

**Brewster Cheese Company**  
**Purchase Order**  
**Terms and Conditions**

**Agreement:** This purchase order, and any documents referred to on the face hereof, constitute the entire agreement between Brewster Cheese Company, (referred to as "Brewster") and the Seller and is expressly conditioned upon Seller's acceptance of all of the terms and conditions of purchase contained therein. Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing despite Brewster's acceptance of goods or services.

**Changes:** Brewster shall have the right at any time to make changes in drawings, quantity, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly.

**Warranties:** Seller warrants that (a) it has good and marketable title to all Products delivered to Brewster pursuant to this Agreement and the same shall be delivered to Brewster free and clear of all liens and encumbrances; (b) that all goods or services furnished hereunder shall conform to the description and specification thereof, be merchantable, and free from any defects in design, workmanship or material; and (c) that the items furnished hereunder are suited for their intended use. Seller shall indemnify, save harmless and defend Brewster from any breach of this warranty, and no limitations on Brewster's remedy in Seller's documents shall operate to reduce this indemnification. Seller shall extend all warranties it receives from its suppliers to Brewster, and Seller's warranty shall extend to Brewster's customers. This warranty is in addition to all warranties implied in law.

**Quantity and Quality:** At Brewster's option, any excess quantities shipped may be returned at Seller's expense. If a special brand is specified in this order, the goods being purchased must meet the standard for quality, performance, and use of such brand. If Brewster elects to accept good purported to be equal to the special brand, the goods may be rejected if any specification is determined to be nonconforming. Any parts or materials that are custom-made to Brewster's specifications are required to pass inspection criteria established by Brewster's Quality Assurance Department.

**Inspection and Quality Control:** All items furnished under this order by Seller to Brewster shall be subject to inspection and tests by Brewster, or representatives of third party purchasing Brewster's product in which items will be used ("User's Representative"). To the extent practicable inspection may be made at all times and places, employees while at Brewster's premises including the period of manufacture and prior to acceptance. Goods rejected by Brewster for whatever reason shall be held, transported and/or stored at Seller's sole expense. Seller shall promptly reimburse Brewster for any such expenses. Brewster reserves the right to charge Seller an administrative cost for any rejection

**Termination:** (a) *Termination for convenience.* Brewster reserves the right to terminate this purchase order for its convenience. In such event Seller shall immediately stop all work and observe any instructions from Brewster as to work in process. Seller shall be paid an equitable payment for work already performed. (b) *Termination for Cause.* By written notice of default to Seller, or if Seller becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Seller any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law of any jurisdiction or for the appointment of a receiver or trustee in respect to any of Seller's property and such proceeding is not dismissed or cured within 60 days, Brewster may cancel the whole or any part of this order or exercise any other remedy provided purchasers of goods by law or in equity.

**Remedies:** Not by way of limitation, the remedies of the parties include: If Brewster cancels this order in whole or in part as provided in Section 6.2, Brewster may procure upon such terms and in such manner as Brewster may deem appropriate goods or services similar to those cancelled and Seller shall be liable to Brewster for any excess costs for such similar supplies or services, including Brewster's costs incurred in making such procurements, provided that Seller shall continue the performance of this order to the extent not cancelled under the provisions of this order. The rights and remedies of Brewster provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order. The failure of Brewster to insist upon strict performance of any of the terms of this order or to exercise any rights hereunder shall not be construed as a waiver of Brewster's rights.

**Price:** Seller warrants that the prices for the articles sold Brewster hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. If price is not stated on this order, it is agreed that the goods or services shall be billed at the price last quoted to, or paid by a customer of Seller, or the prevailing market price, whichever is lower.

**Shipments:** If in order to comply with Brewster's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting there from shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Brewster and approved in advance. Each shipment shall have its own respective packing list/delivery slip with a PO number. Orders shall be shipped complete unless otherwise noted on the purchase order. Brewster may delay delivery and/or acceptance occasioned by causes beyond its control.

**Payment:** Invoices shall be rendered separately for each delivery, cover not more than one order, and specify Brewster's purchase order number. Invoices shall be sent to Brewster at the office indicated below:

\_\_\_\_\_ Brewster Cheese Company 800 Wabash Ave. S.,  
Brewster, Ohio 44613 (if no mark is indicated this location is default  
address to use)

\_\_\_\_\_ Brewster Cheese Company 300 W. Railroad Ave,  
Stockton, IL 61085

\_\_\_\_\_ Brewster Cheese Company 311 S. Oneida St., Rupert,  
ID 83350

All payment terms are net thirty (30) days from receipt of a correct invoice. All invoices should be marked for the attention of Brewster's accounts payable department.

**Packaging:** Seller shall package the goods in accordance with accepted standard commercial practices for normal shipment considering the type of goods involved and the normal risks encountered in shipment. Each package shipped to Brewster shall be numbered and labeled with Brewster's purchase order number, stock number, contents and weight, and shall contain an itemized packing slip. No charges of any kind will be allowed, including charges for boxing, packing, crating or cartage, unless specifically agreed to by Brewster on the face hereof.

**Risk of Loss:** Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein which occur prior to acceptance by Brewster. No such loss, injury, or destruction shall release Seller from any obligations hereunder.

**Miscellaneous:** Seller shall not assign or sub-contract this order without Brewster's prior written consent. The term "Seller" or "Contractor" or both of said terms, as may be appropriate, shall mean the person, firm or corporation to whom the purchase order is addressed, whether the order be for manufactured goods, materials,

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supplies and work, or some or all of them. No advertising or publicity matter having or containing any reference to Brewster shall be made by Seller without the written consent of Brewster. Time is of the essence in this contract.

Special Tooling, Drawings, Artwork or Specifications: Seller is responsible for the protection, calibration, maintenance, and care (other than normal wear) of all tooling, artwork, and equipment owned by Brewster. Said tooling, artwork or equipment shall be subject to surveillance inspection upon notice and shall be returned in an acceptable condition immediately upon demand or notice. Any drawings, artwork, or specification prepared by Seller are to become the property of Brewster and shall be marked "Property of, Brewster Cheese Company" and shall be stored separately when not in use. Such drawings, artwork or specifications will be sent to the Brewster Purchasing Department immediately when requested.

Infringement: Seller warrants that Brewster's purchase, installation, sale and/or use of the goods covered hereby, including, but not limited to any related documentation, will not result in any claim of infringement, or actual infringement of any patent, trademark, copyright, franchise, trade secret or other intellectual property right. Seller shall indemnify and hold Brewster harmless from and against all claims, losses, expenses, damages, causes of action and liabilities of every kind and nature, including without limitation reasonable attorneys' fees, arising from or out of any breach of the foregoing warranty.

Confidentiality: All data and information not already in the public domain, developed or disclosed during the life of this order, will be the property of Brewster and will be held in secrecy and confidence by the Seller. Seller shall protect all data and information received from Brewster with the same degree of care with which it protects its own trade secrets and proprietary, commercial, technical and confidential information. Seller will keep confidential all such data and information until it comes in the public domain or until Brewster's purchasing agent consents in writing to disclosure.

Compliance with Laws: Seller shall comply with all applicable federal, state and local laws, rules, regulations and other legal requirements, including, but not limited to any applicable federal, state or local health or food safety regulations, applicable provisions regarding handling, documenting and transportation of materials (including hazardous materials), and shall defend, indemnify and hold harmless Brewster from and against any all costs (including reasonable attorneys fees and court costs), expenses, claims, liabilities and all fines and penalties arising out of or related to Seller's failure to comply with any law or governmental regulation or otherwise related to Seller's actions or omissions related to the Goods.

Legal: The laws of the state where the product is delivered or service performed shall govern this transaction, excepting its choice of law principles. In any suit or action brought to enforce any term, condition, or covenant herein, or to recover damages arising from any breach of this contract, the losing party shall pay to the prevailing party reasonable attorneys' fees and all other costs and expenses which may be incurred by the prevailing party in any such suit or action and in any reviews thereof and appeals there from. All actions or lawsuits shall be brought in the Stark County Ohio Common Pleas Court and Seller accepts personal jurisdiction and venue of said court.

**ADDITIONAL TERMS FOR ON-SITE WORK:** In the event this order requires the performance of work or installation of goods by Seller upon any property or project of Brewster, the following additional conditions shall also be applicable.

Seller shall have sole responsibility for the safety of its employees and contractors on Brewster's site. Brewster's sites are manufacturing facilities with numerous potentially dangerous areas and Seller must ensure at all times that Seller and all of Seller's employees and contractors comply with all applicable laws and regulations, including OSHA regulations and environmental regulations, including without limitation those related to safe handling and discharges of ammonia. Seller agrees to take all precautions to protect all property and persons from damage or

injury arising out of its work and shall comply with all fire, safety and other applicable regulations prescribed by any governmental agency and by Brewster and/or owner of the project upon which work is being performed, and shall be responsible for the observance thereof by all sub-contractors, employees, agents and representatives of Seller and its subcontractors. Without limiting the foregoing, Seller shall assure that each of its employees is trained in the work practices necessary to safely perform his or her job, shall assure that each employee is instructed in the known potential fire, explosion, or toxic release hazards related to the work he or she will perform in this facility and in the applicable provisions of the emergency response plan of this facility; and shall submit to Brewster documentation that each employee has received and understood the training and instructions. The same requirements apply to subcontractors who may work under contract Seller, all of which require prior approval by Brewster. Additionally Seller will be responsible for relaying the information listed above to your individual employees before they come onto the premises. Seller shall also obtain at its own expense and provide Brewster with proof of insurance coverage providing for 30 days notice of cancellation to Brewster satisfactory to Brewster for workmen's compensation and property damage, public liability, personal injury, employer's liability, product liability and other applicable insurance.

Seller shall keep the premises and work free and clear of all mechanics' and materialmen's liens or claims; Seller shall promptly pay for all labor and material and if Seller fails to do so Brewster, without waiving any rights or remedies against Seller for or by reason of such failure may, but without any obligation to do so, pay the same and deduct the amount of such payments from sums due Seller hereunder; and Brewster may withhold any payment to Seller until receiving such affidavits, waivers, and releases with respect to claims for labor and materials as Brewster may require.

The work shall remain at Seller's risk prior to written acceptance by Brewster and Seller shall replace at its own expense all work damaged or destroyed by any cause whatsoever.

Seller shall act as an independent contractor and not as the agent or representative of Brewster.

Seller shall perform its work in accordance with the schedules and work programs established by Brewster and shall fully cooperate with Brewster and others engaged in work on the project so that the work on the entire project may be performed with the utmost speed, consistent with good practices. In case of conflict, Brewster may direct the necessary coordination. Seller will ensure at all times all of its employees and contractors comply with all site rules of Brewster.

Seller shall carry on its work so that the premises shall at all times be clean, orderly and free from debris and upon completion shall remove all equipment and unused materials from the project; clean up all refuse and debris and leave the site of the work clean, orderly and in good condition.

Seller shall require Seller's employees, agents, contractors or sub-contractors to abide by Brewster's Work and Safety rules when work or services are performed at Brewster's premises. Brewster has the right to exclude personnel from Brewster's premises for any reason whatsoever, including who do not abide by such rules, and at Brewster's election, to declare a default under the order.

Seller is solely liable for its employees, agents, contractors or sub-contractors and their action while on Brewster's premises and the Seller will defend, indemnify and hold harmless Brewster from all losses, costs (including reasonable attorneys fees and court costs), claims, expenses, damages arising from, related to or out of the presence or any action or omissions of Seller or its employees, contractors or agents.