by any court or tribunal. Each party agrees that the arbitral award may be found and that a judgment on the arbitration award may be entered in any court having competent jurisdiction over the parties or their assets.

- 15.12 Severability. If any provision of this Agreement shall for any reason be held illegal or unenforceable, such provision shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect or impair the validity or enforceability of the remaining provisions of this Agreement, unless removal of the invalidated provision renders another provision impossible to perform or inconsistent with the intent of the parties.
- 15.13 Modifications, Amendments. Modifications and amendments to this Agreement must be in writing, executed by the party against which enforcement thereof is sought.
- 15.14 No Rights by Implication. No rights or licenses with respect to the Products are granted or deemed granted hereunder or in connection herewith, other than those rights expressly granted in this Agreement.