

OCEAN SPRAY PO TERMS AND CONDITIONS

- 1. APPLICABILITY:** These Terms and Conditions (“PO Terms”) shall apply to Ocean Spray Cranberries, Inc.’s and/or its affiliates or subsidiaries (“Ocean Spray”) purchase of goods and/or services as further documented by Purchase Orders, SAP Contracts, Scheduling Agreements, or any other similar agreement (collectively “POs”) from Supplier, as defined below. “Goods” or “Services” as used herein, shall mean the goods or services, respectively, provided pursuant to the PO. “Supplier” as used herein, shall mean the seller of Goods and/or Services provided, and shall include its parents, affiliates, subsidiaries, employees, officers, agents, and subcontractors. This PO shall be binding upon Supplier and its successors and assigns, if any, and Supplier shall obtain the agreement of each of its agents and subcontractors to be bound to these PO Terms unless otherwise authorized and approved by Ocean Spray.
- 2. ACCEPTANCE.** A PO is not binding on Ocean Spray until Supplier accepts the PO in writing, starts performance under the PO, or accepts any payment from Ocean Spray under the PO. Ocean Spray may withdraw the PO at any time before it is accepted by Supplier. ANY DIFFERENT OR ADDITIONAL TERMS IN YOUR ACCEPTANCE OF A PO ARE HEREBY EXPLICITLY REJECTED. These PO Terms apply to any repaired or replacement Goods provided by Supplier hereunder. Ocean Spray is not obligated to any minimum purchase or future purchase obligations under this PO.
- 3. AMENDMENTS:** No modification or change to the PO Terms of this PO shall be applicable to any PO between Ocean Spray and Supplier unless it is specifically agreed to in writing by both parties.
- 4. PRICING.** Prices established in the PO for any Goods and/or Services shall be the full compensation for the Goods and/or Services (together the “Price” or “Pricing”). Ocean Spray shall not be liable for payment or reimbursement of any additional charges. No increase in the Price or extra charges will be effective or incurred unless agreed upon in advance in writing by Ocean Spray.
- 5. INVOICES AND PAYMENT TERMS.** Invoices must contain the following information: PO number, part numbers, description of Services or Goods, quantity, Prices, and all supporting documentation, if any. Invoices must list tax amounts separately. Invoices must contain the foregoing to be deemed payable by Ocean Spray. Any deviation or missing information may delay or prevent payment. Unless otherwise stated in the PO, payment terms for the PO will be ninety (90) from the date of Ocean Spray’s receipt of an invoice from the Supplier. Ocean Spray shall have the right to offset payments due Supplier by any amounts Supplier owes Ocean Spray. Payment does not constitute final acceptance. Supplier shall continue performing its obligations under the PO notwithstanding a dispute. Ocean Spray may withhold payment, in whole or in part, and take action in accordance with the PO if Ocean Spray finds any Goods and/or Services to be defective, untimely, unsatisfactory, or otherwise not conforming to the PO or applicable Laws, as defined herein.
- 6. DELIVERY AND SHIPMENT TERMS.** All Goods and/or Services shall be delivered to the address specified on the PO (the “Delivery Point”) during Ocean Spray’s normal business hours or as otherwise instructed by Ocean Spray. Delivery shall be made at the Delivery Point in accordance with the PO. Supplier shall deliver the Goods and/or Services by the delivery date established on the PO (“Delivery Date”). Timely delivery of the Goods or Services is of the essence. Ocean Spray will only pay for the Goods and/or Services detailed in the PO and nothing more. Any overage will be at the peril of the Supplier, and Ocean Spray is not obligated to pay for any over-delivery. Supplier shall provide written notice of shipment to Ocean Spray when the Goods are delivered to a carrier for transportation. Supplier shall provide Ocean Spray all shipping documents, including the commercial invoice, packing list, air waybill/bill of lading and any other documents necessary to release the Goods to Ocean Spray within three (3) business days after Supplier delivers the Goods to the transportation carrier. The PO number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence, and any other documents pertaining to the PO. Title passes to Ocean Spray upon delivery of the Goods to the Delivery Point. Supplier bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Point. If Supplier fails to deliver the Goods in full on the Delivery Date, Ocean Spray, in its sole option, may: (a) agree in writing to a different Delivery Date; or (b) terminate the PO immediately, without liability to Supplier, by providing written notice to Supplier and Supplier shall indemnify Ocean Spray against any losses, claims, damages, and reasonable costs and expenses directly attributable to Supplier’s failure to deliver the Goods on the Delivery Date.
- 7. WARRANTY.**
 - a. **Service Warranties.** Supplier represents and warrants that it has the capability, skill, and expertise to complete the performance required, will perform in a professional and workman-like manner, in compliance with all applicable laws, and satisfy all obligations under the PO. These warranties are cumulative and in addition to any other warranty provided by law or equity.
 - b. **Goods Warranties.** Supplier warrants that Goods furnished hereunder shall comply with the requirements of a PO and shall (a) be new and unused (unless otherwise approved by Ocean Spray) and be free from all defects in design, workmanship and materials; (b) conform to applicable specifications, drawings, designs, samples and other requirements and be in the quantity communicated by Ocean Spray; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances and that Supplier has all right and title to any supplied Goods, or be authorized to sell such Goods to Ocean Spray; (f) not

infringe, violate, or misappropriate any third party's patent or other intellectual property rights, and that Ocean Spray's use of such Goods shall not infringe or misappropriate any third party's rights; (g) comply with the highest warranties and representations expressed by Supplier orally or in a written advertisement, correspondence, or other document provided to or in the possession of Ocean Spray; and (h) comply with all Laws, as defined herein. If the Goods are or become defective during the shelf life as defined in the Ocean Spray specifications, Supplier shall promptly correct such defect or nonconformity at Supplier's sole expense. The corrective work shall be done diligently and expeditiously, consistent with Ocean Spray's needs. Supplier guarantees any adjustment, repair, or replacement to the same extent the original Goods were warranted. Supplier agrees to correct the defects and nonconformities at Supplier's expense, to be liable for all direct damages suffered by Ocean Spray and any other persons, and to defend and indemnify Ocean Spray, its officers, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. These warranties survive any delivery, inspection, acceptance, or payment for such goods. These warranties are cumulative and in addition to any other warranty provided by law or equity.

- 8. INSPECTION.** Ocean Spray, its employees, and/or its representative shall be entitled to access and audit, to the extent practicable and at any and all times during and after performance, the performance and anywhere performance is conducted, any facilities or locations at which Goods or Services are produced, stored, handled or performed, during Supplier's regular business hours with reasonable advance notice. Inspection by Ocean Spray does not relieve, reduce, or otherwise affect Supplier's responsibilities hereunder, including inter alia for any failure under the PO, violation of Law, or breach of the warranties herein. Ocean Spray shall have the right to conduct further inspections after Supplier has carried out any remedial actions. Supplier, without cost to Ocean Spray, shall provide all reasonable assistance to ensure the safety and convenience of the inspectors. At the time of inspections, Supplier shall make available copies of all records, drawings, specifications, packaging data or any relevant information applicable to the Goods and/or Services. The inspection shall be deemed as preliminary only, and all items shall be subject to final inspection and acceptance upon delivery.
- 9. DEFAULT; DEFECTIVE WORK.** Ocean Spray has the right to inspect the Goods and the Services on or after the Delivery Date. Ocean Spray, at its sole option, may inspect all or a sample of the Goods and/or Services, and may reject all or any portion of the Goods and/or Services if it determines the Goods and/or Services are damaged, defective, or otherwise nonconforming with the obligations set forth in the PO and PO Terms. Failure by Ocean Spray to inspect or test any Goods and Services shall not relieve Supplier of any responsibility. If Ocean Spray rejects any portion of the Goods and/or Services Ocean Spray has the right, at its sole option, effective upon written notice to Supplier, to: (a) terminate the PO in its entirety, without liability to Supplier, and receive full reimbursement; (b) accept the Goods and/or Services at a reasonably reduced Price; and (c) require repair or replacement of the rejected Goods and/or Services. If Ocean Spray requires repair or replacement of the Goods and/or Services, Supplier shall, at its risk and expense, repair or replace the rejected Goods and/or Services and pay for all related expenses, including but not limited to, transportation charges for the return of the rejected Goods and/or Services and the delivery of repaired or replacement Good and/or Services. If Supplier fails to timely deliver repaired or replacement Goods and/or Services, Ocean Spray may replace them with Goods and/or Services from a third party and charge Supplier the costs thereof and terminated the PO for cause pursuant to Section 10. Any exercise of Ocean Spray's rights under this Section 9 shall not reduce Supplier's obligations or Ocean Spray's rights and remedies under the PO and PO Terms or applicable law, and Ocean Spray shall have the right to conduct further inspections after Supplier has carried out any remedial actions.
- 10. TERMINATION.** Ocean Spray may terminate the PO, in whole or in part, at any time with or without cause for undelivered Goods or Services by 15 days' prior written notice to Supplier. In addition to any other remedies that may be provided under these PO Terms or otherwise, Ocean Spray may terminate the PO with immediate effect upon written notice to the Seller if Supplier has not performed or complied with the PO, in whole or in part. If the Supplier becomes insolvent, is generally unable to pay, or fails to pay, its debts as they become due, 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, then Ocean Spray may terminate the PO upon written notice to Supplier. If Ocean Spray terminates for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.
- 11. INSURANCE:** Supplier shall secure and maintain in force at all times during the term of this PO with Ocean Spray effective the date of the PO, at least the following types and amount of insurance written on valid and enforceable insurance policies with insurance companies rated A: VIII or better by A.M. Best Company and licensed to do business in the jurisdiction(s) where the products are to be delivered or the service/work is to be performed.

 - a. Commercial General Liability with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in aggregate including Premises/Operations Liability, Products/Completed Operations Liability, Contractual Liability, Third Party Property Damage, and Independent Contractors coverage for bodily or personal injury, property damage and death.
 - b. Workers' Compensation with statutory limits and a minimum Employers' Liability limit of \$1,000,000 per accident and disease.
 - c. Umbrella or Excess Liability with a minimum limit of \$5,000,000 per occurrence and in the aggregate.
 - d. If the vendor will ever be physically onsite at any Ocean Spray location-

- i. Commercial Auto Liability for any auto including Owned, Non-owned, Leased, Rented or Hired with a minimum combined single limit of \$1,000,000 per accident for bodily and personal injury, property damage and death.
- e. If professional or engineering services are being provided where NO access to secure data or systems is needed-
 - i. Professional Liability or Errors & Omissions insurance with a minimum limit of \$1,000,000. Such insurance shall cover any and all errors, omissions or negligent acts in the delivery or performance of products, services and/or licensed programs under this agreement.
- f. If professional or engineering services are being provided where access to secure data or systems is needed:
 - i. Professional Liability or Errors & Omissions insurance with a minimum limit of \$5,000,000 Million Dollars. Such insurance shall cover any and all errors, omissions or negligent acts in the delivery or performance of products, services and/or licensed programs under this agreement.
 - ii. Cyber Liability Insurance including coverage for security & privacy liability, network interruption, system failure, event management, cyber extortion and media content with a minimum limit of \$5,000,000.
- g. If the vendor is manufacturing food products:
 - i. Product Contamination insurance including third party recall liability with respect to manufacturing any products with Ocean Spray Cranberries, Inc.'s products with a minimum limit of \$5,000,000 per occurrence and in the aggregate.

All applicable insurance policies shall include Ocean Spray Cranberries, Inc., its subsidiaries, and their directors, officers, and employees as additional insured for the duration of this agreement with a waiver of subrogation. These policies shall be endorsed as primary and non-contributory, and not in excess of any other insurance coverage maintained by Ocean Spray. This information must be stated on the certificate of insurance provided before entering Ocean Spray's premises or before services commence, and annually thereafter. At least thirty (30) days' notice must be given prior to any material modification, expiration, or cancellation of the aforementioned insurance.

12. CONFIDENTIALITY. A PO incorporates by reference any Confidentiality and Non-Disclosure Agreement executed between Ocean Spray and the Supplier, which constitutes part of this Agreement and by which the Parties will continue to be bound. Supplier acknowledges that its representatives and/or employees may, while performing under the PO, have access to or otherwise discern confidential, sensitive, or proprietary information of Ocean Spray, whether such information is disclosed, available, or accessed orally or in written, electronic, or other form or media, and whether or not such information is marked, designated, or otherwise identified as "confidential" ("Ocean Spray Confidential Information"). Supplier shall keep confidential and not allow the use of Ocean Spray Confidential Information by any party other than Ocean Spray. Upon Ocean Spray's request, Supplier shall promptly return all documents and other materials received from Ocean Spray. Ocean Spray shall be entitled to injunctive relief for any violation of this Section. This Section shall endure beyond the end of the PO performance in perpetuity.

13. INTELLECTUAL PROPERTY. Supplier shall not use any of Ocean Spray's trademarks, tradenames intellectual property, inventions, trade secrets or other proprietary material/rights (collectively, "Ocean Spray IP") except in a manner and form as directed in writing by Ocean Spray. Supplier acknowledges the exclusive rights of Ocean Spray to all of Ocean Spray IP, and that Supplier shall acquire no right, title or interest in or to any of Ocean Spray's IP by virtue of any act in connection with a PO. Any and all goodwill associated with such Ocean Spray IP shall inure exclusively to the benefit of Ocean Spray. Upon termination or expiration hereof or at Ocean Spray's request, Supplier shall immediately cease use of any of the Ocean Spray IP and will not thereafter use Ocean Spray IP or any word, design, trademark or tradename which is confusingly similar with Ocean Spray's. Inventions or discoveries made or conceived or first reduced to practice by Supplier, Ocean Spray, or Ocean Spray and Supplier including their employees during the course of performing any PO shall become the property of Ocean Spray without any need for further action by either party. However, Supplier for itself and its employees agrees that the inventor(s) will execute all documents and do all things necessary or proper, including the securing of patent agreements from employees, to effectuate the purpose of this article. Supplier shall immediately disclose to Ocean Spray of any inventions it conceives of, develops, or reduces to practice arising from, or related to its work under a PO.

14. INDEMNIFICATION. Supplier shall defend, indemnify and hold harmless Ocean Spray from any and all loss, damage, injury, claim, judgment or other liability or expense of any nature whatsoever (including, but not limited to, attorneys' fees) in connection with any claim, suit, action, allegation, or proceeding brought against Ocean Spray which is (i) based on a claim that any Services, Goods or component or any part thereof made to Supplier's designs and furnished hereunder constitutes an infringement or violation of any third party right, including inter alia, patent, copyright or trademark; (ii) for personal injury or property damage by a claimant arising from the negligence or act or omission of Supplier or the use of any Services, Goods or component or part thereof manufactured or supplied by Supplier for sale to Ocean Spray; (iii) a breach by Supplier of any obligations under the PO, including a breach of any representation or warranty; or (iv) attributable to Supplier's failure to deliver the Goods or Services on the delivery date, including without limitation consequential damages. Ocean Spray shall notify Supplier promptly in writing and provide information and assistance (at Supplier's expense) for the defense of same. Supplier shall pay any reasonable settlement thereof (provided, however, that Supplier shall not enter into any settlement which results in injunctive relief against Ocean Spray without Ocean Spray's prior written consent) and/or all damages and costs awarded therein against Ocean Spray. In case of a claim of third party right violation, infringement, or misappropriation,

Supplier shall, by its own expense, immediately either procure for Ocean Spray the right to continue using such Goods, Services, or component, or part thereof, or modify it so that it becomes non-infringing, or Ocean Spray may terminate immediately.

- 15. ASSIGNMENT.** Supplier will not assign a PO, or any interest therein, or any money due or to become due hereunder, or subcontract any major part hereof, other than regularly purchased components, unless expressly authorized in writing by Ocean Spray. Any such authorization shall not release Supplier from its obligations and liabilities under a PO. Ocean Spray may at any time assign, transfer, delegate, or subcontract any or all of its rights or obligations under the PO without Supplier's prior written consent.
- 16. COMPLIANCE WITH LAWS.** Supplier warrants that in the fulfillment of any PO and in the production of the Goods or performance of Services, it will comply with all applicable international, or US federal, state, city or municipal laws, ordinances, rules or regulations, voluntary industry standards, codes or other obligations (the "Laws"). Supplier shall procure at its costs all necessary permits and license as may be necessary before and during performance under the PO.
- 17. HAZARDOUS MATERIAL HANDLING.** Supplier shall be responsible for properly and legally handling and disposing of all waste and hazardous material used in the course of or generated as a result of a PO and shall provide written confirmation of proper disposal of hazardous material if requested by Ocean Spray. If Supplier fails to comply with this paragraph, Ocean Spray may perform or pay for such clean up and charge Supplier for any and all associated costs (including reasonable attorney's fees).
- 18. FORCE MAJEURE.** A failure of Ocean Spray to perform hereunder, if occasioned by fire, explosion, flood, war, pandemic or epidemic, accident, interruption of or delay in transportation, labor trouble, governmental regulation, or any other circumstances of like or different character beyond Ocean Spray's reasonable control, or if occasioned by partial or complete suspension of operations at any of Ocean Spray's offices or other business locations, shall not subject Ocean Spray to any liability to Supplier by reason thereof, but, at Ocean Spray's option, the total quantity covered by a PO may be reduced by the extent of omitted shipments or services, or the specified delivery period may be extended by a time equal to that during which shipments or services shall be so omitted and such shipments shall then be made or Services performed during the period of extension.
- 19. DATA PRIVACY.** If the Supplier obtains, uses, stores, processes, or distributes any personal information while providing the Goods and/or Services, Supplier represents and warrants that it will: (a) only process any personal information to the extent necessary for the provision of the Services; (b) implement and maintain appropriate technical and organizational measures to ensure the security, integrity, and confidentiality of any personal information; and (c) not disclose or transfer any part of the personal information or allow access to it other than as expressly permitted by and in accordance with a PO and applicable Laws. Supplier shall defend, indemnify, and hold harmless Ocean Spray and its subsidiaries, affiliates, officers, directors, employees, and agents from and against all losses, damages, liabilities, fines, awards, costs or expenses of whatever kind, including reasonable attorneys' fees, arising out of or resulting from Supplier's failure to comply with its obligations under this section.
- 20. DATA SECURITY.** If the Supplier receives Ocean Spray's information or access to Ocean Spray's systems under this Agreement, Supplier represents that it shall comply with all applicable Data Protection Laws. Irrespective of Supplier's duty to comply with all such laws, Supplier covenants to comply with all provisions of this section. Supplier will notify Ocean Spray within twenty-four (24) hours upon learning of any accidental or unlawful unauthorized disclosure of or access to Ocean Spray's information ("Security Incident"). Supplier shall take reasonable steps to mitigate the effects of, and minimize any damage resulting from, such Security Incident. After initial notification, Supplier will keep Ocean Spray updated on a regular basis and provide a reasonably detailed incident report which shall include the steps taken by Supplier to investigate the Security Incident and to minimize any potential damages resulting from the Security Incident. At Ocean Spray's reasonable request, Supplier agrees to meet with Ocean Spray to discuss, as applicable and available at the time, the procedures that were followed during the investigation of any Security Incident, the chain of custody of Ocean Spray's information, and the remedial/corrective action to be taken to prevent the Security Incident from occurring again. Supplier further agrees to reasonably cooperate with and assist Ocean Spray in any investigation related to a Security Incident Ocean Spray determines is necessary. Ocean Spray shall be allowed to audit Supplier's document retention policies and procedures, as well as its protection of Ocean Spray's, upon Ocean Spray's reasonable request for so long as Supplier retains copies of Ocean Spray's information. As and when instructed by Ocean Spray, and/or the expiration and/or termination of this Agreement, Supplier shall irretrievably destroy, delete, and/or return to Ocean Spray, at Ocean Spray's sole discretion, all of Ocean Spray's data in Supplier's possession. Within (30) days of any such request by Ocean Spray, and/or the expiration and/or termination of this Agreement, Supplier shall issue a written certification to Ocean Spray evidencing Supplier's compliance with this section.
- 21. CONTRACTOR SAFETY PROGRAM:** In the event that Supplier is providing Goods and/or Services on Ocean Spray's property, Supplier agrees that it will, at all times, follow the provisions of Ocean Spray's Contractor Safety Program linked [here](#) which are incorporated herein by reference.
- 22. CHOICE OF LAW.** A PO and its performance shall be governed by the law of the Commonwealth of Massachusetts as if it was executed and performed entirely therein. Any legal suit, action, or proceeding arising out of or based on a PO or performance contemplated thereby shall be instituted in the courts of the State of Massachusetts, in each case located in the City of Boston, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

- 23. SUPPLIER CODE OF CONDUCT.** Supplier shall comply with Ocean Spray's Supplier Code of Conduct ("Code of Conduct"), as amended by Ocean Spray from time to time, available [here](#). Notwithstanding anything to the contrary herein, Supplier will (i) allow Ocean Spray and/or a third-party representative to assess Supplier's compliance with the Code of Conduct by inspecting the Supplier's facilities and/or reviewing Supplier's practices, policies, and relevant records; or (ii) provide an audit from a verifiable third party concerning the subject matter of the Code of Conduct. Supplier's failure to perform its obligation described in this subsection or to remedy any material non-conformance with the Code of Conduct after a reasonable amount of time will constitute a breach of this Agreement.
- 24. ENTIRE AGREEMENT AND SURVIVAL.** The PO, and these PO Terms incorporated therein, represent the entire understanding between Ocean Spray and Supplier, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may be amended only by written mutual agreement of the parties. In the event of a conflict between the PO Terms, a PO, and any amendment thereto, the PO Terms shall govern and control, unless expressly stated otherwise. The PO Terms prevail over any terms or conditions contained in any other supplier documentation and expressly exclude any of Supplier's general terms and conditions of sale or any other document issued by Supplier in connection with the PO. In the event of a conflict between these PO Terms and an executed agreement between the parties, the terms of the agreement will prevail. Obligations which by their nature should survive acceptance of any Goods or Services, payment by Ocean Spray, and/or termination or expiration of the PO shall survive.
- 25. SUPPLY CHAIN SECURITY AND CUSTOMS COMPLIANCE:** Ocean Spray participates in and supports the US Customs and Border Protection Trade Partnership Against Terrorism Program ("C-TPAT"). Supplier warrants that it (i) participates in C-TPAT or an equivalent and recognized supply chain security program or (ii) has implemented similar security procedures designed to protect supply chain activities from terrorist attacks. Additionally, Supplier agrees to reimburse Ocean Spray for any costs incurred in amending customs entries or for additional duties imposed due to errors/omissions in Supplier's customs paperwork.
- 26. INDEPENDENT CONTRACTOR: SUPPLIER SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE AND IS NOT ENTITLED TO TAX WITHHOLDING, WORKER'S COMPENSATION, UNEMPLOYMENT COMPENSATION, OR ANY EMPLOYEE BENEFITS, STATUTORY OR OTHERWISE FROM OCEAN SPRAY. NEITHER SUPPLIER NOR ANY AGENT, EMPLOYEE OR SUBCONTRACTOR OF SUPPLIER SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF OCEAN SPRAY OR SHALL HAVE AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND OCEAN SPRAY TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. SUPPLIER SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING, INCLUDING ALL INCOME TAX ON ANY MONIES PAID PURSUANT TO THIS PO. SUPPLIER SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF SUPPLIER, ITS EMPLOYEES, ITS AGENTS AND ITS SUBCONTRACTORS.**
- 27. TAXES AND DUTIES:** Unless otherwise indicated on the face of this PO, it (a) does not include any federal, state/provincial or local sales, use or other tax from which an exemption is available for purposes of this PO, and (b) includes all other applicable federal, state/provincial, and local taxes and customs duties in effect at the date of this PO. Supplier agrees to accept and use tax exemption certificates supplied by Ocean Spray. Taxes chargeable to Ocean Spray shall be separately stated on all invoices. In the event that additional customs duties become due after the delivery of the Goods, the duties shall be the responsibility of the Supplier. Real property contractors will include all applicable state and local sales and use tax in their contract prices and separate state taxes on their invoice. Out-of-state contractors will provide Ocean Spray with a copy of their sales tax registration certificate.
- 28. NOTICES/ADMINISTRATION:** Except as otherwise provided in these PO Terms, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by U.S. mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth on the face of this PO.
- 29. NON-WAIVER:** The waiver by a Party of any term, condition or provision herein stated shall not be construed to be a waiver of any other term, condition, or provision hereof nor shall such waiver be deemed a waiver of subsequent breach of the same term, condition or provision.
- 30. SEVERABILITY:** If any provision of these PO Terms shall be invalid or unenforceable with respect to any party, the remainder of the provisions, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the provisions shall be valid and be enforceable to the fullest extent permitted by law.
- 31. CONTINUOUS IMPROVEMENT GUARANTEE:** Supplier shall work with Customer to identify opportunities for continuous improvement in the parties relationship, including but not limited to standardization for Goods suppliers, use reduction programs, recycling programs, testing to allow for extended services. Additionally, for Customer's loyalty, Supplier shall guarantee each year the identification of actions to result in a reduction in total cost equivalent to 10% of Customer's annual spend on Goods and Services from the previous year (including equivalent spend with others for the previous to the Effective Date of this Agreement). Supplier shall validate savings opportunity less implementation costs, if any in an agreed upon

tracking method with appropriate OSC personnel. Supplier shall be credited with validated opportunities irrespectively of SOC actions to implement.

- 32. P-CARD FEES:** Supplier shall not assess Customer any fees for use of Purchasing or other Credit Card transactions, or other electronic transactions, including transactions via a marketplace e/transaction clearinghouse.
- 33. ELECTRONIC COMMERCE AND COMMUNICATION:** Supplier will support Ocean Spray's electronic commerce and communication programs such as: E-Sourcing/Procurement, Advance Shipping Notices, PO transmission and confirmations, Supplier Hosted Catalogs, SAP Ariba Supplier Network, Ivalua Supplier Network and other web-based or Business to Business (B2B) Systems as requested by Ocean Spray (collectively referred to as "Electronic Commerce"). In addition, Supplier shall follow all supplier onboarding procedures and associated instructions provided by Ocean Spray and amended from time to time. If Ocean Spray elects to purchase by Electronic Commerce such purchases will continue to be governed by the provisions of this Order and as may be provided in separate Electronic Commerce agreement between the parties hereto.
- 34. ATTORNEY'S FEES:** Should Ocean Spray utilize the services of an attorney to enforce or defend any term or conditions herein, Ocean Spray shall be entitled to an award of reasonable attorney's fees and costs expended throughout the pendency of the demand, claim and/or litigation.
- 35. CUMULATIVE REMEDY:** The rights and remedies under a PO are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties, or otherwise. Notwithstanding the foregoing, the parties intend that, if Ocean Spray terminates the PO in accordance with Section 10, Supplier's sole and exclusive remedy is the right to payment for the Goods received and accepted and/or Services satisfactorily performed and approved by Ocean Spray.