

**Market 5-one-5**  
**Terms and Conditions of Purchase**  
**Resale Goods**

The following Terms and Conditions (“Agreement”) apply to all orders for the purchase of Goods by Buyer (as defined below). Vendors placing or processing orders for Buyer agree to be bound to these Terms and Conditions.

1. Definitions:

- a. “Buyer” means Market 5ONE5 or any parent company or applicable subsidiary.
- b. “Vendor” means the company or its authorized representative who sells Goods to Buyer.
- c. “Goods” means any products sold to Buyer pursuant to a purchase order or any other agreement between Buyer and Vendor.

2. Insurance: At its own expense, Vendor shall maintain during the term of this Agreement the insurance coverage indicated below. All policies of insurance shall provide thirty (30) days’ written notice of change or cancellation to Buyer.

- a. Comprehensive General Liability Insurance for injury to persons or damage to property in an amount not less than \$ 2,000, 000 for each occurrence, and \$4,000,000 aggregate.
- b. Worker’s Compensation Insurance in statutory amounts and Employer’s Liability Insurance required by applicable state law.
- c. Products Liability Insurance in an amount of not less than \$4,000,000 combined single limit for bodily injury or property damage per occurrence.

Such insurance policy(ies) shall be maintained with responsible insurers acceptable to Buyer and who have a Best’s financial rating of at least A- VIII. **Except for Vendors governed by California Department of Alcoholic Beverage Control Regulations**, the policy(ies) shall be endorsed naming “Market 5ONE5, and its subsidiaries and trade names as now exist or may be constituted hereafter and their directors, officers, employees, agents and representatives” as an Additional Insured and that such insurance shall be primary and non-contributory. The Vendor shall furnish Buyer a Certificate of Insurance evidencing that these policy(ies)’ terms and conditions are maintained in force as well as any endorsements pertaining to the insurance policy(ies).

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**3. Indemnification and Limitation of Damages (THIS SECTION DOES NOT APPLY TO VENDORS GOVERNED BY CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL REGULATIONS):**

- A. Intellectual Property: Vendor will defend, indemnify, and hold Buyer, Buyer’s affiliates and their respective officers, directors, shareholders, employees, agents, and representatives (collectively “Indemnified Parties”), harmless from any and all actions, claims, liabilities, losses, costs, fines, penalties, demands, damages, and expenses (including reasonable attorney’s fees) asserted against Indemnified Parties arising from or based on any Good violating or infringing the patent, trademark, copyrights or other exclusive rights of any third party, provided Buyer gives prompt notice to Vendor of such claim and reasonably cooperates with the Vendor in the defense thereof. This section shall survive the expiration or termination of this Agreement.
- B. Product Liability: Vendor agrees to defend, indemnify, and hold harmless Indemnified Parties from any claims, liabilities, losses, costs, fines, penalties, demands, damages, and expenses (including reasonable attorney’s fees) arising out of third party product liability claims as a result of the formulation, manufacture, packaging, labeling, shipping, recall, enforcement of government laws and regulations, sale, use or consumption of any of the Goods or arising out of Vendor’s breach of any term, covenant, expressed or implied warranty, or representation in this Agreement except to the extent that such loss is due to the sole gross negligence or willful misconduct of Buyer.
- C. General: Vendor agrees to indemnify, defend and hold harmless Indemnified Parties from all claims, liabilities, losses, costs, fines, penalties, demands, damages, and expenses (including reasonable attorney’s fees) arising from or in any way related to the performance by Vendor of services or the Goods provided under this Agreement, except for damage caused solely by the gross negligence or willful misconduct of Buyer. Without limiting the generality of the foregoing, Vendor agrees to defend, indemnify and hold harmless Indemnified Parties from any claims, liabilities, losses, costs, fines, penalties, demands, damages, and expenses (including reasonable attorneys’ fees) arising out of Vendor’s failure to comply with California’s Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Section 25249.5, et seq. (“Proposition 65”) and/or Section

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5.E's (below) Requirement to affix a label to all Goods, warnings required under Proposition 65. This section shall survive the expiration or termination of this Agreement.

**D. In no event shall Buyer's liability under this Agreement, whether based on contract, tort, or otherwise, exceed the total amount paid to Vendor by Buyer under this Agreement. IN ADDITION, BUYER SHALL NOT BE LIABLE TO VENDOR, UNDER ANY CIRCUMSTANCES, FOR SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF DATA OR PROFITS, IN CONNECTION WITH THE AGREEMENT, EVEN IF INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.**

4. Assignment: Neither this Agreement, nor any of the rights hereunder, including any payments due, may be assigned by Vendor to any other person or entity, including a successor in interest, whether by operation of law or otherwise, without the prior written consent of Buyer.

5. Warranties and Representations of Vendor:

A. **Where Vendor is a distributor and not the manufacturer of Goods subject California Department of Alcoholic Beverage Control Regulations**, Vendor has asked manufacturers to represent, warrant and guarantee the following; in all other cases Vendor represents, warrants, and guarantees that, as of the date of delivery, the Goods shall: (i) not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, and regulations adopted thereunder (the "FD&C Act"); (ii) not be articles that are prohibited, under the provisions of Section 404 or 505 of the FD&C Act, or any successor thereto, from being introduced into interstate commerce; (iii) not be adulterated or misbranded within the meaning of, or in violation of, any disclosure or warning required under the pure food and drug or health, safety and environmental laws, regulations or ordinances of any state or other government authority which are applicable to such shipment or delivery; (iv) be in compliance with all other applicable Federal, state and local laws and regulations, including but not limited to, Proposition 65; (v) be merchantable and fit for their intended purpose, and shall pass without objection in trade; (vi) if the Goods include food intended for consumption, Vendor applies current, industry accepted standard in the manufacturing and production of the Goods, including but not limited to, the U.S.

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Food and Drug Administration and U.S. Department of Agriculture’s *Guide to Minimize Food Safety Hazards for Fresh Fruits and Vegetables and Produce GAPs Harmonized Food Safety Standards*; and (vii) If Vendor’s Goods include shell eggs, the Vendor and the Goods will comply with Health and Safety Code sections 25995, et seq. and the egg regulations;

- B. Vendor represents and warrants that it has, or immediately prior to delivery shall have, title to the Goods and all rights necessary to transfer such rights and title to Buyer free of any lien, pledge, hypothecation or other encumbrance, including but not limited to all patent, copyright, trademark, service mark, and trade secret (collectively, “Intellectual Property”) rights required or appropriate for its manufacture of Goods, sale of Goods to Buyer, and use or sale of Goods, as contemplated, by Buyer;
- C. Vendor represents and warrants that: (i) it is a legal entity duly organized and in good standing under the laws of the state (or other governmental entity) of its organization, with full capacity to sue and to be sued; (ii) it is authorized to enter into and be bound by the terms of this Agreement; and (iii) neither this Agreement nor Vendor’s performance hereof shall be a violation of applicable law or the terms of any material contract, instrument or agreement between Vendor and any third party;
- D. Vendor represents and warrants that the Vendor itself, its employees, agents, affiliates, parents, and subsidiaries (i) will comply with all applicable laws and local government regulations regarding labor, child labor, minimum wage, living conditions, overtime, working conditions, and the environment, and (ii) do not use forced prison labor or the labor of children under age of 14.
- E. Vendor agrees to provide such information as Buyer may reasonably request to enable Buyer to comply, and to facilitate Buyer’s compliance, with applicable federal, state, and local statutes, rules, regulations, ordinances, orders, and other imperatives (collectively, “Requirements”). The Requirements include Vendor agreeing to affix warnings required under Proposition 65 to all Goods; offering to provide Proposition 65 warnings for Buyer to place on shelves is not sufficient. Vendor further agrees to comply with such rules as may be promulgated by Buyer with respect to such Requirements. Vendor warrants, now and as of the time of each shipment of Goods hereunder, that such information as it shall

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provide to Buyer under this Section 5.E shall be true, accurate, and complete in all material respects;

- F. Vendor represents and warrants that the Goods sold under this Agreement have been produced such that (a) the Good's design was an original design effort by Vendor or Vendor's supplier, and that it is not a reproduction or copy, in whole or in part, of any other materials, goods, products or articles in violation of any patent, trademark or copyright laws of the United States or any state; (b) the packaging, labeling and logos used for the Goods were not copied from the packaging, labels or logos of any other materials, goods, products or articles and were not designed to look like the packaging, labels and logos of any other materials, goods, products or articles; and (c) none of the Goods infringe any patent, copyright or trademark.
  - G. Vendor acknowledges and agrees, for purposes of Goods covered 21 C.F.R. Section 1.500, et seq., that at the time of delivery into the United States Vendor was the U.S. owner or consignee of Goods (if any) having a foreign source, and is "importer" of such Goods for purposes of 21 C.F.R. Section 1.500. As such importer, Vendor is responsible for compliance with respect to such Goods, with the U.S. FDA's Foreign Supplier Verification Program, as set forth at 21 C.F.R. Section 1.500, et seq.
  - H. Vendor acknowledges and agrees that it has received Buyer's Supplier Quality Expectation Manual and agrees to comply (to the extent permitted by applicable law) with Buyer's requirements as mentioned in the manual.
6. Advertising: Vendor shall obtain written, signed approval from a duly authorized executive of Buyer prior to any reference to or use of the Buyer name, logo, trademarks, service marks, copyrights or any other proprietary classification of Buyer or its affiliates. This section shall survive the expiration or termination of this Agreement.
7. Best Price (**the following does not apply to Vendors governed by California Department of Alcoholic Beverage Control Regulations**): The pricing, rebates and allowances Vendor provides Buyer for all Goods purchased by Buyer will be no less favorable than the pricing, rebates and allowances Vendor provides to any other customer that buys similar or substantially comparable Goods. If Vendor offers pricing, rebates or allowances to any comparable customer that are more favorable than what Vendor has offered Buyer, Vendor will simultaneously give Buyer the benefit of the more favorable terms.

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8. Risk of Loss: Unless otherwise agreed by Buyer in writing, Vendor shall bear the risk of loss or damage to Goods shipped to Buyer until receipt of the Goods by Buyer at the location designated by Buyer. Vendor shall pay all freight to Buyer's designated location unless otherwise agreed by Buyer in a writing signed by a duly authorized representative of Buyer.
9. Universal Product Codes: Vendor will print a unique, Good-specific Universal Product Code ("UPC") on all Goods' packaging. Vendor will give Buyer a list of the UPC numbers. Vendor will notify Buyer in writing prior to changing any Goods' UPC, which notice will include the date after which all units of the Good that Vendor ships to Buyer will bear the new UPC.
10. Inspection: Notwithstanding any prior inspection or payments, all Goods will be subject to final inspection at the destination. Should Buyer determine that the Goods are non-conforming or defective, Buyer may, at its election, (i) cancel this Agreement, (ii) accept such Goods with an agreed-upon reduction in price, or (iii) return the Goods and require replacement or credit. Should Vendor fail to deliver replacement for such non-conforming or defective Goods promptly, Buyer may cover and charge Vendor costs occasioned thereby.
11. Time is of the Essence: Time is of the essence. Buyer reserves the right to cancel any orders subject to this Agreement if the Goods are not received by Buyer on time. Vendor will notify Buyer promptly of any delays or threats of delay in the timely delivery of the Goods.
12. Force Majeure: Neither party shall be liable for delays or defaults in delivery or other performance under this Agreement due to fire, flood, civil outbreak, labor disputes, acts of God, governmental order or regulation, or other unforeseeable causes beyond the respective party's reasonable control.
13. Termination: Without limiting any other rights or remedies available (unless otherwise specified in this Agreement), either party to this Agreement may terminate the Agreement upon thirty (30) days written notice to the other party that the party is in default of this Agreement and must cure such default. A party is in default if it has breached or for any reason failed to comply with any of the material terms of this Agreement. This Agreement shall terminate if the defaulting party fails to cure the default within the thirty-day notice period. Buyer may also terminate this Agreement, at any time, with or without cause, by providing Vendor with at least thirty (30) days written notice.
14. Independent Contractor: The relationship between Vendor and Buyer under this Agreement is intended to be that of independent contractors. Nothing in this Agreement is intended to be construed to constitute Vendor and Buyer as principal and agent, partners or joint ventures. This

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Agreement does not convey nor shall either party claim any property interest in the other party's corporate name, trademarks, service marks, trade names, trade designations or other intangible property rights, except as expressly provided for herein. Both Vendor and Buyer shall have the sole right, authority and obligation to fix, pay or otherwise provide the compensation and employee benefits of its respective employees, and to provide workers' compensation insurance and to pay payroll taxes for such employees. No employee of Vendor shall be deemed to be an employee of Buyer and vice versa and neither Vendor nor Buyer shall have any responsibility to pay any expenses related to employees of the other party.

15. Confidentiality:

- A. Definition of Confidential Information: The parties may have access to each other's Confidential Information. "Confidential Information" means this Agreement and all proprietary or confidential information of a party ("Disclosing Party") that is disclosed to the other party ("Receiving Party"), whether orally or in writing, which is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure. "Confidential Information" shall include, without limitation, information and materials relating to the Disclosing Party's (a) financial and business affairs, (b) know-how, processes, trade secrets, procedures, or methods of operation, (c) proposed or existing projects, programs, and products, (d) sales and marketing materials and methodologies, and (e) employees, customers, vendors, and suppliers.

"Confidential Information" does not include the following: (i) information which is now or hereafter becomes, through no act or failure of the Receiving Party, generally available to the public; (ii) information which was lawfully received by the Receiving Party without restriction as to use or disclosure before it was disclosed by the Disclosing Party; (iii) information which is independently developed by the Receiving Party independently of and without aid of the Confidential Information received from the Disclosing Party (and the Receiving Party can sufficiently document such independent development); (iv) information which lawfully becomes known to the Receiving Party through a third party which lawfully has the information and discloses such information to the Receiving Party without breaching confidentiality obligations to the Disclosing Party; and/or (v)

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information which is disclosed pursuant to court order or as otherwise required by law, after giving the Disclosing Party notice of such required disclosure and after assisting the Disclosing Party in its reasonable efforts to prevent or limit such disclosure. **For Vendors governed by the California Department of Alcoholic Beverage Control Regulations,** Confidential Information shall also exclude information regarding sales records or other reports provided to a third party by Receiving Party pursuant to an agreement requiring such reporting.

- B. Protection of Confidential Information: Each party will take all action reasonably necessary to protect the confidentiality of the other party's Confidential Information in its possession, including, without limitation, implementing and enforcing commercially reasonable operating procedures to minimize the possibility of unauthorized use or copying of the Confidential Information. The Receiving Party will enforce compliance with the non-disclosure obligations of this Agreement by its employees, or former employees, authorized sub-contractors and agents who receive Confidential Information and will immediately give notice to the Disclosing Party upon discovering any unauthorized use or disclosure of Confidential Information. The Receiving Party agrees to assist the Disclosing Party in remedying any unauthorized use or disclosure of Confidential Information. Neither party shall communicate any information to the other party in violation of the proprietary rights of any third party. This section shall survive termination and expiration of this Agreement.
- C. Return of Confidential Information: Upon termination or expiration of the Agreement, a party must: (a) promptly return to the other party all Confidential Information (as defined above), or (b) upon the other party's request, destroy, or otherwise make unreadable through shredding, erasing or otherwise modifying, all Confidential Information of the other party, whether in paper, electronic, or any other form.

16. Severability and Precedence: If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed severable from this Agreement. The remaining provisions of this Agreement will remain in full force and effect.

In the event of any conflict between the terms of this Agreement and any invoice or any other document submitted by Vendor to Buyer, this Agreement shall govern. If Vendor has an existing,

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written and fully executed contract with Buyer, the order of precedence in the event of a conflict is as follows: (1) the existing, written and fully executed contract; (2) this Agreement; and then (3) any invoice or any other document submitted.

17. Modification: Neither this Agreement nor any of its terms may be amended, deleted, waived, or modified orally, but only by a written instrument executed by the party against which enforcement of the termination, amendment, waiver of modification is sought. This Agreement constitutes the entire and integrated agreement between the parties with respect to the matters herein and supersedes all prior negotiations, communications, understanding, commitments and agreements of the parties, whether written or oral.
18. Governing Law: This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of California, United States of America without regard to conflict of laws. Both parties acknowledge that the Superior Court of the State of California in and for the County of Yolo and the associated federal and appellate courts shall have exclusive jurisdiction to hear and decide any dispute, controversy or litigation regarding arising out of or related to this Agreement or any portion thereof.
19. Notices: Any notices required to be sent during the term of this Agreement shall be sent to the following:

Market 5-one-5  
500 West Capitol Ave.  
West Sacramento, CA 95605-2696  
Attn: Trading Partner Management  
Cc: Legal Department

20. Vendor Responsibility in Event of Recalled Good: Vendor agrees to have in place, at all times during the Term of this Agreement, sufficient product recall or compelled market withdrawal procedures which must include prompt notification to Buyer of any Good recalled or withdrawn from the market.

In the event that a Good is recalled or withdrawn, Vendor **(except for Vendors governed by California Department of Alcoholic Beverage Control Regulations)** agrees that it is responsible for all reasonable costs and expenses incurred by Buyer as a result of the Good recall or withdrawal (and will reimburse Buyer, or pay for, all such reasonable costs and expenses). In addition, Vendor acknowledges and agrees that in the event a Good supplied by Vendor to Buyer is recalled or

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required to be withdrawn from the market, Vendor is responsible for applicable: (1) Recall Product Fees; (2) Recall Logistics Fees; and (3) Recall Administrative Fees – said fees shall be either paid to Buyer in immediately available funds or may be credited against Vendor’s future invoices. Buyer shall have the right to offset and deduct from invoices owed the amount of any of these fees previously not paid. Recovery of the aforementioned costs, expenses, and fees are in addition to, and not in lieu of, any other remedies available to Buyer. The recall fees are set forth in Buyer’s Supplier Quality Expectation Manual.

21. **Guaranteed Sales (the following does not apply to Vendors governed by California Department of Alcoholic Beverage Control Regulations):** Vendor shall sell Goods to Buyer on a “Guaranteed Sales” basis. This means that Buyer will pull its store level shrink related to the Goods and bill Vendor back for the value of the store level shrink; Vendor will then reimburse Buyer or credit Buyer (Buyer’s choice) the billed back amounts.

Vendor Company’s Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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