

## NCB PURCHASE ORDER TERMS AND CONDITIONS

1. **Purchase Order; Cancellation.** These Nor-Cal Beverage Co., Inc. Purchase Order (“NCB Purchase Order”) Terms and Conditions apply to all orders of goods, merchandise and incidental services (“Products”) by NCB and its affiliates (collectively “NCB”) from Vendor. NCB reserves the right to cancel a NCB Purchase Order without penalty by notice to Vendor on or before the given cancellation date and at any time if the completion or delivery date is not met or if, prior to such date, NCB has reason to demand adequate assurance of due performance and such assurance is not forthcoming within ten (10) days after the date of NCB’s demand. NCB may cancel the unreceived portion of a NCB Purchase Order at any time if delivery of the ordered Products is not timely. If Vendor can fulfill its delivery obligation only by shipping by premium routing, Vendor will prepay the premium charges. If Vendor ships the Products before the “ship on” date, after the cancellation date, or after actual cancellation, NCB may, in the exercise of its sole discretion, refuse the shipment, or NCB may accept the Products and charge Vendor in accordance with NCB’s Non-Compliance Fee Schedule. Individual NCB Purchase Order must segregate any and all loads created at Vendor’s dock.

1.1 **Performance.** All Vendors or Contractors are subject to NCB noncompliant penalty procedures for failure to comply with all NCB plant safety rules, regulations or laws. NCB requires Vendors and Contractors to acknowledge our Contractor/Vendor/Supplier Safety and Environmental handbook. If NCB finds a Vendor, Contractor or Supplier out of compliance, NCB reserves the right to stop any and all work or deliveries at once until such compliance can be established. NCB depending on noncompliant severity may remove any and all violating parties from NCB premises. If NCB finds that any noncompliant party willfully violated NCB rules or regulations NCB may terminate any and all agreements or contracts with the noncompliant party.

2. **Non-Conforming or Unordered Products.** NCB will have no obligation to accept or pay for any unordered Products or Products shipped that do not conform to, or comply with, the terms and conditions of the NCB Purchase Order or the terms and conditions of any agreement to which these NCB Purchase Order Terms and Conditions are attached, including shipping and routing instructions and dates of shipment and delivery. If NCB takes delivery of such nonconforming order, or any part of such an order, NCB reserves the right to deduct from its payment all actual or reasonable expenses, including but not limited to transportation, inspection, receipt, recall, care and custody of the Products, and notice to Vendor incurred as a result of such non-conformity or non-compliance. If NCB takes delivery of any unordered or non-complying Products, NCB may, without notice to Vendor of such fact, ship the unordered or noncomplying Products to Vendor at Vendor’s cost and expense. NCB will have no obligation to accept or to pay for any substituted goods or excess shipment of any Products made without NCB’s prior written approval. Vendors will not backorder any Products subject to the NCB Purchase Order without NCB’s prior written consent. Vendor must pay all shipping

costs associated with a backorder. All backorders should receive the best of pricing and terms at either the time of original order or at the time of actual shipment. All terms and conditions of the NCB Purchase Order apply to any Products on backorder.

3. **Right of Inspection.** NCB will have the right to inspect the Products and reject any nonconforming Products within sixty (60) days of delivery. This right of inspection, whether exercised or not, will not affect NCB's right to revoke acceptance or pursue other remedies if defects or nonconformities are discovered at a later date, notwithstanding that any defect or nonconformity could have been discovered upon inspection. Payment by NCB will not be construed as an acceptance of Products, or as a waiver or limitation of any of NCB's rights as set forth herein.

4. **Shipment Constitutes Acceptance of Vendor Agreement.** Shipment of Products by Vendor constitutes acceptance of NCB's Purchase Order Terms and Conditions and the terms and conditions set forth in any agreement to which the NCB Purchase Order Terms and Conditions are attached, unless NCB has agreed in writing to a change prior to shipment.

5. **Representations, Warranties and Guarantees.** By acceptance of the NCB Purchase Order, Vendor makes the following representations, warranties and guarantees:

5.1 The Products shipped, as of the date of shipment, will conform to all state and federal laws and also comply with, and are not adulterated or misbranded within the meaning of, any states' food and drug law.

5.2 Each shipment or other delivery of Products is not misbranded or mislabeled under the FHSA or any other law or regulation, has been tested and approved by the Underwriters Laboratory, Inc. and the National Sanitation Foundation (if applicable), and meets all applicable Occupational Safety and Health Administration Standards. Vendor will provide NCB copies of all Material Safety Data Sheets ("MSDS") for any applicable Products.

5.3 The Products, including the packaging, advertising, labels and other materials contained on, with, or relating to the Products, do not infringe any patent, copyright, trademark, trade name or other proprietary interest of NCB or any third party and comply with the Federal Trade Commission Act and all other applicable laws, rules and regulations.

**5.4** The price charged, allowances and services furnished, if any, in connection with the sale of Products to NCB are not discriminatory and were made available on substantially proportionate terms to other customers of Vendor, and that the prices charged for the Products shipped are the lowest lawful prices available from Vendor.

**5.5** The Products and the manufacture, sale, storage, shipping, transportation and billing for the Products, comply with all provisions of applicable law and with all applicable promulgations of governmental authority, both domestic and foreign.

**5.6** Vendor is the lawful owner of the Products, has good right to sell same and convey good and merchantable title, and the Products are and will be conveyed free of any and all claims, liens, security interests or other encumbrances.

**5.7** The Products are of merchantable quality and of good material and workmanship, are free from contamination or impurity and defects in design and title, and are fit and sufficient for purposes for which goods of that type are ordinarily used, as well as for any purposes Vendor has specified or advertised.

**5.8** The Products conform in every respect to applicable specifications, instructions, drawings, data, samples and descriptions.

**5.9** The representations, warranties and guarantees contained in this Section 5 run to NCB, its customers, and its and their successors and assigns. Vendor incorporates by reference and passes on to NCB and its customers and its and their successors and assigns the benefits of all warranties and guarantees given to Vendor by persons from whom Vendor purchased any of the Products. NCB's approval of specifications, drawings, samples and/or other descriptions furnished by Vendor does not relieve Vendor of its obligations. The representations, warranties and guarantees set forth in this Section 5 are in addition to all other express, implied or statutory warranties, are continuing in nature, survive NCB's payment, acceptance, inspection or failure to inspect the Products.

**5.10** Vendor will in every manner of its business related to the NCB Purchase Order obey and conform to all applicable laws, rules and regulations, both domestic and foreign.

**6. Code of Conduct.** Vendor warrants that the Products are produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States

Department of Labor issued under Section 14 thereof. Vendor represents and warrants that Vendor and its contractors are not engaged in and will not engage in any labor practice in violation of the laws or regulations of the country of manufacture or assembly of the Products involving unsanitary and/or unsafe labor conditions. If NCB determines that Vendor or its contractors have failed to comply with the foregoing, NCB will be entitled to return all Products on hand for full refund, at Vendor's cost, and cancel any unfilled orders at no cost. The following Code of Conduct is an integral part of all NCB Purchase Orders, the terms of which must be followed by Vendor and its contractors:

- 6.1** Child, indentured, involuntary, or prison labor must not be used or supported.
- 6.2** Workers may not be exposed to unreasonably hazardous, unsafe, or unhealthy conditions.
- 6.3** Workers may not be unlawfully discriminated against on the basis of race, color, religion, gender, national origin, age, disability or sexual orientation.
- 6.4** The workplace must be free from harassment, which includes sexually coercive, threatening, abusive, or exploitive conduct or behavior or harassment because of one's race, color, religion, gender, national origin, age, disability or sexual orientation.
- 6.5** Workers at all time must be treated fairly, with dignity and respect.
- 6.6** Wages paid to workers must meet or exceed legal and industry standards.
- 6.7** All Vendor workers performing work within the United States must be legally eligible for employment in the U.S.A. under the United States Immigration Laws. Vendor must require and review, prior to each non-U.S. citizen employee's assignment, documentation establishing such eligibility for all Vendor workers who perform services for NCB within the United States.
- 6.8** Vendor may not engage in any conduct likely, intending, or appearing to improperly influence any NCB Representatives in the performance of their job responsibilities. Bribes, cash payments, and business gifts and entertainment of more than token value expressly are prohibited. Vendor must refrain from

engaging in any conduct that may appear improper or may result in a conflict of interest when viewed from NCB's point of view.

**6.9** Vendor will not offer or provide money or anything else of value to any agent or representative of NCB in order to obtain or retain business.

**7. Customer Returns.** If NCB has purchased Products for the purpose of resale and NCB's customers return any of the Products to NCB due to any actual or alleged defect, or the Products in any way fails to comply with these NCB Purchase Order Terms and Conditions, NCB may tender back such Products to Vendor on an FOB origin basis. Vendor will promptly accept such Products, pay all shipping and handling expenses and give full, unconditional credit or cash refund, at NCB's option, for the cost of the Products to NCB. Perishable food Products need not be returned in order to obtain full credit.

**8. Acceptance of Terms.** NCB's offer to purchase is expressly subject to Vendor's acceptance of these NCB Purchase Order Terms and Conditions and any Vendor Agreement to which these NCB Purchase Order Terms and Conditions is attached. Vendor's execution of NCB's Vendor Agreement (or Vendor's shipment of Products in response to a NCB Purchase Order) constitutes Vendor's acceptance of these NCB Purchase Order Terms and Conditions and Vendor Agreement to which the NCB Purchase Order Terms and Conditions is attached, and precludes Vendor's objection to any such terms and conditions and/or Vendor's inclusion of any different or additional items, terms or conditions in any resulting order except as set forth in written amendment referencing these NCB Purchase Order Terms and signed by both NCB and Vendor. By accepting a NCB Purchase Order or by shipping Products in response to a NCB Purchase Order, Vendor agrees that NCB is not bound by any other term or condition of Vendor in any written acknowledgment, invoice or otherwise, that is inconsistent with or in addition to the terms and conditions hereof. All sections of the Uniform Commercial Code that expressly or implicitly protect NCB and are not inconsistent with any term hereunder are hereby incorporated by reference, whether it is construed as an offer or acceptance.

**9. Payments Subject to Claims/Defenses.** All amounts payable to Vendor will be subject to all claims and defenses of NCB, whether arising from the NCB Purchase Order or any other transaction. NCB has the right to set off and deduct against any such amounts all present and future indebtedness of Vendor to NCB (which includes all of its affiliates) and may exercise this right up to three (3) years from the date of the last shipment by Vendor. Vendor will be deemed to have accepted each debit amount or vendor chargeback within ninety (90) days following receipt of notice of same, unless Vendor notifies NCB's Accounts Payable Department (marked "Correspondence") in writing during such period as to why the deduction should not be made and provides sufficient documentation of the reason(s) given.

**10. Taxes and Other Charges.** Unless otherwise agreed in writing, the contract price includes all federal, state and local taxes, tariffs, import duties, commissions and other charges, except taxes Vendor is required by law to collect from NCB. Such taxes, if any, will be separately stated in Vendor's invoice and will be paid by NCB unless an exemption is available. Vendor will obtain and pay for any licenses, permits, or inspections by public bodies required in connection with the manufacture, completion, or delivery of the Products.

**11. Force Majeure.** TIME IS OF THE ESSENCE. However, NCB excuses Vendor from nonperformance or delays in delivery caused by acts of God, unforeseeable occurrences or other force Majeure events, but Vendor agrees it is not excused by unexpected difficulty or commercial impracticality of any degree. NCB may cancel the unreceived portion of a NCB Purchase Order at any time if delivery of the goods is not timely. If Vendor can fulfill its delivery obligation only by shipping by premium routing, the premium charges shall be prepaid by the Vendor or, if not prepaid, then NCB reserves the right to issue chargebacks relating to the additional freight costs and administrative costs. NCB reserves the right to reject any shipment of any order of goods from Vendor and shall have no obligation to pay for the rejected shipment in the event that NCB's business or operations are discontinued in whole or part by reason of fire, flood, earthquake, war, civil disorder or any other act or event beyond NCB's reasonable control.

**12. Indemnification.** Vendor will protect, defend, indemnify and hold harmless NCB, its subsidiaries and affiliates, and its and their directors, officers, employees, agents, contractors, successors and assigns from and against any and all claims and actions (including those in strict liability), demands, liabilities, losses, costs and expenses (including attorney's fees) including, without limitation, liabilities arising from any actual or alleged injury to or death of any person, damage to any property, and any other damage or loss, by whomsoever suffered, including Vendor's or NCB's agents or employees, resulting or claimed to result, directly or indirectly, from 1) the Products, including NCB's purchase, use, shipment, storage, delivery, sale, offering for sale, or other handling of the Products, or 2) Vendor's actual or alleged breach of any of the representations, warranties, guarantees or other terms and conditions contained herein, except if such liability is caused by the sole negligence or willful misconduct of NCB or its employees. In addition to the foregoing, if any of the Products purchased or any part thereof is alleged or held to constitute infringement, Vendor, at its own expense, will either (i) procure for NCB, its successors, assigns, and customers the right to continue using such Products, (ii) replace the Products with non-infringing items or (iii) only if options (i) and (ii) are impracticable, refund the purchase price for the Products and pay all related expenses.

As to any claim made against NCB, Vendor expressly waives any insulation from liability or immunity from suit with respect to injuries to Vendor's employees that may

be extended to Vendor as a result of any payments made by Vendor to such employees or under any applicable worker's compensation statute or similar law or judicial decision. It is further agreed and affirmed that Vendor will hold harmless NCB from and against any claims made by any of Vendor's employees, contractors or representatives working in the course and scope of their employment by Vendor or provision of services to Vendor while at any NCB location (the term "location" not being limited to any store, manufacturing plant or distribution center, but encompassing NCB and all of its affiliates and subsidiaries and their facilities), unless such claim was the sole and proximate result of the gross negligence and/or willful misconduct of NCB. Further, NCB will be held harmless from any worker's compensation liens incurred from Vendor's insurance carrier, third party administrator or self-administered, self-insured claims program(s). Vendor acknowledges that this provision is a reasonable request from NCB and being agreed to by Vendor in order to give Vendor employees, contractors and representative's access to NCB locations.

**13. Country of Origin Requirements.** Vendor warrants to NCB that it complies (or prior to the Effective Date will be in full compliance) with all federal, state and local Country of Origin labeling and related requirements, including those required by the U.S. Customs Service, those contained in the Agricultural Marketing Act, as amended by the 2002 Farm Bill, and the implementing regulations (collectively, "Country of Origin Requirements"), and will provide to NCB all reasonable assistance requested by NCB and information necessary to enable NCB to comply with the Country of Origin Requirements as they apply to Vendor's Products. In particular, Vendor will:

**13.1** label or include with all Products subject to the Country of Origin Requirements ("Covered Commodities") that are shipped to NCB all Country of Origin information that NCB is required to display or maintain with respect to the Covered Commodities;

**13.2** Comply with all record keeping and Product segregation standards required by the Country of Origin Requirements and by NCB; and

**13.3** Provide to NCB at least once each year the results of an audit of the program used by Vendor to comply with the Country of Origin Requirements performed by the USDA or other third party reasonably acceptable to NCB.

Breach of this warranty with respect to the Country of Origin Requirements will trigger the indemnification obligations of the NCB Purchase Order Terms and Conditions and in any agreement to which they are attached.

**14. Title and Risk: Shipment.** Unless otherwise indicated on the NCB Purchase Order, title and risk of loss with respect to the Products will remain with Vendor until the Products have been delivered to and accepted by NCB, or an agent or consignee duly designated by NCB, at the location specified on the NCB Purchase Order. A packing slip must accompany each shipment. If a shipment is to a consignee or agent of NCB, a copy of the packing slip must be forwarded concurrently to NCB. If no packing slip is sent, the count or weight reported by NCB or its agent or consignee will be final and binding upon Vendor with respect to such shipment.

**15. Payment to Carrier.** The obligation of NCB to pay for shipping of Products shall be deemed satisfied and terminated by payment to the issuer of the shipping invoice for Vendor's Products. Vendor will indemnify NCB against and hold NCB harmless from any and all costs, expenses, liabilities, and damages, including attorneys' fees that NCB may incur in connection with or as the result of any claim for payment from any other claimant including but not limited to any broker acting as the agent of Vendor's designated carrier.

**16. Supplier Diversity.** NCB is committed to providing meaningful opportunities for minority-owned businesses ("MBE" – minority-owned business enterprises) and women-owned companies ("WBE" – women owned business enterprises) to be our business partners. Vendor will supply to NCB upon NCB's request MBE and WBE information about Vendor's organization and entities with whom Vendor does business.

**17. Equal opportunity** "All contractors and subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability."

**18. Public Announcements.** Vendor will inform and obtain the prior written consent of NCB prior to making any public announcement, through press releases or otherwise, concerning its relationship with NCB.

**19. Other Provisions.** Any rights or remedies granted to NCB in any part of the NCB Purchase Order will not be exclusive of, but will be in addition to, any other rights or remedies that NCB may have at law or in equity. Vendor may not assign its rights and obligations hereunder without the prior written consent of NCB, which will be in NCB's sole discretion. The rights and obligations of the NCB Purchase Order will inure to the



benefit of, and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and permitted assigns. No action, failure of action or delay by either party will constitute a waiver of any of its rights or remedies under the NCB Purchase Order. Vendor and NCB are not, and will not be, joint venturers, partners, agents, servants, or employees or fiduciaries of the other, and do not have the power to bind or obligate the other. The waiver of a breach of any provision does not constitute a waiver of a subsequent breach of the same or different provision. The rights and liabilities of the parties under a NCB Purchase Order are governed in all respects by California law, without reference to or application of its conflicts of law provisions. **THE PARTIES HEREBY WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY DISPUTES OR CLAIMS ARISING UNDER THIS AGREEMENT.** If Vendor has previously made NCB an offer with respect to Products, the NCB Purchase Order will not operate as an acceptance of Vendor's offer, but rather will be deemed to be a counter-offer. If any of the terms of the NCB Purchase Order or agreement in which they are incorporated are subsequently or are now illegal, they will be severed without affecting the remaining terms. The section headings are for reference only and will not be considered controlling as to the content and/or interpretation of any section.

## **20. Judicial Reference Procedure.**

20.1 In the event of any action or proceeding that involves the rights or obligations of the Parties under this Agreement, the Prevailing Party (or Prevailing Parties) shall be entitled to reimbursement from the other Party or Parties of all costs and expenses associated with said action or proceeding, including reasonable attorney fees, litigation expenses and expert witness fees.

20.2 In any controversy, claim or judicial action arising from or relating to this Agreement or any of the transactions contemplated hereby: (i) each of the Parties waive any rights to trial by jury it may have, whether the action is before a court of any judicial district in the State of California, the United States of America or otherwise; and, (ii) all decisions of fact and law shall at the request of any Party be determined by reference in accordance with Code of Civil Procedure Section 638, *et seq.*, if the action is before a court of any judicial district of the State of California. The Parties shall designate to the Court a referee of their mutual selection. In the event that they are unable to mutually select a referee, the presiding judge of the Superior Court shall make such selection. The referee shall prepare written findings of fact and conclusions of law. Judgment upon award shall be entered in the court in which the proceeding was commenced. No provision of this section shall limit the right of any party to exercise self-help remedies or obtain provisional or ancillary remedies such as injunctive relief from a court of competent jurisdiction before, after, or during the pendency of any referenced proceeding.

Any concerns must be submitted to Nor Cal Beverage Co., Inc. in writing at our corporate address 2286 Stone Blvd West Sacramento, Ca. 95691