



## **TERMS AND CONDITIONS OF SALE**

**1. Terms and Conditions:** These Terms and Conditions of Sale ("Terms") shall apply to the sale of Products by Chobani to Customer. These Terms constitute the agreement between Chobani and Customer with respect to Customer's purchase and Chobani's sale of Products, to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document) and supersedes and cancels any prior discussions, understandings or representations between Chobani and Customer. No addition to or modification of these Terms shall be binding upon Chobani unless expressly agreed to by Chobani in writing, and, if these Terms are deemed an offer, acceptance is expressly limited to these Terms.

**2. Definitions:** Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Section 19 below

**3. Purchase Orders:** Customer will purchase Products from Chobani by submitting a written purchase order to Chobani; such purchase order is subject to acceptance by Chobani (a "Purchase Order"). These Terms will apply to the Purchase Order and supersede any different or additional terms on Customer's purchase orders. Purchase orders issued by Customer to Chobani are solely for the purpose of requesting delivery dates and quantities, specifying the ship-to and bill-to addresses, and specifying the applicable price for each Product; all other terms on such purchase order shall have no force or effect. The Purchase Order is subject to acceptance by Chobani (which acceptance may be evidenced by Chobani's shipment of Product). If a Purchase Order exceeds Chobani's inventory, Chobani may allocate available inventory in Chobani's discretion, without liability to Customer or any third party.

**4. Price and Payment Terms:** The price payable for the Products purchased by Customer shall be Chobani's price for such Products in effect at the time of shipment (the "Purchase Price"). Customer shall be responsible for the payment of all taxes, withholding, duties and other governmental assessments upon or with respect to the sale, purchase, use, receipt or shipment of Products (other than taxes based solely on Chobani's net income), including, without limitation, sales or use tax or similar taxes, provided that Chobani will not invoice Customer for taxes to the extent Customer has provided Chobani with evidence that Customer is exempt from paying and/or Chobani is exempt from collecting such tax. The Purchase Price shall be paid in U.S. Dollars. Customer shall pay all amounts invoiced within 14 days from invoice date, unless Chobani at any time determines that Customer's credit is not satisfactory, in which case payment terms shall be C.O.D. Chobani shall not invoice for Product before the actual date of shipment of the applicable Products. All sums not paid when due will accrue interest daily at the lesser of an annual rate of 18% or the highest rate permissible by law on the unpaid balance until paid in full. Customer shall have no right to offset or deduct any amount from the amounts owed to Chobani. In any action by Chobani to enforce its right to payment, Chobani shall be entitled to recover its reasonable attorneys' fees, costs or other expenses to the extent it is the prevailing party.

**5. Promotions:** Notwithstanding anything to the contrary set forth herein or in any Purchase Order submitted by Customer, manufacturer discounts or other promotional pricing, allowances or other terms (the "Promotional Terms"), if any, relating to Products shall be strictly based upon the types and quantities of Product to which such Promotional Terms are stated to apply as set forth in the Purchase Order. No modification of any such Promotional Terms, or the types or quantities of Product to which they apply, shall be effective unless expressly agreed to in writing by Chobani. Any promotions, discounts, or other allowances offered by Customer to its customers on types or quantities of Product in excess of those set forth in the Purchase Order as accepted by Chobani shall be Customer's sole responsibility.

**6. Production; Shipping; Title and Risk of Loss:** (a) Chobani reserves the right to produce and ship all or any portion of the Products specified in any Purchase Order from any one or more of its plants or facilities; and, subject to these Terms, Chobani shall use its reasonable commercial efforts to fill promptly (by full or partial shipment) Customer's Purchase Order, insofar as practical and consistent with Chobani's then-current lead-time schedule, shipping schedule, access to supplies on acceptable terms and allocation of available Products and capacity among Chobani's customers; each partial shipment shall be deemed a separate sale and may be invoiced upon such shipment. (b) Customer may not decrease, reschedule or cancel any Purchase Order. (c) Upon tender of delivery of Products, Customer will provide Chobani with immediate telephone or e-mail notification of any alleged Product nonconformity, including any shortage or other discrepancy or situation which Customer believes may impair the value of the Products or justify payment of less than the amount invoiced for such Products. If notice is not so made within 24 hours after tender of delivery of Products, then Customer shall be deemed to have accepted the Products as conforming in all respects and will submit to Chobani full payment therefor on or before the date set forth in Section 4 above. Within five (5) days after any such telephonic or e-mail notice described above, Customer will send Chobani a detailed written confirmation thereof and will attach all documents relevant thereto. Any payment for less than the amount invoiced must be authorized in advance by Chobani by assignment of a credit/claim number. The assignment of a credit/claim number shall not constitute final approval of Customer's claim or constitute a waiver of any of Customer's obligations or Chobani's rights



hereunder. (d) For Outbound Shipments. Chobani shall mark all Products for shipment to Customer's address set forth on the Purchase Order. All Products are delivered F.O.B. Destination per UCC (or D.A.P. per INCOTERMS for international shipments) Customer's warehouse or place of shipment specified in Customer's Purchase Order. Customer shall include complete shipping instructions on Customer's Purchase Order. Chobani will use its reasonable commercial efforts to comply with such instructions, provided, however, if Customer does not designate a carrier or method of shipment or Chobani determines the carrier or method of shipment specified by Customer is unavailable or Chobani reasonably determines the carrier or method of shipment is unsatisfactory for shipment of Products, Chobani may select the carrier or method of shipment. In the event of any such change, Chobani shall promptly notify Customer. Chobani will be responsible for all shipping and delivery charges, including insurance to the named place of delivery, but not import customs or import taxes. Title to and risk of loss of Products shall pass to Customer at delivery. (e) For Customer Pickup Orders. All Products are delivered F.O.B. Origin (Chobani's applicable warehouse or place of production) per UCC. Title to and risk of loss of Products shall pass to Customer at delivery, and delivery shall mean at the time Product is placed in the possession of Customer's carrier after loading.

**7. Installments:** Subject to these Terms, if the Purchase Order provides for deliveries over a period exceeding one (1) month, Chobani shall not be obligated to deliver in any 30 day period more than approximately equal monthly quantities of Product in relation to the total amount of Products requested in the Purchase Order, and Chobani may make shipments of the total amount of Product ordered in such equal monthly quantities. Any failure by Chobani to ship or deliver any installment when due will not be deemed to substantially impair the value of the contract as a whole and will not constitute a breach of the contract as a whole. In the event of non-delivery of an installment by Chobani, Customer's sole and exclusive remedy shall be limited to delivery of the Products as soon as Chobani can reasonably do so.

**8. Quality Assurance:** Chobani shall have no obligation to ensure that any Products purchased from Chobani meet any special quality assurance specifications and/or other requirements of Customer unless such specifications and/or other requirements are set forth in Customer's Purchase Order and expressly agreed to in writing by Chobani.

**9. Default:** If Customer (a) fails to furnish shipping instructions for Products within the time specified, (b) fails to order any shipment of Products within the time specified therefor, (c) fails to supply adequate credit within the time specified, (d) fails or refuses to accept any shipment of Products properly tendered, (e) fails to tender any payment when due in accordance with these Terms and the terms of the applicable invoice, (f) is determined by Chobani to be likely to default in any such payment, including without limitation if Customer is unable, or states that is unable, to pay its debts as and when they become due or where a receiver is appointed for all or any portion of the assets of Customer, or (g) fails in any other respect to perform its obligations in accordance with these Terms, the occurrence of any of the events specified in clauses (a) – (g) above being deemed to constitute a material breach hereof, Chobani may treat such default as (i) a total breach of the entire contract, or (ii) a breach only as to the individual shipment or installment, and, in addition to any other rights or remedies which Chobani may have at law or in equity, Chobani may (x) cancel the Purchase Order, (y) terminate the Purchase Order as to the portion thereof in default or as to any unshipped balance, or both, and/or (z) take possession of and resell, after two (2) days written notice to Customer, any of the Products which have been shipped and which Customer has wrongfully failed or refused to accept, and receive from Customer the difference between the Purchase Price with respect to such Products and the price obtained on resale (if less), as well as any incidental costs and expenses incurred by Chobani. All rights and remedies of Chobani shall be cumulative and not exclusive of any other rights or remedies which Chobani would otherwise have at law or in equity. Customer shall cooperate with Chobani in Chobani's enforcement of its rights and remedies hereunder, including granting Chobani access to Customer's facilities for the purpose or retaking possession of any Products that are the subject of a default, and shall indemnify Chobani for all costs and expenses incurred by Chobani in connection with the repossession, transport and/or disposal of any Products that perish, become damaged or tainted, or otherwise become unsalable as a direct or indirect result of Customer being unable or unwilling to accept delivery of such Products.

**10. Descriptions and Specifications; Samples:** To the extent permitted by applicable law, all descriptive specifications and other data furnished by Chobani or otherwise contained in catalogues or other advertising materials are approximate only and are intended to be merely a general description of Products and are not incorporated by reference into any agreement between Chobani and Customer, under these Terms or otherwise. To the extent permitted by applicable law, any sample, description or visual representation or details of Product provided by Chobani to Customer are representative only, and the actual Product delivered may differ, provided such differences are not materially adverse to Customer, as reasonably determined by Chobani.

**11. Warranty; Limitation of Liability:** Chobani represents and warrants to Customer that, as of the date of shipment (a) Chobani has the right to convey good title to Products, (b) the Product is not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, and (c) the Product is not an article which may not be introduced into interstate commerce.



EXCEPT AS EXPRESSLY SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE, CHOBANI HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. IN NO EVENT SHALL CHOBANI BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES WHATSOEVER INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS, LOST PROFITS, DAMAGE TO GOODWILL OR REPUTATION, BUSINESS INTERRUPTION, OTHER INDIRECT PECUNIARY LOSS OR OTHER INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY), CONTRIBUTION, INDEMNITY, SUBROGATION OR OTHERWISE, EVEN IF CHOBANI HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES. CUSTOMER ASSUMES ALL RISKS AND LIABILITIES FOR ANY LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE USE OR SUBSEQUENT SALE OF THE PRODUCTS, EITHER ALONE OR IN COMBINATION WITH OTHER PRODUCTS.

**12. Exclusive Remedy:** Customer's exclusive remedy and Chobani's sole liability for shipment of nonconforming Product, including for breach of the limited warranty set forth in Section 11 above, is expressly limited to a refund of the Purchase Price paid by Customer with respect to such nonconforming Product. All nonconforming Product, at Chobani's option, shall be either (x) returned to Chobani, at Chobani's expense, or (y) disposed of by Customer in a manner mutually acceptable to Chobani and Customer with all reasonable costs of disposition to be paid by Chobani. Customer shall not return or dispose of any Product except upon receipt of, and in accordance with, instructions provided by Chobani. Customer shall properly store all such Product in accordance with industry standards while awaiting such instructions from Chobani. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE REMEDIES GRANTED TO IT HEREUNDER ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY CLAIM BY CUSTOMER IN CONNECTION WITH OR RELATING TO THE PRODUCTS.

**13. Force Majeure:** Chobani shall not be liable to Customer for, and shall not be deemed to have breached these Terms in the event of, any failure or delay in performance when such failure or delay is caused by conditions beyond Chobani's reasonable control, including without limitation war, strike, labor dispute, fire, flood, earthquake, tornado, hurricane, government action or intervention, embargo or blockade, explosion, terrorist threats or acts, civil unrest, shortage of raw materials, breakdown, shortage or non-availability of transportation facilities or equipment or any other national or regional emergency or act of God. If Chobani declares a force majeure event hereunder, the applicable Purchase Order shall continue in effect for a period of 60 days from such declaration. After the expiration of such 60 day period, Chobani may cancel any unperformed portion of the Purchase Order upon written notice to Customer without liability to Customer.

**14. Termination of Purchase Order:** Upon any termination of a Purchase Order or any part thereof by Chobani in accordance with these Terms, Customer shall be deemed to have waived all claims for damages related to such termination, including without limitation any loss of anticipated profits, and to accept as its sole remedy for termination the reasonable additional costs of obtaining substitute goods of comparable quantity and quality, provided such costs do not exceed the aggregate applicable Purchase Order Purchase Price. Any claim for adjustment not asserted within 60 days from the date of such termination shall be deemed to have been waived by Customer.

**15. Confidential Information; Duty Not to Disclose:** Customer agrees that it shall not use or disclose, or permit the use or disclosure of, Chobani Confidential Information, except as required by these Terms. All use or disclosure of Chobani Confidential Information shall be for the sole and exclusive benefit of Chobani. Customer shall obtain Chobani's written consent prior to any publication, presentation, public announcement or press release concerning its relationship as a Customer of Chobani and shall not disclose the terms of any Purchase Order accepted by Chobani other than to such of Customer's employees who have a need to know such information in the ordinary course of Customer's business.

**16. Intellectual Property Rights:** All Intellectual Property of either party hereto, and all modifications thereto, shall at all times be and remain the sole and exclusive property of such party, and neither these Terms nor any Purchase Order submitted by Customer hereunder shall constitute a license to either party to use or display the Intellectual Property of the other party, except to the limited extent necessary in connection with its performance under any such Purchase Order.

**17. Audit Rights:** Chobani may, upon at least 15 days prior written notice, inspect, or have an accountant or auditor inspect, Customer's books and records relating to these Terms, Customer's Purchase Orders and Customer's compliance herewith and therewith, for up to two (2) years of prior records from the date of such audit. Any such audit will be conducted during Customer's normal business hours and in a manner that does not interfere with Customer's normal business operations. In the event the cost of any such audit shall exceed \$2,000, Customer shall reimburse Chobani for such excess cost.

**18. Export Laws:** Customer acknowledges that sales of the Products may be subject to export and import control laws, restrictions and regulations imposed by the United States or other jurisdictions. Customer shall comply with all applicable



export laws, restrictions and regulations of the United States, the European Union or other foreign agency or authority and agrees not to import, export or re-export, or allow the import, export or re-export of, any Product in violation of any such laws, restrictions or regulations. Customer hereby certifies to Chobani that neither it nor any of its customers is on any U.S. government restricted parties list or similar list and shall be solely responsible for obtaining any and all necessary licenses in connection with the import, export or re-export of Products.

**19. Foreign Corrupt Practices Act:** In conformity with the US Foreign Corrupt Practices Act, or any other applicable anti-corruption law, and Chobani's guidelines related thereto, Customer shall not directly or indirectly make an offer, payment, promise to pay, authorize payment, promise to give, or otherwise induce the giving of anything of value for the purpose of influencing an act or decision of an official of any government entity, political party or office (including a decision not to act) to affect any act or decision in order to assist Customer or Chobani, in obtaining, retaining or directing any business. Any violation of this provision is considered a material breach of contract, allowing for immediate termination by Chobani without notice or opportunity to cure, and Customer will indemnify Chobani for associated costs.

**20. General:**

(a) Notwithstanding the expiration or termination of these Terms or any Purchase Order, any rights and obligations which by their nature extend beyond such expiration or termination shall survive such expiration or termination, including the provisions of Sections 9 (Default), 11 (Warranty; Limitation of Liability), 12 (Exclusive Remedy), 14 (Termination of Purchase Order), 15 (Confidential Information; Duty Not to Disclose), 16 (Intellectual Property Rights), 17 (Audit Rights) and this Section 20.

(b) These Terms and the Purchase Orders shall in all respects be governed by and construed in accordance with the laws of the State of New York, United States of America, without regard to its conflict of laws principles. The parties agree that any claim or dispute arising under this Agreement shall be resolved by a court located in New York County, New York. Customer irrevocably consents to the personal jurisdiction of the state and federal courts in and for New York County, New York, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum. The English language version of these Terms and the Purchase Orders shall govern and control any translation of these Terms and any Purchase Order into any other language. The parties specifically waive application of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The word "including" shall mean including without limitation.

(c) Any notice to be given under these Terms or a Purchase Order will be in writing and addressed to the party at the address stated in the front of the Purchase Order with a copy to Chobani, LLC, 200 Lafayette Street, 6th Floor, New York New York 10012, Attention: Chief Legal Officer and General Counsel. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; or (iii) if sent by electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal.

(d) If any court of competent jurisdiction holds that any provision of these Terms or of any Purchase Order is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of these Terms and/or of the Purchase Order will not be affected or impaired, and all remaining terms hereof or of the Purchase Order shall remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.

(e) No course of dealing or failure by either party to strictly enforce any term, right or condition of these Terms or a Purchase Order will be construed as a waiver thereof. Any waiver by either party of a breach of any provision of these Terms will not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of these Terms. Any waiver must be in writing and signed by the party so waiving.

(f) These Terms may be modified by Chobani at any time for any reason.

(g) Customer shall not assign any Purchase Order or any interest therein without Chobani's prior written consent. Any attempted assignment in violation of the foregoing shall be void and of no force or effect and shall entitle Chobani to cancel such Purchase Order immediately upon written notice to Customer.

(h) All capitalized terms used in these Terms, to the extent not defined elsewhere in these Terms, shall have the following meanings: "**Chobani**" means Chobani, LLC, a Delaware limited liability company, and each of its parent, subsidiaries and affiliates (which shall include any corporation or entity which, directly or indirectly, controls, is controlled by or is under common control with, Chobani, LLC), and each of their respective successors and assigns, individually and collectively. "**Chobani**



**Confidential Information**” means information, in whatever form or medium, disclosed by or on behalf of Chobani to Customer which relates to Chobani’s business or other information not generally known to the public, including, without limitation, commercial, business, financial, and technical information, such as its business plans, operations, specifications, formulas, processes, methods, inventions, flavors, concepts, ideas, applications, ingredients, recipes, know-how, discoveries, technology, intended use or sale of products, capabilities, systems, pricing, controls, standards, suppliers, customers and personally identifiable information and the terms of any agreement between Chobani and Customer and the discussions, negotiations and proposals related thereto. Confidential Information shall not include information that (a) Customer can demonstrate, as evidenced by its written records, was in its possession or control prior to the time of its disclosure hereunder; (b) is or becomes publicly known, through no wrongful act of Customer or any Customer personnel; (c) Customer can demonstrate, as evidenced by its written records, was received by it from a third party free to disclose it without obligation (whether contractual, legal, fiduciary or otherwise) to Chobani; or (d) Customer can demonstrate, as evidenced by its written records, was developed independently by it without use of, or reference to, the Confidential Information. **“Customer”** means the Customer identified in the Purchase Order. **“Intellectual Property Rights”** means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including moral rights, and all derivative works thereof; (ii) trademark, service mark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing). **“Products”** means, individually and collectively, Chobani’s currently generally available products listed on Chobani’s then current price list or that are otherwise sold to Customer hereunder. **“UCC”** means the New York Uniform Commercial Code.