

## VALLEY MILK, LLC - SELLER'S TERMS AND CONDITIONS

[Effective 6/6/2023]

To facilitate transactions between the parties, the following terms and conditions will apply to all goods and materials sold under this Order Acknowledgement except to the extent expressly set forth by Valley Milk, LLC ("Seller") on the face of this Order Acknowledgement. These terms and conditions shall also apply to any and all transactions between the customer ("Buyer") and Seller unless modified by a written document duly executed by an authorized agent of Seller.

**Application of Terms and Conditions.** In placing an order with Seller, you are agreeing to these Terms and Conditions. Seller objects to any different or additional terms expressed or implied in any purchase order, proposal, offer, confirmation, or other communication sent or to be sent by Buyer, which are hereby expressly rejected and superseded by this Order Acknowledgement. No such additional or different terms or conditions will be of any force or effect. This Order Acknowledgement is expressly conditional on Buyer's assent to all terms herein and Seller is unwilling to proceed in this transaction without that assent. This is the final expression of this agreement and there will be no waiver or modification of any of these terms unless in writing signed by both parties.

**Payment; Finance Charge.** Unless otherwise set forth in this Order Confirmation, payment for goods shall be made thirty (30) days after invoicing. Seller offers no discount for early payment. Balances that are unpaid after the payment deadline are subject to a \$30.00 late fee. A 1.5% monthly finance charge will be assessed on all past due amounts, with the finance charge subject to change without notice, at Seller's sole option.

**Prices.** Prices are in United States Dollars.

**Title; Risk of Loss.** Title to the goods and risk of loss shall transfer to Buyer upon pick up of goods at Buyer's designated location for product sold ex works, unless otherwise specified on Seller's Order Acknowledgement.

**Storage Fee.** A storage fee of \$250.00 per load per week shall be assessed for goods remaining at Seller's facility more than twenty-one (21) days after notification of allocation.

**Limitation of Warranty.** THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, THAT EXTEND BEYOND THE DESCRIPTION OF THE GOODS IN THE ORDER ACKNOWLEDGEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. However, Seller warrants that the goods delivered shall conform to the grade and quantity specified in the Order Acknowledgement.

**Force Majeure.** Force majeure shall mean delays caused by any governmental or quasi-governmental entity, shortages of materials, natural resources, or labor, fire, catastrophe, labor strikes, civil commotion, riots, war, acts of God, governmental prohibitions or regulations, inability to obtain materials, pandemic, epidemic, or any and all other extraordinary causes (but not including financial inability). Therefore, if an event of force majeure occurs, Seller may terminate the order. Seller shall not be liable for any damages or penalties whatsoever, whether direct, indirect, special, liquidated, delay, consequential, contingent, exemplary, punitive or otherwise, resulting from Seller's failure to perform or delay in performing as a result of the foregoing.

**Limitation of Liability.** SELLER'S LIABILITY SHALL BE LIMITED TO THE COST OF REPLACING DEFECTIVE AND/OR NONCONFORMING GOODS AT THE POINT OF DELIVERY AS SPECIFIED IN SELLER'S ORDER ACKNOWLEDGEMENT WITHIN A REASONABLE PERIOD OF TIME FOLLOWING PROPER AND TIMELY REJECTION BY BUYER. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER FOR LIQUIDATED, DELAY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OF ANY NATURE WHATSOEVER, ARISING FROM NONCONFORMITY OF GOODS OR DELAY IN SHIPMENT, OR ANY OTHER BREACH BY SELLER.

**Indemnification.** Buyer assumes and agrees to defend, indemnify, and hold harmless Seller from any and all liability whatsoever which may arise from the use by Buyer or others of the goods sold hereunder, whether used singly or in combination with other materials, whether such liability is based on contract, tort, strict liability, or other theory except the extent such liability is caused solely by Seller's gross negligence or willful misconduct.

**Costs, Expenses, and Attorneys' Fees.** In any dispute between Buyer and Seller concerning the enforcement or declaration of any rights under this Order Acknowledgement and/or Terms and Conditions or if any litigation is commenced between Buyer and Seller for the enforcement or declaration of any rights under this Order Acknowledgement and/or Terms and Conditions, then the prevailing party shall be entitled to receive from the non-prevailing party any and all of the costs, expenses, and fees incurred by the prevailing party in connection with a dispute between Buyer and Seller, including, without limitation, reasonable attorneys' fees and costs and expenses. The terms of this section shall not merge into any judgment and shall apply post-judgment including, but not limited to, in any appeal or bankruptcy proceeding.

**Applicable Law; Consent to Jurisdiction and Venue.** The contract of sale arising from the acceptance of this Order Acknowledgement is entered into, and shall be construed and interpreted in accordance with, the laws of the State of California. Venue shall be in the County of Stanislaus.

**Waiver.** No waiver of any provision of this Order Acknowledgement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**Severability.** If any term or provision of this Order Acknowledgement becomes or is held by any court of competent jurisdiction to be illegal, null, or void, the remaining terms and provisions shall not be affected or invalidated.