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## INNOVATIVE FORMULATIONS TERMS & CONDITIONS

These are the terms and conditions of sale (the "Terms of Sale") which apply to your purchase of goods and services from INNOVATIVE FORMULATIONS, LLC. (referred to here as "Innovative Formulations", "we", "us" and "our"). When we refer to "you" and "your," we mean the purchaser of INNOVATIVE FORMULATIONS goods and services.

These Terms of Sale contain important legal terms regarding this business transaction between you and us. By agreeing to these Terms of Sale you wholly agree to all things contained herein, all of which form part of a legally binding contract between us and you. You should read and fully understand these Terms of Sale before signing, hence entering into a purchase contract with INNOVATIVE FORMULATIONS, LLC.

- 1) Your order constitutes an offer to purchase specific goods and services from us. Where you order more than one item, your order comprises a series of offers for each item individually.
- 2) Your Quote Approval form sets out the final details of your formula, including active ingredients, packaging expectations and the price to be paid. This document must be signed and returned before a flavor profile can be developed or samples can be made. When a signed quote approval is on file and a product is being ordered without changes to the active ingredients, packaging or price, a separate Quote Approval need not be signed.
- 3) Innovative Formulations provides up to two (2) samples of each product, without cost to you.
  - a) This may be two (2) flavors of the same formula, or one (1) sample each of two distinct formulations of the same product.
  - b) For the purpose increasing the number of flavors offered, or making substantial formula changes, an additional two (2) free samples of each product ordered may be requested upon receipt of a deposit, in accordance with section five (5).
  - c) Each sample will be limited to ten servings.
  - d) Samples are sent at our cost, using standard shipping services. Charges for expedited samples must be charged on the customer's shipping account.
  - e) Additional samples are available at a cost of \$200.00 per sample. If additional samples are ordered, they will be considered a sale of goods and services and will be governed by the terms and conditions of this agreement.
- 4) Flavor profiles created for samples or for products are the proprietary and intellectual property of Innovative Formulations. Flavor profiles will not, under any circumstance, be provided to the customer until an agreement for fair and reasonable compensation is agreed to by both parties. Fair and reasonable compensation pricing begins at \$10,000.00 per flavor profile, and may increase if Innovative Formulations determines that a greater loss might be anticipated from the sale of the flavor profile.
- 5) The Invoice form contains details of the goods you have ordered, the total cost of the order and a corresponding order number. Please note that the Invoice is simply an acknowledgement that your order has been received and acknowledged by INNOVATIVE FORMULATIONS; it does not indicate that your order is ACTIVE and does not form a binding contract at this point.

- 6) **Your order is not active until payment of the deposit (50% of the total invoice, unless otherwise agreed to) has been received. Henceforth, this contract will be legally binding.**
- 7) **Effective January 1, 2018, the invoice for all orders will include a 1.99% credit card processing fee, as well as an amount that can be paid by bank wire for no additional fee.**
- 8) Custom packaging options are available, but may add significant cost and lead time to your order.
  - a) When an order includes custom packaging (bottles, lids, cartons, etc), the minimum order quantity necessary to complete the order will be sourced and the cost of the entire minimum quantity will be added to the invoice for the order.
    - i) Packaging secured in this manner will be warehoused at Innovative Formulations, but will be used only for the purchasing your orders.
    - ii) If a you do not order additional quantities of products that use sourced custom packaging, you may choose to have remaining packaging shipped to you, freight collect.
    - iii) If twelve (12) months pass without an order for products using sourced custom packaging, and you have not asked to have the product returned to you, ownership of the custom packaging transfers wholly and completely to Innovative Formulations – without compensation.

*Example: If a customer desires to have dark blue lids, and the minimum order quantity is 2000 lids, the minimum quantity will be sourced and the full cost of the 2000 lids will be added to the customer's invoice.*

- 9) **Innovative Formulations applies customer provided labels, manufactured on bi-oriented polypropylene (BOPP) material. For customers who choose to provide paper labels for application, there will be an additional fee of \$1.50 per bottle, to offset the impact to our operations.**
- 10) For orders that are active, changes to the formula or packaging will result in the following:
  - a) A \$200.00 service fee will be added to the invoice.
  - b) For ingredients or packaging components ordered specifically for your product, but not used, the lesser of the following will be added to the invoice:
    - i) When ingredients or packaging can be returned to the supplier, the cost of shipping each way, as well as any restocking fee charged by the supplier will be added to the invoice.
    - ii) When ingredients or packaging are not eligible for return to the supplier, the value of the minimum order quantity of the product necessary for the order, as well as any freight charges not included in the invoice value, will be recoverable.
      - (1) Amounts added to the invoice due to products ordered specifically for your product will be supported by copies of invoices or sales orders from the supplier and/or transportation companies, except that supplier name and contact information will be redacted.

- 11) Although we hope to be able to supply all goods ordered, we reserve the right, at our discretion and without the need to give reasons, to refuse any offer at any time before it has been accepted, and to cancel any active order after it has been accepted. Should we refuse your order we will notify you as soon as reasonably possible, and should we cancel an active order, we will issue a compensatory refund that shall not exceed the deposit amount remitted to INNOVATIVE FORMULATIONS for the manufacture of product.
- 12) INNOVATIVE FORMULATIONS agrees to package your order per the specifications outlaid in the Quote Approval, Invoice or other communication between the parties.
- 13) In the event that you request specific lot coding and/or expiration dating information be imprinted on your products, INNOVATIVE FORMULATIONS does not guarantee, nor accept liability for the accuracy of the product stability and expiration. The customer will solely be responsible for substantiating stability, expiration, and lot coding data.
- 14) If the product is requested unlabeled, INNOVATIVE FORMULATIONS does not guarantee the product meets the claims of any label adhered to the product after the customer or customer's designee assumes possession. You fully indemnify INNOVATIVE FORMULATIONS from any and all liability once you alter the product in any way, as it differs from our retained sample representing the way your product left INNOVATIVE FORMULATIONS's facility.
- 15) Unless governed by a separate agreement, payment terms are as follows:
  - a) NON-REFUNDABLE 50% deposit of the invoice amount is due upon receipt of the invoice.
  - b) The remaining balance of the purchase price is due prior to or upon shipment of your order.
- 16) Except where otherwise set out in these Terms of Sale, the price payable by you for the goods is the price given by INNOVATIVE FORMULATIONS at the time you place your order, as reflected on the Invoice.
- 17) In most cases, the delivery fee is included within the quoted price which is given by INNOVATIVE FORMULATIONS within the Quote Approval Form and Invoice; however, INNOVATIVE FORMULATIONS reserves the right to adjust the shipping on any order, when applicable and deemed as necessary if your order requires multiple deliveries or if your order is to be delivered with a special service or is requires special equipment, or if goods are to be delivered to any address outside of the continental United States. Reconsignment and redelivery charges, when not the fault of INNOVATIVE FORMULATIONS, diversion, inside delivery, sort and segregate, lift gate, residential delivery and limited access delivery charges are your responsibility and, if paid by INNOVATIVE FORMULATIONS, may be added to your invoice.
- 18) While we try to ensure that all the prices are accurate, discrepancies may occur due to fluctuation in ingredient/packaging pricing, usage and/or availability or any other change. If we discover a discrepancy and an amendment need be made in the price of the goods you have ordered, we will inform you as soon as reasonably possible. You will then be given the option of re-confirming your order at the correct price or cancelling your order and receiving a full refund for the amount already paid.

- 19) We strive to complete and ship all custom formulated products within four weeks from the date that the last of these items is received in house: paid deposit, packaging components (including labels) and raw materials. Because we are at the mercy of ingredient/packaging availability, we may – from time to time - be unable to ship your product within the four week timeframe. When this occurs, we will do our best to notify you as soon as possible. If current business volumes or other conditions may result in a known delay to your shipment, we will make every effort to communicate this at the time your order is received.
- 20) You agree to purchase + or – 5% of the product quantity set forth in the Sales Order, dependent on the actual production quantity.
- 21) Delivery will take place at the delivery address specified by you during the order process, and will be reflected on the Invoice, subject to the following conditions:
- a) Although we allow you to specify a different delivery address from your billing address, you are solely responsible for ensuring that we are able to make delivery to this address and that you or your designee are available to accept delivery at this address on the delivery date.
  - b) On delivery, you will be required to check the condition of the packaging and whether the correct number of packages have been delivered. If there is obvious damage or items are missing or incorrect, you MUST record this on the delivery document with the freight delivery driver. Missing, damaged, or incorrect items, subject to these Terms of Sale, will be monetarily reimbursed to you by INNOVATIVE FORMULATIONS through a credit memo only your account with us ONLY if noted with the shipping company.
  - c) Concealed loss or damage must be reported no more than two days after delivery of the goods. Claims for concealed loss or damage will be investigated to determine whether or not any recovery is available.
- 22) Once finished goods have been delivered, they can only be returned to INNOVATIVE FORMULATIONS if the goods are defective.
- 23) Our entire liability to you under these Terms of Sale shall not exceed the price paid for the goods you purchase from INNOVATIVE FORMULATIONS.
- 24) We will not be liable for the finished product complying with the laws and regulations of any foreign territory. If the product is produced with the intent to distribute abroad, the responsibility for ensuring compliance with the importing territory's laws lies solely with the customer.
- 25) We will not be liable to you *under any circumstance*, for any loss of revenue, loss of profits, anticipated savings, goodwill or business opportunity, for any injury to your reputation or for any other losses other than the cost of the goods you have purchased.
- 26) We guarantee our products meet + or – 5% of label specified claim for each ingredient. If they do not, we will replace the product at no cost to you. You must notify Innovative Formulations within 14 days of your receipt of the products, provide independent 3rd party analytical testing substantiating, and provide an unopened sample from the lot back to us for our own in-house retesting. If all aspects of the above are not met and complied with, this product warranty is null.
- 27) We will not be responsible for any delay or failure to comply with these Terms of Sale if the delay or failure arises from any event which is beyond our reasonable control. Such events

would include (but are not limited to) fires, floods, earthquakes, storms, natural disasters, war, civil unrest, acts of terrorism or malicious damage to or destruction of our premises, equipment or goods; delay due to the breakdown of our machinery or delays caused by our suppliers of materials, which are beyond our control.

- 28) If you breach these Terms of Sale and we take no action, we will still be entitled to use our rights and remedies in any other situation where you breach the Terms of Sale.
- 29) Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified, except by an instrument in writing signed by each party.
- 30) Except as expressly provided in this Agreement, and to the extent permitted by law, any remedies described in this Agreement are cumulative and not alternative to any other remedies
- 31) In the event that any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been included. The parties shall, in good faith, amend this Agreement to provide, to the extent possible, each party with the benefits provided by such invalid or unenforceable provision.
- 32) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.
- 33) Each signatory to this Agreement has signature authority and is empowered on behalf of his or her respective party to execute this Agreement.
- 34) This Agreement, together with all Exhibits attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements, commitments or understandings with respect thereto.
- 35) The relationship between the Parties hereunder shall be that of independent contractor, and neither party shall be considered the agent, partner or employee of or a joint venture with the other party, in its performance of all duties under this Agreement. Neither Party shall have the authority to bind the other in any manner whatsoever, and neither Party shall hold itself out, or otherwise describe itself as, agent for the other by way of correspondence, document, nameplate, sign or any other oral or written notice or other communication.
- 36) You will indemnify, defend, and hold harmless INNOVATIVE FORMULATIONS, its affiliates, parents, subsidiaries, directors, officers, agents and employees (collectively, "INNOVATIVE FORMULATIONS INDEMNITEES") from and against, and reimburse INNOVATIVE FORMULATIONS indemnitees for, any and all claims, demands, actions, causes of action, losses, judgments, damages, costs and expenses (including, but not limited to, attorneys' fees, court costs and costs of settlement) arising out of claims against a INNOVATIVE FORMULATIONS Indemnitee based on:
  - a) YOUR sale of a Product;

- b) the death of, or bodily injury to, any person on account of the use of a Product, to the extent such death or bodily injury results from a defect in the storage or sale;
- c) negligence, gross negligence or intentional conduct of you or your employees, agents or representatives;
- d) your violation of any applicable law or government regulation;
- e) any claims that your marketing or sale of a Product infringes the patent or other proprietary rights of any third party; or
- f) any breach by you of any of its representations, warranties, covenants or agreements in this Agreement.

37) You hereby agree to defend Innovative Formulations, Inc., its affiliated companies, and their respective officers, directors, employees, and agents (the "Innovative Formulations Parties") against any claim that arises, directly or indirectly, from (a) any death of or injury to any person, damage to any property or any other damage or loss due to any defect in or use of any Product; (b) any Product recall; (c) any infringement or misappropriation of any proprietary rights by Products, Product Information, or other content You provide to Innovative Formulations; (d) Your negligence, gross negligence, strict liability or intentional misconduct; (e) Your breach of this Agreement; or (f) Your failure to state accurate product descriptions, adequate warnings, or instructions (individually, a "Claim", and collectively, the "Claims"). You will indemnify each Innovative Formulations Party against any liability (including reasonable costs and attorneys' fees) incurred by that Innovative Formulations Party relating to any Claim, except to the proportional extent the liability is caused by the negligence or intentional misconduct of that Innovative Formulations Party as determined by a final, non-appealable order of a court having jurisdiction. You will not consent to the entry of a judgment or settle on behalf of a Innovative Formulations Party without the Innovative Formulations Parties' prior written consent, which may not be unreasonably withheld. You will use counsel reasonably satisfactory to the Innovative Formulations Parties.

38) This Agreement and all transactions between the Parties will be governed by and construed in accordance with the laws of the State of Arkansas, without regard to its conflict of laws provisions. The Parties consent and agree to that any legal action or proceeding arising out of, related to or in connection with the formation of or otherwise regarding this Agreement shall be brought in the District Court of Boone County, Arkansas, or in the United States District Court for the Western District of Arkansas, and each assents and submits to the personal jurisdiction of any such courts in any such action or proceeding and waives any right it may have to select a venue (or change or transfer venue) to a venue different than as aforesaid.