

## Terms and Conditions for Purchases

Except to the extent (1) California Natural Products ("Customer") otherwise agrees via handwritten signature in a written (non-electronic) document (each, a "Handwritten Signature") or via another method that Customer agreed via Handwritten Signature would be binding on Customer (each a "Customer Consent"), and (2) the other party ("You" or "Provider") also agrees, in each case pursuant to and in compliance with these Terms (each, a "Signed Agreement");

**1. Applicability; Incorporation.** (a) The version of these Terms and Conditions for Purchases (these "Terms") that is applicable shall be the one attached or otherwise incorporated into the applicable Signed Agreement (or if there is no applicable Signed Agreement, then the unnegotiated version at [www.cnpcnm.com/terms-purchases.pdf](http://www.cnpcnm.com/terms-purchases.pdf) (the "Unnegotiated Terms").

(b) These Terms shall be deemed to be incorporated into (as if fully restated in) any Signed Agreement, Order (as this and all capitalized terms are defined herein) and written or electronic communication or document exchanged between you and Customer (together, the "Parties", and each, a "Party"), in each case, if and to the extent these Terms are not already expressly incorporated therein (pursuant to these Terms, whether directly or via a Signed Agreement).

(c) Each Master Agreement is incorporated into its Statements of Work, in each case, if and to the extent such Master Agreement isn't already explicitly incorporated therein (pursuant to these Terms). A "Master Agreement" is a Signed Agreement that is referred to as a master agreement or that is otherwise designed to apply to and/or govern one or more other Signed Agreement(s), and "Statements of Work" are the Signed Agreements to which a Master Agreement applies.

(d) Customer only orders, purchases and accepts products, services and service deliverables subject to these Terms (and any applicable Signed Agreement). If Customer orders, purchases or accepts any product, service or service deliverable directly or indirectly from you, then Provider accepts and agrees to be bound by these Terms if: (1) Provider acts in any way (internally or otherwise) to commence the fulfillment of any portion of Customer's Order, (2) Provider communicates to Customer that Provider intends to provide a product, service or service deliverable to Customer (directly or indirectly) or the applicable Order is otherwise Accepted by Provider, or (3) Provider otherwise incorporates, assents to, accepts and/or agrees to these Terms.

**2. Orders Generally.** (a) Customer will issue one or more purchase Orders to commence/trigger the purchase of each product and/or service. Customer may be required to issue such Order(s) pursuant to one or more Signed Agreements (by requiring Customer to purchase a specific quantity or a specific product and/or service or otherwise). An "Order" is Customer's order, offer and/or request for one or more product(s), service(s) and/or service deliverable(s).

(b) The only terms and conditions of an Order that shall have any force or effect shall be: (1) those set forth in any applicable Signed Agreements, (2) the Unnegotiated Terms if these Terms are not incorporated into the applicable Signed Agreements, and (3) the Description of What is to be Purchased in any Accepted Orders.

(c) No additional or different terms and conditions on any Order, confirmation form, acceptance form and/or other pre-printed and/or automatically generated written and/or electronic form, on any website, computer program and/or computer portal, and/or in any other written and/or electronic communication/document, in each case, used by either Party in the order and acceptance process shall have any force or effect whatsoever except as is explicitly set forth in any applicable Signed Agreements (or if none, the Unnegotiated Terms). NO ADDITIONAL OR DIFFERENT TERM OR CONDITION DELIVERED BY EITHER PARTY (WHETHER IN THE OFFER/ACCEPTANCE PROCESS OR OTHERWISE) NOR ANY ATTEMPT TO VARY, IN ANY DEGREE, THE PERMITTED TERMS AND/OR CONDITIONS OF THE ORDER, THE ACCEPTANCE, THESE TERMS, OR ANY SIGNED AGREEMENT SHALL OPERATE AS A COUNTEROFFER TO, OR A REJECTION OF, THE OFFER/ORDER, THE ACCEPTANCE, THESE TERMS, OR ANY SIGNED AGREEMENT (EXCEPT, IN EACH CASE, TO THE EXTENT AGREED TO IN A SIGNED WRITING). UNLESS PROVIDER *REJECTS* (AS DEFINED BELOW) THE OFFER/ORDER, SUCH OFFER/ORDER SHALL BE DEEMED ACCEPTED WITHOUT SUCH ADDITIONAL OR DIFFERENT TERM OR CONDITION OR VARIANCE, AND NOTICE OF OBJECTION TO SUCH ADDITIONAL OR DIFFERENT TERM OR CONDITION OR VARIANCE, AND REJECTION OF EACH, IS HEREBY EXPRESSLY GIVEN.

(d) Once an Order is Accepted by Provider, Provider shall refer to Customer's Order number on each packing list, invoice and any other written or electronic communication/document related to that Order and/or provided by and/or on behalf of Provider.

(e) Orders that are Accepted by Provider ("Accepted Orders") are binding on Customer subject to the terms and conditions of the applicable Signed Agreements (or if none, the Unnegotiated Terms), but Customer is not required to place any future and/or additional Orders (and Customer does not guarantee that it will obtain its requirements from Provider, nor does Customer guarantee any other quantity/volume and/or that Provider has any exclusivity), except, in each case, to the extent otherwise unequivocally agreed to by Customer (such as would be the case if set forth explicitly as a Customer "GUARANTEE" (using that word or a variation thereof directly in connection therewith)) in an applicable Signed Agreement.

**3. Provider May Reject an Order.** (a) To "*Reject*" an Order, Provider shall not have Waived Rejection and Provider shall reject the Order in full via (1) a written or electronic communication/document received by Customer before the Order is Accepted by Provider (and no later than 48 hours after Provider's receipt of the Order) with the word 'REJECTED' (or a variation of such word) prominently displayed on its face, and (2) a brief explanation (which may be provided verbally).

(b) Provider shall *Reject* an Order if such Order misstates in any way the Description of What is to be Purchased, and Provider shall then afford Customer the opportunity to submit a new/corrected Order.

(c) Provider may not *Reject* an Order (and shall be deemed to have "Waived Rejection") if (1) Provider has agreed (via a written or electronic communication/document) to provide or make available any specific product(s), service(s) and/or service deliverable(s) (or to meet Customer's requirements or to make available a certain quantity (or an amount up to a certain quantity)), (2) such Order is for such product(s), service(s) and/or service deliverable(s) (or does not exceed such quantity), and (3) the Order does not otherwise fail to comply with any applicable Signed Agreement (or if none, the Unnegotiated Terms).

(d) If Provider does not *Reject* an Order, then it shall be deemed to be accepted by Provider ("Accepted by Provider"), and Provider may not later reject or change the Order without Customer Consent.

(e) Customer requests that Provider's receipt of all Orders be confirmed as soon as practicable, and Provider shall so confirm no later than 48 hours after receipt.

(f) With respect to any change to an Order that is requested or proposed by Customer, terms and conditions identical to Sections 3(a)-(e) of these Terms apply thereto, except the word 'Order' is replaced with such request/proposal, and no such change shall be deemed to be accepted by Provider unless and until it is Accepted by Provider.

**4. Provision of Products, Services and Service Deliverables; Payment.** Provider shall provide products, services and service deliverables, and Customer shall pay for products and services in each case, pursuant to the applicable Signed Agreements (or if none, the Unnegotiated Terms) and the Description of What is to be Purchased in any Accepted Orders.

**5. Specifications; Provider's Quality Documentation; Customer's Supplier Qualification/Compliance Program.** (a) The definition of Specifications is intended to be broad to permit the Parties to reach agreement on those Specifications using mutually acceptable means and methods and to accommodate changes to the Specifications over time without necessitating a formal amendment to any agreement. As such, "Specifications" for each product, service and service deliverable means:

(1) the specifications that form part of the Description of What is to be Purchased in any Accepted Order and/or that are contained in each Signed Agreement and/or (to the extent not in conflict with the foregoing) each other written or electronic communication/document that is provided by Provider to Customer (that is also acceptable to Customer) or provided by Customer to Provider (that is also acceptable to Provider), where the burden of proving whether something is 'acceptable' to one Party is on the other Party and shall not be presumed without written or electronic evidence of the same,

(2) the specifications that Customer has reasonably assumed would apply to the products, services and/or service deliverables because they had applied to earlier products, services and/or service deliverables with the same description/SKUs, and

(3) the specifications in each of Provider's Quality Documentation.

(b) "Provider's Quality Documentation" means a certificate of analysis ("COA") and each other written or electronic communication/document relating to the quality and/or specifications of a product, service and/or service deliverable (and/or to Provider itself), such as a certificate of insurance ("COI"), but only if such communication/document is provided by or on behalf of Provider. (c) In no event shall Provider's Quality Documentation modify any other Specification except as set forth in a Signed Agreement. Conforming to Provider's Quality Documentation is not a substitute for, and does not displace, conforming to the other Specifications. (d) Customer and its direct and indirect customers may, in its sole discretion, rely on Provider's Quality Documentation and treat each one that is signed and delivered by or on behalf of Provider as a stand-alone, independent document/agreement that is not deemed (and/or that has not been) waived, removed, added to, modified, superseded and/or amended by these Terms and/or any other Signed Agreement. (e) Provider's Quality Documentation (if related to a product for human consumption, its packaging and/or a related product and/or service) may be uploaded to TraceGains (food safety, quality and compliance management software) and thereafter shall be subject to TraceGains, Inc.'s terms and conditions as they may exist from time to time, and Provider authorizes and consents to the same each time Provider's Quality Documentation is provided to Customer by or on behalf of Provider.

(f) Provider shall comply with Customer's supplier qualification/compliance program as it exists from time to time (the "Supplier Qualification Program" or the "Program"), which may require the delivery of certain Provider's Quality Documentation, including COAs and COIs; provided, however, that except to the extent Provider has agreed to comply with the Program, failure to comply with the Program shall not be deemed to be a breach of these Terms, but rather may result in Customer no longer requesting products, services and/or service deliverables from Provider (which discontinuation shall not be deemed to be a breach by Customer of any Accepted Order and/or Signed Agreement).

**6. Lead Times.** (a) A lead time may be required for each product or service pursuant to a Signed Agreement or a notice to Customer (if such notice is provided in advance by the same number of days as the new lead time and does not affect Orders already placed by Customer) (the "Lead Time"). (b) Provider shall be afforded the Lead Time even if Provider Waived Rejection of an Order (and the Description of What is to be Purchased shall be deemed amended accordingly) unless: (1) Provider fails to bring the error to Customer's attention within 48 hours of Provider's receipt of the Order, or (2) Provider otherwise affirmatively accepts the error (or any amount of time that is less than the Lead Time, in which case the Description of What is to be Purchased shall be deemed amended to account such amount of time), and/or (3) to the extent Customer terminates/cancels the Order after being made aware of the error or of Provider's acceptance of any time other than that which was reflected in the original Description of What is to be Purchased.

**7. Sourcing; Aged Inventory.** Product that is a raw material, an ingredient or any material that Customer uses in packaging goods must be from sources and manufacturing locations approved by Customer. Product, on the date of delivery, shall not be older than that which is stated in a Signed Agreement (or if not stated, shall not be older than the earlier of: 90 days from the date of manufacture or having no less than 70% of its shelf life remaining). In the event Customer does not take shipment of products specifically manufactured for it within the period established by any floor stock agreement (or other stocking agreement) that is a Signed Agreement, Provider shall notify Customer, and Customer shall take reasonable steps to take shipment as soon as practicable thereafter.

**8. Representations and Warranties.** (a) Notwithstanding anything to the contrary, a product intended to wear (such as a belt or ball bearing) and a component of a product or service deliverable purchased by Provider as complete unit for installation (such as an electrical motor) are not warranted herein but shall be replaced, repaired or refunded by Provider in accordance with the warranty or guarantee of the manufacturer or supplier of said product/component; provided, in each case, such manufacturer's warranty is a reasonable replacement of Provider's warranties herein.

(b) Nothing contained in these Terms, any Signed Agreement, any Accepted Order, any Customer Consent and/or any and/or any other written or electronic communication/document in connection with any of the foregoing shall prohibit Provider from providing, directly and/or indirectly (as a pass-through warranty from the original manufacturer or otherwise), additional written or electronic warranties and/or written or electronic warranties that would in effect extend one or more of the warranties contained in these Terms and/or in any Signed Agreement for periods of time beyond that which are contained herein, and such additional and/or extended warranties shall be given effect, including as it relates to procedural restrictions placed on such additional and/or extended warranties, but only as it relates to additional warranties and the extended period. Provider may provide those warranties in the literature provided with the products, services and/or service deliverables, in a description of the products, services and/or service deliverables and/or as Provider otherwise may choose.

(c) Notwithstanding anything to the contrary, Customer's rights in connection with any breach by Provider of Provider's representations and warranties shall be reduced to the extent any breach thereof is proximately caused by: (1) Customer's breach of these Terms and/or any Signed Agreement and/or any negligence, willful misconduct, fraud and/or other tortious act and/or tortious failure to act of Customer, any of its Affiliates and/or any of its and/or their Personnel (each, "Customer Misconduct"), (2) Customer's failure to maintain, install or use a delivered product or service deliverable in material compliance with written maintenance, installation and use instructions provided to Customer in Provider's Quality Documentation prior to its delivery, (3) Customer's unreasonable modification or repair of a product or service deliverable, in each case, unless recommended, authorized and/or permitted by Provider, and/or (4) any raw material or component that Customer is required to deliver to Provider (directly or indirectly) pursuant to a Signed Agreement.

(d) Provider represents and warrants that: (1) Provider is not under, nor will it enter into in the future, any agreement, commitment, understanding or other obligation, whether written, electronic and/or oral, which is inconsistent and/or that conflicts with these Terms and/or any Signed Agreement and/or that would in any way and/or to any extent prevent, limit and/or otherwise impair the performance by Provider of any of its obligations hereunder and thereunder, (2) each delivered product, service and service deliverable at the time of delivery is free from security interests, liens, restrictions, encumbrances and other claims, except as permitted in a Signed Agreement, (3) for

the Warranty Period and subject to **Section 8(c)** of these Terms, each delivered product, service and service deliverable complies with all applicable laws, orders, rules and regulations as they exist on the date of delivery and as they exist on the date another service is to be delivered in connection therewith (such as would be the case for a product for which an installation or calibration service is to be delivered after the original delivery of such product), (4) in Provider's performance (including in selling and delivering each product, service and service deliverable and in any manufacturing or other creation of each product or service deliverable), Provider and its Personnel have all applicable licenses, permits and registrations and comply with all applicable laws, orders, rules and regulations, (5) for the Warranty Period and subject to **Section 8(c)** of these Terms, each delivered product (i) passes without objection in the trade under its description in these Terms, in each applicable Signed Agreement and in each applicable Accepted Order, (ii) is of fair average quality within that description, (iii) runs, within the variations permitted by the Specifications, of even kind, quality and quantity within each unit and among all units involved, (iv) is adequately contained, packaged, and labeled, and (v) conforms to the promises and/or affirmations of fact made on the container and/or label if any, (6) for the Warranty Period and subject to **Section 8(c)** of these Terms, each delivered product, service and service deliverable at the time of delivery thereof is free from defect of design, material and/or workmanship (whether patent or latent) and conforms to the applicable Specifications, (7) each delivered product and service deliverable on the date of delivery is delivered in good and undamaged condition, (8) for the Warranty Period and subject to **Section 8(c)** of these Terms, each delivered product, service and service deliverable does not interfere with, infringe upon, misappropriate and/or violate any intellectual property right of any third party, no such claim has been made and, except as otherwise set forth in a Signed Agreement, no intellectual property right of any third party precludes or limits further sale, resale or use of such product or service deliverable, except in each case, to the extent caused by (i) any detailed design, specification, trademark or ornamental appearance originated and furnished by Customer to Provider in writing and used by Provider at Customer's specific written direction, (ii) the combination with any of Customer's other products and/or service deliverables, and/or (iii) modification by any party other than Provider, any of its Affiliates and/or any of its and/or their Personnel, in each case after delivery (the "Excluded Intellectual Property"), (9) each service is performed using competent, trained professionals and is performed either consistent with the Standard of Care described below, if applicable, and if not applicable, then in a professional and workmanlike manner in accordance with the applicable professional industry standards of diligence, care and skill recognized in Provider's industry at the time of delivery, (10) subject to **Section 8(c)** of these Terms, each delivered service is performed such that the intended results are obtained by Customer, except to the extent full delivery of the services is terminated/cancelled as permitted in these Terms and/or in any applicable Signed Agreement, and (11) Provider's Quality Documentation is true and correct when signed and/or provided and will remain true and correct for the Warranty Period of the applicable product, service or service deliverable, and Provider, each of its Affiliates and each of its and/or their Personnel have complied and will comply with Provider's Quality Documentation as contemplated therein.

(e) The warranties contained herein shall survive any inspection, delivery, performance, acceptance and/or payment of/for each product, service and service deliverable and any subsequent sale and/or other transfer to a third party of each product, service and service deliverable.

(f) Except as set forth in **Section 8(h)** of these Terms, in the event any product, service or service deliverable fails to conform to any of Provider's representations and warranties, Provider shall: (1) repair, replace or re-perform the nonconforming products, services and service deliverables, in each case, at Provider's sole cost and expense (including uninstalling, packing, shipping and reinstalling), or (2) if such repair, replacement or re-performance will not make Customer whole within a reasonable amount of time, then refund Customer (or to the extent not yet paid, waive payment) for each such nonconforming product, service or service deliverable, and in each case (3) reimburse Customer for Customer's Expenses, where "Customer's Expenses" means the actual costs and damages incurred by Customer in connection with the nonconforming product, service or service deliverable and its repair or replacement.

(g) If Customer is entitled to a refund, payment waiver and/or reimbursement in the event any product, service and/or service deliverable fails to conform to any of Provider's representations and warranties, then to the extent such nonconformance negatively affects another product, service and/or service deliverable and/or the whole of any turn-key solution involving both a product and a service and/or service deliverable, Customer shall also have the option to (1) terminate/cancel all or part of each Order previously Accepted by Provider (and/or the applicable Statement of Work) as it relates to such negatively affected product, service, service deliverable and solution to the extent Customer returns the same (or in the case of a service, returns related service deliverables), and (2) receive from Provider full refund thereof (and to the extent not yet paid, waiver of payment thereof) and reimbursement of Customer's Expenses in connection therewith.

(h) In the event any product, service or service deliverable fails to conform to any of Provider's representations and warranties regarding non-infringement (and/or interference with and/or misappropriation and/or violation of any intellectual property right), Provider shall, in its sole discretion and cost either: (1) procure for Customer the right to use the product, service or service deliverable, (2) modify or replace the product, service or service deliverable to avoid infringement (and interference/misappropriation/violation) provided that Customer approves such modification or replacement in a Customer Consent, which approval shall not be unreasonably withheld or delayed, or (3) remove such product or service deliverable and reimburse Customer for the product, service and service deliverable and for Customer's Expenses.

(i) Subject to **Sections 8(i) and 9** of these Terms, the rights of Customer provided in this **Section 8** shall be in addition to any other rights provided by law, order, rule, regulation, these Terms and any Signed Agreement; provided, however, that under no circumstance shall Customer be entitled to duplicative recovery of the same Customer Expense.

(j) EXCEPT AS EXPRESSLY STATED IN THESE TERMS AND/OR IN ANY APPLICABLE SIGNED AGREEMENT, EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND/OR WARRANTIES RELATED TO ANY PRODUCT, SERVICE, SERVICE DELIVERABLE, USAGE OF TRADE, COURSE OF DEALING AND/OR COURSE OF PERFORMANCE, INCLUDING ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. THE DISCLAIMER CONTAINED IN THIS **SECTION 8(j)** DOES NOT AFFECT THE TERMS OF ANY WARRANTY FROM A THIRD PARTY (THAT IS NOT PROVIDER, AN AFFILIATE OF PROVIDER AND/OR ONE OR MORE OF ITS AND/OR THEIR PERSONNEL) AND/OR THOSE PROVIDED PURSUANT TO **SECTION 8(b)** OF THESE TERMS.

(k) Customer shall not be required to stop or slow down production on account of any warranty claim and has the full and complete right to replace parts and/or materials and/or to take any action it deems, in its sole discretion, appropriate in the running of its business and/or in the operation of its equipment regardless of the warranty claim. For example, Customer shall not be required to stop or slow down production while Provider determines whether it believes the warranty claim has merit.

(l) Repaired, replaced or re-performed products, services or service deliverables shall be subject to the same terms and conditions in the same manner and to the same extent as products, services or service deliverables originally delivered, measured from the date of their delivery so that Customer gets the benefit of conforming (non-defective) product, service deliverables and services for the time periods specified in the original warranties (for example, if the original warranty is for three years and if the original product, service and/or service deliverable conforms for one year but then becomes non-conforming, then upon completion of the repair or replacement, the warranty for the repaired or replaced product, service or service deliverable shall be two years regardless of how long the repair or replacement takes to complete).

(m) Notwithstanding anything contained herein to the contrary, if Provider is providing professional services that are insured under a professional liability insurance policy for which Customer is a named additional insured, then Provider makes no warranties hereunder in connection with such professional services and associated service deliverables, but rather Provider shall provide such professional services and service deliverables consistent with the following (the "Standard of Care"): the professional skill and care ordinarily provided by professionals performing the same type of service and providing the same type of service deliverable who practice in the same or similar location under the same or similar circumstances. If Provider also provides Products, the foregoing shall not limit or eliminate any warranties contained herein related to such Products.

**9. Indemnification.** (a) Upon demand by Customer, Provider (the "Indemnifying Party") shall indemnify, defend (at Customer's election) and hold harmless Customer, its Affiliates and its and their Personnel (each an "Indemnified Party") from and against any and all third-party (including governmental entities/agencies/authorities' and Customer's employees) claims, allegations, actions, causes of actions and demands (each, a "Claim") that actually and/or allegedly are connected with, arise out of and/or are related to any Indemnification Claim (as defined below) and any and all Losses (as defined below); provided, however, that in each case, the Indemnifying Party shall not be responsible to indemnify or hold-harmless to the extent the most recent applicable adjudication or Settlement (as defined below) explicitly states that Customer Misconduct is the direct cause of the Losses (it being understood that if Customer Misconduct is a cause, the amount that the Indemnifying Party is responsible to indemnify and hold-harmless shall be reduced by the proportion caused by such Customer Misconduct). Following the most recent adjudication or Settlement of any Claim, Customer shall be entitled to contribution for the costs and expenses to defend the Claim (including all reasonable attorneys' fees and other reasonable defense and investigation costs and/or expenses) from Provider except in proportion to any such Customer Misconduct. In the absence of an adjudicated allocation of fault, the Parties shall make good faith efforts to allocate fault between them before pursuing any related legal action against each other.

(b) As used herein, "Losses" means judgments and awards resulting from Indemnification Claims, settlements of such Indemnification Claims (to the extent such settlements are made with both Customer's and the Indemnifying Party's approval, which approval shall not be unreasonably withheld or delayed (each, a "Settlement")), and direct and/or third-party bodily injuries, illnesses, property damages, penalties, fines, liabilities, deficiencies, costs, expenses, losses and other damages (including all reasonable attorneys' fees and other reasonable defense and investigation costs and/or expenses) connected with, arising out of and/or related to an Indemnification Claim (regardless of who will or has defended the Indemnified Party against such Claim), and an "Indemnification Claim" means any Provider Misconduct and/or any improper, unlawful, unreasonable, negligent and/or defect in any action and/or failure to act of Provider, any of its Affiliates and/or any of its and/or their Personnel and/or suppliers (including any breach of these Terms and/or any Signed Agreement (including any breach of any representation and/or warranty) and/or any allegation of any condition and/or aspect of any product, service and/or service deliverable that may have resulted from any of the foregoing and/or that existed at (and/or prior to) the time of delivery to Customer, such as may be the case with respect to design, quality, manufacture, packaging, labeling, packing, possession, storage, handling, sale, invoicing, shipping, delivery, defect (whether latent or patent), failure with respect to strict liability in tort and/or with respect to any related instructions, warnings and/or advertising and/or promotional materials).

(c) If requested by Customer, Provider shall promptly undertake such defense upon demand using counsel approved by Customer, which approval shall not be unreasonably withheld or delayed. Customer, in its sole discretion, may participate in such defense, at Provider's sole cost and expense (including any reasonable attorneys' fees and other reasonable defense and/or investigation costs and/or expenses), which shall be payable upon demand (together, "Provider's Expense"), but only if Customer uses counsel approved by Provider, which approval shall not be unreasonably withheld or delayed.

(d) Except to the extent the Indemnification Claim relates to any alleged infringement (and/or interference with and/or misappropriation and/or violation) of any intellectual property right purportedly held by Provider, Customer, in its sole discretion and at Provider's Expense, may instead elect to defend the Claim on the Indemnified Party's behalf and at the Indemnified Party's expense, and, Provider, in its sole discretion and at Provider's Expense, may participate in such defense using counsel approved by Customer, which approval shall not be unreasonably withheld or delayed.

(e) Obligations to defend, indemnify and/or hold harmless shall survive the delivery of products, services and/or service deliverable, and any subsequent sale and/or other transfer of product, service deliverables and/or the results of services to a third party, and remedies under these Terms and each Signed Agreement are cumulative and in addition to those provided by law or any other document or agreement.

**10. Force Majeure.** (a) Provider and Customer shall be excused from performing when and for so long as performance is impossible due to fire, explosion, physical unavailability or scarcity of raw materials, crime, accident, failure or delay of energy or of other public utilities, war, riot, order or act of military or civil authority, national emergency, insurrection, public disorder, natural disaster or unusually severe storm, flood, earthquake, volcanic eruption or other act of God, in each case, through no fault of and beyond the reasonable control of the Party claiming excuse as a result of such circumstance(s) and/or event(s) (each, "Force Majeure"). (b) In the event of Force Majeure affecting one Party, that Party shall promptly notify the other Party and stay in reasonable contact regarding the status of the Force Majeure and its effects.

**11. Delivery.** (a) If an Accepted Order is labeled (or is otherwise known by the Parties to be) a 'blanket order' or a 'blanket purchase order,' then regardless of one or more dates/times stated therein, the applicable dates/times shall be as specified in the body of that Accepted Order, in one or more future releases related to that Accepted Order (which releases may come in the form of Orders, reports or otherwise as the Parties may agree) and/or as the Parties may otherwise agree. (b) In all other cases, if delivery, required, desired, preferred or performance dates/times are not set forth in the Description of What is to be Purchased, performance by Provider shall be as soon as reasonably possible. (c) Provider shall inform Customer, via a written or electronic communication/document as soon as practical, and via a follow-up phone call on the same day (to the Customer representative who is assigned by Customer to work with Provider), if Provider anticipates that any product, service and/or service deliverable will be delayed. (d) Late deliveries not caused by Customer shall be treated by Provider as nonconformance and shall be promptly investigated by Provider for root cause. Provider shall promptly take necessary steps to correct the root cause of late delivery. (e) If any product, service and/or service deliverable is not delivered on time (as that time is extended by a Customer delay and/or Force Majeure), Provider shall reimburse Customer for Customer's Damages, where "Customer's Damages" means the actual costs and damages incurred by Customer in connection with the delay. (f) Notwithstanding any cover, alternative production/sourcing and/or other remedy available to Customer, Provider's failure to timely deliver (other than due to Customer delay and/or Force Majeure) shall be deemed a material breach hereof. (g) Whenever Customer is the Party responsible for arranging transportation, Provider shall let Customer know when a delivery is available with a reasonable amount of lead time to enable Customer to make non-expedited arrangements to have it delivered on time (whether Provider's applicable delivery is at pickup or is on another delivery term). In all other cases: (1) Provider shall make an unloading appointment with Customer at least 48 hours in advance (unless the applicable Accepted Order is for same day, next day or next business-day delivery), and (2) if unloading will require use of machinery larger than a forklift, Provider shall give Customer at least two business days' notice before arrival. (h) All packages, cases, crates, totes, bags and other packaging shall be marked with Provider's name. (i) Provider shall provide a packing list to accompany each delivery, and that packing list shall set forth each product by part-code, part-number or SKU and shall specify the quantity of each. (j) Provider shall send a separate invoice immediately after making each shipment. (k) Customer shall not be responsible or liable for any boxing, packaging, drayage, carting and/or other service charges unless included in the price or otherwise specified in the applicable Accepted Order and/or a Signed Agreement. (l) Unless otherwise set forth in an Accepted Order (or, if not set forth in an Accepted Order, then except as set forth in an applicable Signed Agreement), title to products and risk of loss and/or damage prior to and/or in transit pass from Provider to Customer DDP (as defined by Incoterms 2010), and in any case, Customer shall never be deemed to be, nor shall Customer ever be declared to be, the importer and/or the importer of record. (m) Provider shall not deliver any quantity in excess of that which has been ordered via an Accepted Order.

**12. Terminating/Canceling or Delaying an Order.** Once an Order is Accepted by Provider, Customer may not terminate/cancel or delay the Order (and/or the applicable Statement of Work), and time is of the essence, except that Customer shall have the right to such termination/cancellation and/or delay: (a) to the extent the delay is a request/proposal to change the Order and the request/proposal is accepted by Provider pursuant to **Section 2(g)** of these Terms, (b) if Customer terminates/cancels an Order because Provider made Customer aware of Customer's error in accounting for an applicable lead time as described in **Section 6(b)(3)** of these Terms, (c) if Customer terminates/cancels an Order (and/or the applicable Statement of Work) pursuant to **Section 8(g)** of these Terms, (d) as may be permitted in any Signed Agreement, (e) to the extent Provider consents to Customer's termination/cancellation or delay in a written or electronic communication/document, (f) in the event of Force Majeure, (g) in the case of any Provider Misconduct in connection with such Order (and/or any product, service or service deliverable described therein), and/or (h) if Provider fails or ceases to comply with the Supplier Qualification Program. Provider shall refund to Customer all amounts previously paid and not require further payment in connection with each terminated/canceled Accepted Order (and/or the applicable Statement of Work) to the extent Customer shall not have the intended benefit of applicable products, services and/or service deliverables that are the subject of such terminated/canceled Accepted Order because they have not yet been delivered or have been returned (and, in addition, if such termination/cancellation is pursuant to **Section 12(c)/Section 8(g)** and/or **Sections 12(q) and/or 12(h)**, then to the extent Customer elects to return all or any products and/or service deliverables thereunder, all such returns shall be made at Provider's sole cost and expense (including teardown/uninstalling/removing/extracting, packing and shipping). To the extent Customer wishes to obtain or retain any fully manufactured or work-in-progress product, Customer shall have title thereto and shall pay (net any amounts previously paid and/or refunded) the purchase price thereof discounted by the foregoing, if applicable, and/or any other amounts Customer is entitled to under these Terms.

**13. Returns.** (a) Customer may not return any product, service deliverable, under warranty claim or otherwise, without first reporting to Provider the reason for such return, and then only: (1) to the extent delivered in excess of the quantity ordered, (2) if a product, service or service deliverable fails to meet an applicable Specification, is unfit for Customer's requirements due to errors, changes and/or defects in manufacturing and/or delivery and/or otherwise does not conform to Provider's representations and warranties and/or reasonably could be (or could have been) affected by any Provider Misconduct, (3) if Customer has the right to terminate/cancel the Order (and/or the applicable Statement of Work) for such product, service and/or service deliverable, (4) as may be permitted in any applicable Signed Agreement, (5) if Provider consents thereto in a written or electronic communication/document, and/or (6) as may be permitted by law, order, rule or regulation. (b) Returns shall be at Provider's expense if and to the extent the reason for such return relates to Provider Misconduct.

**14. Assignment.** Neither these Terms, any Signed Agreement nor any Accepted Order nor any right or obligation under any of the foregoing may be assigned, transferred, delegated, pledged, hypothecated or otherwise disposed of, in any voluntary or involuntary manner (whether by transfer, merger or reorganization or similar transaction, consolidation, sale of all or substantially all properties or assets, acquisition, affiliation, division, conversion, dissolution, liquidation or otherwise), by (a) Provider, without Customer's prior consent (in a Customer Consent), which consent shall not be unreasonably withheld or delayed, and/or (b) Customer, without Provider's prior consent, which consent shall not be unreasonably withheld or delayed, except that because Customer is owned at least in part indirectly by private equity, Customer may (without requiring the consent of Provider) in whole or in part assign and/or secure the assumption of the rights and obligations in these Terms, all Signed Agreements, all Accepted Orders and, in each case, the rights and obligations thereunder to: (i) an individual or entity of demonstrated financial ability to assume the same, (ii) a current or future Affiliate of Customer, and/or (iii) a successor to all or part of Customer's business. Any purported assignment without any consent required by this **Section 14** shall be null, void and unenforceable against the non-assigning Party. No permitted assignment shall relieve the assignor of its obligations incurred prior to the date of the assignment. Subject to the foregoing, these Terms, each Signed Agreement and each Accepted Order and the rights and obligations of the Parties under any of the foregoing shall be binding upon and inure to the benefit of the Parties' successors in interest and permitted assigns.

**15. Insurance.** (a) Provider shall maintain in effect, at its expense, insurance of such types and in such amounts as is commercially reasonable in connection with the conduct of its business, including insurance coverage for its liability and indemnity obligations under each and any agreement with and/or for the benefit of Customer, each of its Affiliates and each of its and their Personnel (each, a "Customer Entity"). (b) Each insurance company shall have an overall A.M. Best Rating of A, X or better (as shown at <http://www.ambest.com/home/default.aspx>). (c) Customer's Supplier Qualification Program may also apply with respect to coverage and policies pursuant to **Section 5(f)** of these Terms. (d) Provider shall provide to Customer one or more COIs showing, at a minimum, the coverage/policies described above, upon request. New COIs showing, at a minimum, the coverage/policies described above shall be provided annually thereafter. (e) Provider shall provide to Customer at least 30 days' advance written notice of cancellation, non-renewal or material change of each coverage/policy, but such notice is not required to come from Provider's insurance broker/company. (f) Each coverage/policy (except as it relates to workers' compensation insurance if Provider does not perform staffing services) and the COIs shall name the following as an additional insured: California Natural Products and its parents, subsidiaries, affiliates and divisions, 1219, Lathrop, CA 95330, U.S.A. If Provider may provide any product and/or service deliverable (other than written and/or electronic data) or if Provider or any of its Personnel may drive a vehicle on behalf of a Customer Entity, then additional insured coverage shall be on a primary noncontributory basis and the waiver of subrogation shall be: California Natural Products and its parents, subsidiaries, affiliates and divisions, and the COIs shall reflect the same.

**16. Amendment/Modification and Waiver.** (a) Neither these Terms, any Signed Agreement nor any Accepted Order nor any right or obligation under any of the foregoing may be waived and/or amended/modified except to the extent agreed to in an applicable Signed Agreement; provided, however, that:

(1) no such waiver and/or amendment/modification in a Signed Agreement of/to any of the following shall be enforceable against Customer (if enforcement is contrary to Customer's wishes at any time), unless (and to the extent) waived and/or amended/modified in a Signed Agreement by explicitly using the word "amended" (or "amends" or "amend") and referencing the applicable section and subsection number being waived and/or amended/modified (making it clear that such section/subsection is a part of the following and that it is being amended thereby):

(i) any Master Agreement, or

(ii) any of the following Sections of these Terms: **Sections 1(a), 1(b), 1(c), 2, 3, 5(a), 16, 17, 18(b) and/or 29(d)**, and

(2) Provider may also waive any of the foregoing and/or any of its rights and/or remedies under any law, order, rule and/or regulation if such waiver is set forth in a written or electronic communication/document by Provider.

(b) No waiver shall constitute a waiver of any other identical, similar, future and/or other breach. No waiver, amendment and/or modification made in a Statement of Work shall be applicable to any future and/or other Statement of Work. (c) Any delay or failure by either Party to exercise any right or remedy shall not constitute a waiver by that Party to thereafter enforce such right and obtain such remedy. (d) Payment by Customer of any invoice shall not be deemed to be an acceptance of any product, service and/or service deliverable nor a waiver by Customer of any rights and/or remedies it may have.

**17. Rights and Remedies.** Notwithstanding the foregoing and/or anything to the contrary other than as set forth in **Section 8(f)** of these Terms: CUSTOMER SHALL RECEIVE THE FULL AND COMPLETE PROTECTION AFFORDED BY THE UNIFORM COMMERCIAL CODE AS ADOPTED BY CALIFORNIA (THE "CODE") AND ALL OTHER APPLICABLE LAWS, ORDERS, RULES AND REGULATIONS (THE "LAW") IN RELATION TO WARRANTIES, REMEDIES AND ALL OTHER RIGHTS OF A BUYER UNDER THE CODE AND THE LAW WITHOUT ANY DISCLAIMER, LIMITATION AND/OR ANY OTHER RESTRICTION, WHETHER IMPOSED BY PROVIDER, THE CODE, THE LAW OR OTHERWISE (UNLESS LEGALLY REQUIRED SOLELY BY THE CODE AND/OR THE LAW).

**18. Severability and Order of Precedence.** (a) If any term or condition (or any portion of any term or condition) in these Terms, any Signed Agreement and/or in any Accepted Order is held to be invalid, illegal or unenforceable, then to the extent allowed by law: (1) the same shall be construed and enforced so as to best effectuate the original intention of the Parties, and (2) such invalidity, illegality or unenforceability shall not affect any other term or condition therein or the whole of these Terms, any such Signed Agreement and/or such Accepted Order. (b) In the case of any conflict between and/or among any of the following, they shall control/govern (in the following order):

(1) The Description of What is to be Purchased in an Accepted Order (newest to oldest);

(2) **Section 16** of these Terms (newest to oldest, except that if multiple versions of Unnegotiated Terms apply, then with respect to an Accepted Order, the version on the date of that Order controls over all others);

(3) Signed Agreements (newest to oldest, except that any Master Agreement controls over any other Signed Agreements to which the Master Agreement applies (newest to oldest)); and

(4) These Terms excluding **Section 16** of these Terms (newest to oldest, except that if multiple versions of Unnegotiated Terms apply, then with respect to an Accepted Order, the version on the date of that Order controls over all others).

**19. Notices.** Notices provided under these Terms, each Signed Agreement and/or each Accepted Order shall be given in writing and deemed received upon the earlier of actual or constructive receipt, five days after mailing if mailed postage prepaid by certified or registered mail or airmail, return receipt requested, or one day after such notice is sent by nationally recognized overnight mail or courier (subject to confirmation of delivery) to the address listed in these Terms and/or any Signed Agreement as the address to use for purposes of notices (if no address is so designated, to its registered agent within the state or country of its organization/formation or an office location designated in any of such Party's websites), or to such other address as may be designated as the address to use for purposes of notice if designated (a) by Customer in a Customer Consent, and/or (b) by Provider in a signed writing. EACH PARTY IRREVOCABLY CONSENTS THAT THE MAILING OF PROCESS OR OTHER PAPERS IN THE MANNER PROVIDED IN THIS **SECTION 19** OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW SHALL BE VALID AND SUFFICIENT SERVICE THEREOF. Customer's address for purposes of notice is: 1250 E. Lathrop Rd, Lathrop, CA 95330, U.S.A., Attention: CEO.

**20. Intellectual Property.** Each Party shall retain sole ownership of all right, title and interest in and to all of its United States and international patents, copyrights, trademarks, service marks, trade names, symbols, logos, trade secrets and know-how, the content and materials on its website, its ideas, and its methods, and its other proprietary rights as well as its confidential and/or proprietary material, whether in visual, oral, written and/or electronic form (collectively, the "Intellectual Property"), and nothing shall be construed as granting any rights (by license or otherwise) in/to any Intellectual Property from one Party to the other Party, except as explicitly set forth in these Terms and/or a Signed Agreement.

**21. Confidentiality and Safety.** If one Party will be at the other Party's premises and/or at another location designated by such other Party (including during delivery): (a) the visiting Party shall follow (and shall ensure that its Personnel follow) all reasonable safety and security rules and procedures, as communicated to it and/or its Personnel from time to time, (b) the visiting Party and its Personnel may first be required to sign a reasonable confidentiality agreement and/or other reasonable agreements governing the visit (such as those that restrict the use of a camera or other recording device), and (c) the visiting Party shall comply (and shall ensure that its Personnel comply) with any such agreements.

**22. Governing Law.** Except as required by U.S. federal law: these Terms, each Signed Agreement, each Customer Consent, each Order, each Specification, Provider's Quality Documentation, each other written or electronic communication/document in connection with any of the foregoing and/or each of the rights and obligations of the Parties and each claim related to and/or arising out of any of the foregoing and/or the breach thereof, including any question regarding the existence, validity and/or termination of any agreement between the Parties (whether sounding in contract, warranty, tort or otherwise) shall: (a) be governed, construed and enforced in all respects (including as to validity, construction, interpretation, capacity, performance and effect) by and in accordance with the internal laws of the State of California, U.S., without regard to conflicts of laws rules, and (b) not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended (collectively, the "Conventions"). For the avoidance of doubt, the Conventions are hereby excluded.

**23. If Provider is a Foreign Entity.** If Provider is not a U.S. resident or an entity organized under the laws of any U.S. state, and if Customer so elects (in its sole discretion), notwithstanding anything to the contrary, each dispute arising out of or in connection with these Terms, each Signed Agreement, each Customer Consent, each Order, each Specification, Provider's Quality Documentation, and each other written or electronic communication/document in connection with any of the foregoing the breach thereof, including any question regarding the existence, validity and/or termination of any agreement between the Parties (whether sounding in contract, warranty, tort or otherwise) shall be referred to and finally resolved by arbitration under the rules of or by the London Court of International Arbitration (the "LCIA Rules"), which LCIA Rules are deemed to be incorporated into (as if fully restated in) these Terms, where: (a) the number of arbitrators shall be one, (b) the language to be used in the arbitral proceedings shall be English, and (c) the seat, or legal place, of arbitration shall be: (1) San Francisco County, California, U.S. if these Terms are incorporated into any Signed Agreement or if any state or federal court in the United States would have personal jurisdiction over Provider whether by agreement or otherwise, and if not, (2) Paris, France.

**24. Jurisdiction.** Notwithstanding the means and methods of resolving any dispute between the Parties and/or the location thereof: (1) a judgment in any action and/or a decision in any arbitration may be enforced in any other jurisdiction by suit on the judgment/decision, and (2) any action for equitable relief may be brought in any court having personal jurisdiction over the defendant.

**25. Independent Contractors.** Nothing contained in these Terms, any Signed Agreement, any Accepted Order and/or any Customer Consent is intended to constitute or create an agency, a joint venture, a partnership and/or a formal business organization of any kind. The status of the Parties with respect to one another is that of independent contractors.

**26. Product of Negotiation.** Each Signed Agreement is the product of negotiation and shall be deemed to have been drafted by both of the Parties, and any rule of law or any legal decision that would require interpretation of any claimed ambiguities herein and/or therein against the Party that drafted it has no application and is expressly waived by the Parties.

**27. Survival.** Upon the expiration or termination of any Signed Agreement and/or Accepted Order, all rights and obligations of the Parties thereunder relating thereto (except as it relates to: (a) any open Statement of Work under any Master Agreement unless and until the Statement of Work itself is has expired/terminated and/or (b) any open Accepted Orders under any Signed Agreement unless and until the Accepted Order itself has expired/terminated) shall automatically terminate except for any right of action occurring prior to termination/expiration and payment obligations and other terms and conditions that expressly and/or by implication are intended to survive termination/expiration (including any that pertain to limitation of liability, indemnity, representations and warranties, title and this survival provision).

**28. Heading; Signatures; Counterparts.** (a) Headings and captions in each Signed Agreement and/or Customer Consent are inserted and used solely for convenience of reference and shall not control or otherwise affect interpretation. (b) Delivering a copy of a handwritten signature via electronic means shall be deemed to have the same legal effect as delivery of an original signed copy, and each Party agrees that it will not object to the use of such electronic documents; however, names that are merely typed and sent via electronic means are not the equivalent of written and signed documents. (c) Each Signed Agreement may be signed in separate counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same document.

**29. More Definitions.** As used in these Terms, Signed Agreements, Customer Consents, Orders, Specifications, Provider's Quality Documentation and other written or electronic communications/documents in connection with any of the foregoing: (a) the phrase "such as" and the phrase "for example" each means 'for example, but not by way of limitation,' (b) the word "including" means 'including, but not limited to,' the word "includes" means 'includes, but is not limited to,' and the word or "include" means 'include, but are not limited to,' (c) the phrase "service deliverable" means any and all material (including drawings, plans and code programming) provided to Customer directly or indirectly in connection with the product and/or services, (d) the "Description of What is to be Purchased" means what Customer is offering/ordering/requesting with respect to price, quantity, identification (such as name, number/SKU and/or other Specifications), date(s), location(s), quality (such as 'new' or 'used'), delivery term(s) (such as 'pickup) and Provider's Payment Terms (where "Provider's Payment Terms" means the amount of time, if any, between Customer's receipt of Provider's invoice and the due date(s) for payment of such invoice, as such time has been agreed to in a Signed Agreement and/or in the applicable Accepted Order), in each case, which may be contained in an Accepted Order, (e) "Affiliates" of a party means individuals and entities that directly or indirectly control, are controlled by, or are under common control with, that party, and an "Affiliate" means any and/or each of them, (f) "Personnel" means agents, representatives, officers, owners, directors, managers, employees and subcontractors (and the agents, representative, officers, owners, directors, managers and employees of such subcontractors) and/or any and/or each of them, (g) "Warranty Period" means the number of days, weeks, months or years referenced in a Signed Agreement or Provider's Quality Documentation to be the longest period of time for which a warranty is applicable, but such period of time shall be measured from the delivery date (or if not delivered, measured from the date/time for such delivery in the Description of What is to be Purchased); provided, however, that if no such days, weeks, months or years have been so referenced, then it means until (1) in the case of a product, its printed 'best by', 'use by', 'shelf-life' or similar expression of usable life, or if does not have a printed 'best by', 'use by', 'shelf-life' or similar expression of usable life, then until the longer of (i) 36 months in the case of a piece of equipment or other tool for production, and (ii) 24 months in the case of a product for human consumption, packaging, other material or another product, or (2) in the case of a service or service deliverable, 36 months, in each case measured from the delivery date (or if not delivered, measured from the date/time for such delivery in the Description of What is to be Purchased), (h) "Provider Misconduct" means each of (1) Provider's breach of any representation, warranty, covenant and/or other term and/or condition in these Terms, any Signed Agreement and/or any Accepted Order, and/or (2) any negligence, willful misconduct, fraud and/or other tortious act and/or tortious failure to act of Provider, any of its Affiliates and/or any of its and/or their Personnel, and (i) wherever appropriate, the singular shall include the plural, and the plural shall include the singular.

**30. EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION.** Provider certifies that it/he/she abides by, and Provider agrees at all times to abide by, the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) (in accordance with Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, Executive Order 11758, the Vietnam Era Veterans Readjustment Act of 1974 and Executive Order 11701) as applicable and as amended from time to time. Each of such regulations is hereby incorporated herein by reference as if fully restated herein. 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, sexual orientation, gender identity 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, sexual orientation, gender identity, national origin, protected veteran status or disability. Provider shall also, as applicable, abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under U.S. federal labor laws.

These Terms are subject to change by Customer at any time without notice. The latest version will be posted at [www.cnp.com/terms-purchases.pdf](http://www.cnp.com/terms-purchases.pdf). The version of these Terms that is in effect on the date an Order is placed shall govern that Order, except to the extent otherwise set forth in a Signed Agreement.