



G&J PEPSI

TERMS & CONDITIONS OF PURCHASE

1. **CONTRACT INFORMATION.** This offer to purchase becomes a contract only when acknowledged in writing or otherwise accepted by Seller as identified on the purchaser order to which these Terms & Conditions of Purchase are attached or incorporated by reference (this "Purchase Order"); the furnishing of any product or service hereunder or the acceptance of any payment made by G & J Pepsi-Cola Bottlers, Inc. ("Buyer") under this offer constitutes an unqualified acceptance by Seller of this Purchase Order and all of these Terms and Conditions of Purchase. Buyer objects to the prior or subsequent inclusion of any different or additional terms proposed by Seller in any quotation, proposal, acknowledgement, invoice or other form, correspondence or communication whatsoever, and a contract will result only on the basis of this Purchase Order including these Terms and Conditions of Purchase. If this order responds to Seller's quotation or proposal, Seller agrees that the terms of this Purchase Order including these Terms and Conditions of Purchase shall supersede any terms and conditions contained in the quotation or proposal. Acceptance of any Buyer's quotation or proposal by Seller is expressly conditional on Seller's assent to the additional and different terms contained or referenced in this Purchase Order, including these Terms and Conditions of Purchase.

2. **COMPLETE AGREEMENT.** This Purchase Order contains the complete and final agreement between Buyer and Seller, superseding all prior oral or written negotiations, representations, statement and communications. No agreement or other understanding in any way purporting to modify this Purchase Order, including these Terms and Conditions of Purchase, shall be binding upon Buyer unless made in writing and signed by an authorized representative from Buyer's Purchasing Department. Buyer is not responsible for any goods delivered or services performed unless authorized by a written purchase order.

3. **TIMELY DELIVERY AND PERFORMANCE.** (a) Time is of the essence with regard to delivery of all goods and the performance of all services under this Purchase Order. Shipment must be made and services commenced to meet agreed dates. Seller shall give the Buyer immediate notice in writing of the cause and of the length of any delay or anticipated delay in meeting the delivery requirements of this Purchase Order. Buyer, at its option, may either approve a revised shipment, delivery of performance schedule or may cancel the shipment, delivery, of this purchase order without liability. In the alternative, Buyer may also require a more expeditious method of transportation for the goods than the transportation method originally specified. In such case, Seller shall, at Buyer's option (i) promptly reimburse Buyer for the increased cost of the more expeditious method, (ii) allow Buyer to reduce its payment of Seller's invoices by such difference, or (iii) ship the goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount that Buyer would have paid for normal shipment. (b) Seller represents that it has taken such steps as are necessary to ensure that the timely delivery of goods and services is not affected by disruption or failure of computer or other systems. Seller further agrees to provide such documentation or certification as Buyer may request in order to document Seller's compliance with this representation.

4. **SHIPPING, PACKING, RISK OF LOSS, RECEIPT.** Buyer shall have the right to route all shipments. All goods shall be suitably packed, marked with the Purchase Order number and shipped in accordance with Buyer's shipping instructions and in accordance with the requirements of common carriers so as to obtain the lowest transportation cost. Packing slips must be included with all shipments showing Purchase Order number, part or item number and quantity; and the last copy must state "Order Completed". The order number must also be shown on the invoice. No charge shall be made to Buyer for boxing, packing, crating or carting unless separately itemized on the face of this Purchase Order. Regardless of shipping terms, all risk that the ordered goods may be lost, damaged or delayed in transit shall be upon the Seller until conforming goods have been actually received, inspected and accepted by Buyer. The Seller shall be liable to Buyer for any loss or damage resulting from the Seller's failure to provide adequate protection during shipment. Additional expenses, charges or claims incurred as a result of deviation from the specified route, noncompliance with these or other shipping instructions, or improper description in shipping documents shall be assumed by the Seller. Seller will handle all claims with the common carrier and Seller's insurer,

and billing and payment for lost or damaged goods shall be withheld until the claim is resolved. Buyer will not be responsible for deliveries made to it unless received by the Buyer's Receiving Department.

SPECIAL REQUIREMENTS FOR NON-USA GOODS – Buyer requires that for all goods not manufactured in the United States, a commercial invoice and a country of origin certificate (if not specified on the Commercial Invoice) shall be included with the shipping documents. The commercial invoice must include at a minimum, the following information: - Exporter's Name, Exporter's Telephone Number, Exporter's Fax Number, Exporter's Address, Importer's Name, Importer's Telephone Number, Importer's Fax Number, Shipping Address, Invoice Number, Invoice Date, Description of Goods, Packaging Marks and Numbers, Manufacturer Name, Purchase Order Number, Part Number, Quantity per Unit, Price, Port of Discharge, Country of Origin, and an Authorized Signature. The Country of Origin Certificate must include at a minimum, the following information: - Exporter's Name, Exporter's Telephone Number, Exporter's Fax Number, Exporter's Address, Importer's Name, Importer's Telephone Number, Importer's Fax Number, Importer's Shipping Address, Purchase Order Number, Description of Goods, Packaging Marks and Numbers, Part Number, Quantity Per Unit, Country of Origin, and an Authorized Signature.

5. CHANGE ORDERS. Buyer may at any time by written order (a "Change Order") make changes in the goods or services ordered, including changes in drawings or specifications, or require additional or fewer goods or services. If such changes cause an increase or decrease in Seller's costs or in the time required for Seller's performance, an equitable adjustment shall be agreed between Buyer and Seller and the Purchase Order shall be modified in writing. Any claim by the Seller for adjustment under this provision must be asserted within ten (10) days from the date of receipt of a Change Order. Seller shall perform under the Purchase Order as modified by Buyer's Change Order while negotiation or other determination of the equitable adjustment is taking place.

6. WARRANTIES. (a) Seller represents and warrants that all the goods and services covered by this Purchase Order: (i) conform to the specifications, drawings, data, samples, or other descriptions furnished or specified by Buyer; (ii) are new, merchantable, and free from defects in material, workmanship and design; (iii) are supplied with all operation, testing, service and maintenance manuals, instructions, warnings, software (including source code) and documentation; and (iv) are free of liens or claims by any third party and any subcontractor or third party who has provided labor, material or services in connection with Seller's performance of this purchase order has been paid in full and in a timely fashion; (b) Seller hereby waives any right that it may have now or in the future to any mechanic's lien or other encumbrance with respect to the goods or services supplied hereunder. (c) In addition, Seller acknowledges that it knows of Buyer's intended use and warrants that all goods and services covered by this Purchase Order which have been selected, designed, manufactured, assembled or supplied by Seller, will be fit and sufficient for that use. (d) All warranties shall commence only upon acceptance by Buyer of all the goods and services supplied under this Purchase Order and shall continue thereafter for a minimum of one (1) year, unless a different term is expressly stated on the face of this Purchase Order. (e) These representations and warranties shall survive acceptance and subsequent use or resale or other disposition of the goods or services, as well as payment therefore, by Buyer; and also run to Buyer's successors, assigns, customers and users of Buyer's products that contain, incorporate or embody goods or services purchased under this Purchase Order. (f) Buyer objects to any provision limiting the Buyer's rights or remedies under applicable law except as explicitly stated herein.

7. PRICE WARRANTY. If prices in effect at the date of acceptance of this Purchase Order are reduced prior to the date of delivery or performance, or if Seller lowers prices to other buyers under similar conditions and in similar quantities before completion delivery, Seller agrees to afford to Buyer the benefit of such reduction or lower prices. This Purchase Order may not be filled at a higher price than last quoted or charged without Buyer's prior written consent. If no price is specified, the price is to be the price of the last delivery.

8. INSPECTION. (a) All goods shall be subject to inspection and testing by Buyer to the extent practicable at all times and places including the period of manufacture and prior to final acceptance by Buyer and its Customer. (b) All inspections and tests on the premises of Seller or its supplier shall be performed in such a manner as not to unduly delay the work. (c) Final acceptance or rejection of the goods shall be made as promptly as practicable after delivery, except as otherwise provided in this Purchase Order, but failure to

inspect and accept or reject goods or failure to detect defects by inspection, shall neither relieve Seller from responsibility for such goods as are not in accordance with the order requirements nor impose liabilities on Buyer therefore. (d) Seller shall provide and maintain an inspection and process control system acceptable to Buyer covering the goods hereunder. (e) Records of all inspection work by Seller shall be kept complete and available to Buyer during the performance of this Purchase Order and for three years following completion of the work subject to the Purchase Order, and for such longer periods as may be specified in this order.

9. **NON-CONFORMING GOODS.** If any goods or services are not as represented, warranted, or otherwise in conformance with this Purchase Order, including any applicable drawings and specifications the Buyer, in addition to such other rights, remedies and choices as it may have by contract or by law, at its option and sole discretion may: (a) reject and return such goods or services at Seller's sole risk and expense; or (b) require Seller, at Seller's expense, to inspect the goods or services and repair, remove and replace, or otherwise correct any non-conforming goods or services. To the extent that Buyer rejects goods or services as non-conforming, quantities under this Purchase Order will automatically be reduced unless Buyer otherwise notifies Seller in writing. If Buyer elects subsection (b) of this Section 9 and Seller fails to inspect, repair, remove and replace, or otherwise correct the non-conforming goods or services, Buyer may do so and charge Seller for the costs incurred by Buyer in doing so.

10. **BILLING, PAYMENT, EXTRA CHARGES, and TAXES.** (a) In the event of any error or omission in any statement of account or invoice, Buyer may withhold payment pending rectification without loss of cash discount where applicable. (b) The information on the Seller's shipper must match the information that appears on this Purchase Order exactly. This includes Purchase Order number, line number, item number, quantity, unit of measure, and release number. (c) The information on the Seller's invoice must match the information that appears on this Purchase Order exactly. This includes Purchase Order number, item number, line number, quantity, unit cost, and extended amount. (d) No extra charges of any kind, including interest charges, service charges or carrying charges, will be allowed unless specifically agreed to by Buyer in writing.

11. **SETOFF.** In addition to any right of setoff provided by law, all amounts due Seller or its affiliates under this Purchase Order or any other purchase order or contract shall be considered net of Seller's indebtedness or obligation to Buyer and its affiliates. Buyer has a right of setoff with respect to any indebtedness or obligation of Seller to subcontractors or third parties that provide or provided labor materials or services in connection with the performance of this Purchase Order or any other purchase order who claim that they have not been paid in full, and Buyer may deduct any amounts due or to become due from Seller and its subsidiaries and affiliates from any sums due or to become due from Buyer or its affiliates.

12. **TAXES.** Any applicable sales or use or federal excise tax will be shown separately on the invoice for this Purchase Order. Seller shall be responsible for all taxes in connection with this Purchase Order. Buyer will not pay any additional taxes unless specifically agreed to in writing.

13. **DUTY DRAWBACK.** Should Buyer be entitled to make application for duty drawback with respect to any material imported by Seller to satisfy this Purchase Order (including rights developed by substitution and rights which may be acquired from Seller's suppliers), Seller will provide without cost to Buyer the necessary information and documentation to enable Buyer to make such application.

14. **TERMINATION.** (a) Buyer may terminate all or any part of this Purchase Order without cause and at its convenience. Upon written notice from Buyer to Seller of such termination, Seller shall stop all work and shall cause its suppliers or subcontractors to stop all work. (b) Upon a termination in accordance with Section 14(a), Buyer shall pay to Seller the following amounts without duplication: (i) the order price for all conforming goods or services which have been completed and delivered in accordance with this Purchase Order and (ii) the actual direct costs of and, raw material committed and services rendered as of the date of termination, but only to the extent such costs are reasonable in amount and otherwise proper under United States Generally Accepted Accounting Principles ("GAAP"), and less, however, the reasonable value of any goods-in-process, or raw materials in excess of those authorized in delivery releases

outstanding at the date of termination and any goods-in-process or raw materials that Seller can reasonably put toward another use. In no event will payments made to Seller exceed the aggregate price payable to Seller for finished goods which would be provided by Seller under delivery or release schedules outstanding at the date of termination. (c) Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement or rental costs, unamortized depreciation costs, and general and administrative burden charges arising out of the termination. (d) Payment is conditioned upon receipt by Buyer of Seller's termination claim, with sufficient supporting data to permit Buyer's audit, within ten (10) business days from the effective date of termination, and thereafter prompt receipt of such supplemental and supporting information as Buyer may request. Buyer, or its agents, shall have the right to audit and examine all books, records, facilities, work, material, inventories, and other items relating to Seller's termination. (f) Upon payment in accordance with this Section 14, all right, title and interest in and to finished goods, goods or services (including Developments, as defined below) in process and raw materials shall vest in Buyer and Seller shall deliver to Buyer any such items that have not yet been delivered to Buyer in accordance with the payment terms set forth on this Purchase Order.

15. CANCELLATION. Buyer reserves the right to cancel or suspend, from time to time, all or any part of this Purchase Order for cause, if Seller fails to timely make any delivery of any goods or perform any services in accordance with this Purchase Order, if Seller fails to make payment when due to any subcontractor or any third party who provides labor, material or services in connection with the performance of this Purchase Order, or if Seller otherwise breaches any of the other provisions of this purchase order, or upon the happening of any of the following or comparable events: (a) Seller's insolvency; (b) Seller's filing of a voluntary petition in bankruptcy; (c) filing of any involuntary petition in bankruptcy against Seller; (d) appointment of a receiver or trustee for Seller; (e) execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment, or assignment is not vacated or nullified within 15 days of such event; (f) Seller's failure to provide documentation in a timely manner pursuant to a request by Buyer under Section 3(b) of these Terms and Conditions; or (g) Buyer's reasonable determination that Seller is at risk for non-delivery of any goods or services or other breach.

16. PROPRIETARY RIGHTS. (a) Buyer's data, designs, specifications, computer programs, drawings, plans, documentation, processes, models, prototypes, methods, technologies, techniques, formulae or other information concerning its products or business, in whatever form, is Buyer's proprietary and confidential property ("Proprietary Property"). If any goods are made or services supplied according to, by means of, or with Proprietary Property, the Seller agrees that the same goods or services will not be furnished to any other party and that Proprietary Property will not be used to provide goods or services to any party other than Buyer unless Buyer has consented in advance in writing. Seller shall keep all Buyers' Proprietary Property confidential. Upon completion of this Purchase Order, Seller shall turn over to the Buyer all Proprietary Property in its possession. (b) Seller agrees that Buyer also owns all right, title and interest in and to any invention, discovery, concept, idea or work of authorship conceived, developed, reduced to practice or created in connection with or suggested by this Purchase Order (hereinafter "Developments"), which Developments are hereby deemed Proprietary Property. If any goods or services supplied by Seller are copyrightable, they shall be deemed to be a "work made for hire," as such term is defined in the Copyright Laws of the United States. In any event, the Seller hereby assigns, and agrees to assign or cause the assignment of, without further compensation, to Buyer, all right, title and interest in and to all Developments, and Seller shall execute or cause the execution of all papers reasonably required to protect Buyer's rights. (c) in the event or to the extent Buyer does not acquire the right, title and interest in any goods or services as described in subsection (b) above, Seller hereby grants Buyer a perpetual, worldwide, nonexclusive, royalty-free, irrevocable license to make, use, sell, sublicense, and import all Developments and to repair and have repaired, to reconstruct and have reconstructed the goods, and to prepare derivative works of any works of authorship performed or delivered hereunder. (d) Buyer may agree to hold the Seller's confidential and proprietary property in confidence, but only if, and to the extent, a separate confidentiality agreement is signed by Buyer.

17. CONFIDENTIALITY. Unless Buyer and Seller have executed a confidentiality agreement prior to or in connection with this Purchase Order (in which case the terms of such confidentiality agreement shall apply),

all information Buyer discloses to Seller, whether disclosed orally or in written, electronic or other form or media, and whether or not such information is marked or identified as confidential, shall be deemed to be "Confidential Information" unless an exception set forth in this Section 17 applies. Confidential Information shall not include information that, at the time of disclosure and as established by documentary evidence: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 17 by Seller or any of its directors, officers, agents, employees, or contractors (collectively, "Representatives"); (ii) is or becomes available to Seller on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of Seller or its Representatives before being disclosed by or on behalf of Buyer; or (iv) was or is independently developed by Seller without reference to or use, in whole or in part, of any of Buyer's Confidential Information. Seller shall: (A) protect and safeguard the confidentiality of Buyer's Confidential Information with at least the same degree of care as Seller would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use Buyer's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Purchase Order; and (C) not disclose any such Confidential Information to any person or entity, except to Seller's Representatives who need to know the Confidential Information to assist Seller, or act on its behalf, to exercise its rights or perform its obligations under the Purchase Order, and who are subject to confidentiality and nondisclosure contractual obligations at least as stringent as those set forth in this Section. Seller shall be responsible for any breach of this Section caused by any of its Representatives. At any time during or after the term of this Purchase Order, at Buyer's written request, Seller shall promptly return, and shall require its Representatives to return to Buyer all copies, whether in written, electronic or other form or media, of Buyer's Confidential Information, including all documents, papers, drawings, notes and summaries that incorporate Confidential Information and were prepared by Seller (collectively, "Copies"), or destroy all Copies and certify in writing to Buyer that such Confidential Information including all Copies have been destroyed. If Seller is required to disclose Buyer's Confidential Information under applicable federal, state or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction, Seller shall, to the extent legally permitted, immediately notify Buyer of the required disclosure and shall assist Buyer in securing confidential treatment of the Confidential Information that Seller is required to disclose. If it is expressly understood that, unless the parties have executed a separate confidentiality agreement prior to or in connection with this Purchase that applies to Seller's information, Buyer shall not be subject to any confidentiality obligations with respect to any information Seller discloses to Buyer and Buyer may use such information in any manner.

18. **AUDIT RIGHTS.** Seller hereby grants to Buyer and Buyer's customers, and each of their authorized Representatives (as defined below), access to Seller's premises (including Seller's manufacturing operations used in production of goods subject to the Purchase Order) and all pertinent documents and other information, whether stored in tangible or intangible form, including any books, records, and accounts, in any way related to Seller's performance under this Agreement (including Seller's processes and procedures), goods supplied to Buyer pursuant to the Purchase Order, or any payment or other transaction occurring in connection with this Agreement, for the purpose of auditing Seller's compliance with the terms of this Agreement and any other agreements between Buyer and Seller, including Seller's charges for goods and services supplied to Buyer, or inspecting or conducting an inventory of finished goods, work-in-process or raw-material inventory. Seller agrees to cooperate fully with Buyer in connection with any such audit or inspection. Seller shall maintain, during the Term and for a period of three years after the Term, complete and accurate books and records and any other financial information in accordance with United States generally accepted accounting principles. Seller shall segregate its records and otherwise cooperate with Buyer so as to facilitate any audit by Buyer. Seller shall reimburse Buyer for all amounts associated with errors discovered during an audit. In addition, Seller shall reimburse Buyer for the amount of Buyer's reasonable costs and expenses incurred in conducting the audit. If requested by Buyer, Seller shall use its reasonable efforts to permit Buyer and its Representatives to obtain from subcontractors or other suppliers to Seller the information and permission to conduct the reviews specified with respect to Seller in this Section 18.

19. **INSURANCE COVERAGE.** Seller shall have in force the following insurance coverages and, if requested, shall deliver to Buyer a certificate of insurance, in form reasonably acceptable to Client,

providing evidence of such coverages: Workers Compensation (Statutory Requirements); Commercial General Liability (\$1 million minimum); Automobile Liability (\$1 million minimum).

20. PUBLICATIONS. The Seller agrees that no acknowledgment or other information concerning the order and the supplies or services provided hereunder will be made public by the Seller without the prior written agreement of the Buyer.

21. GENERAL INDEMNIFICATION. Seller shall defend, indemnify and hold Buyer harmless from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorneys' fees (such liabilities hereinafter referred to as "Liability") arising out of the Seller's performance of this Purchase Order and including, without limitation, Liability for property or personal bodily injury (including death), whether said Liability is premised on contract, tort or otherwise (including without limitation strict liability or Buyer's negligence). This indemnity will not apply where such Liability arises solely from the negligence or other fault of Buyer or its employees. Buyer, at its option, may require Seller to furnish evidence of insurance reasonably satisfactory to Buyer covering the Liability and indemnification obligations provided above, but no acceptance of such evidence by Buyer shall be deemed a waiver, release or limitation of such Liability or duty to indemnify, defend, and hold Buyer harmless. Seller shall be listed as an additional insured under the insurance coverage discussed in the preceding sentence. This general indemnification shall not be construed as limiting or qualifying Buyer's other indemnification rights under this Purchase Order.

22. WORK ON BUYER'S PREMISES. If Seller's performance of this purchase order involves or results in the presence of Seller or its agents on premises of Buyer or Buyer's customer(s), Seller shall take all necessary precautions to assure that the work and other Seller activities are carried out in a safe and proper manner and Seller shall defend, hold harmless and indemnify Buyer against any and all Liability arising out of such work or Seller's presence on the premises. Seller shall also maintain such public liability, property damage, and employer's liability and worker's compensation insurance as will protect Buyer from risk and from any claims under any applicable worker's compensation acts. Seller agrees to sign Buyer's standard independent contractor agreement, if requested by Buyer, before performing any work on the Buyer's premises. Seller agrees to furnish Certificates of Insurance showing that Buyer and, if Seller or its agents are on the premises of Buyer's customer(s), such customer(s) have been named as additional insureds under Seller's insurance policies with respect to any claim of bodily injury, personal injury, or property damage arising out of Seller's performance of this Purchase Order on the premises of Buyer and/or Buyer's customer(s). The certificate of insurance should also include the following information: (i) Name and address of insurance agent; (ii) Name and address of named insured; (iii) Name of insurance company writing each policy; (iv) Description of coverage in standard terminology: Workers' compensation, employer's liability, comprehensive or commercial general liability, products liability, completed operations liability, blanket contractual liability, automobile liability, excess liability, etc.; (v) Policy number for each policy; (vi) Policy period for each policy; (vii) Limits of liability for each policy; (viii) Description and location of property or operations; (ix) Name and address of certificate holder; (x) Notice of cancellation (30 days, minimum); and (xi) Authorized signature on behalf of insurer. In addition, Seller agrees to defend, indemnify and hold harmless Buyer's customer from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney fees arising out of Seller's performance of this Purchase Order and Seller further agrees to defend, indemnify and hold harmless Buyer with respect to any obligation which Buyer may owe to defend, indemnify and hold harmless Buyer's customer to the extent that such claim arises out of Seller's performance of this Purchase Order.

23. INTELLECTUAL PROPERTY INFRINGEMENT. (a) Seller hereby agrees to defend, hold harmless and indemnify Buyer, its successors and customers, against all Liability arising out of any actual or alleged, direct or contributory, infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or other intellectual or industrial property right, or for the actual or alleged misuse or misappropriation of a trade secret by reason of the manufacture, use, sale, license or import of the goods or services supplied by Seller under this Purchase Order. (b) The preceding subsection shall not apply if Liability directly and solely results from the detailed design or specification supplied by Buyer to Seller, if and to the extent Seller has not participated in or contributed to the development of such design or

specification. This displaces and Seller waives any claim against Buyer under the Uniform Commercial Code or otherwise, including any hold harmless or similar claim, in any way related to a claim asserted against Seller or Buyer for infringement or similar claim.

24. FAIR LABOR STANDARDS. The Seller hereby certifies that all goods furnished and service provided hereunder shall have been produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the Administrator of the Wage and Hour Division issued under Section 14 thereof, and in accordance with all applicable state and federal laws and regulations governing general conditions for labor employed in the production of such goods.

25. COMPLIANCE WITH LAWS. Seller agrees to comply with the applicable provisions of any federal, state, or local law or ordinance and all lawful orders, rules, and regulations issued thereunder and any provisions, representations or agreements, or contractual clauses required thereby to be included or incorporated by reference or operation of law in the contract resulting from acceptance of this Purchase Order including, but not limited to: Robinson-Patman Act; Employment of Veterans (Executive Order 11701); Employment of the Handicapped (Executive Order 11758 as amended by Executive Order 11867); Employment Discrimination Because of Age (Executive Order 11141); and Utilization of Disadvantaged Business Enterprises (Executive Order 11625 & Public Law 95-507). Seller certifies that with respect to orders which exceed \$10,000 it is in compliance with the requirements for non-segregated facilities set forth in 41 C.F.R. Chapter 60-1 8. Further, Seller warrants that each chemical substance constituting or contained in goods sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (P.L. 94-469) as amended. Further, Seller certifies and guarantees that the goods supplied hereunder are in compliance with applicable sections of the Federal Consumer Product Safety Act (P.L. 92573) as amended and the Federal Hazardous Substances Act (P.L. 92-516) as amended and lawful standards and regulations hereunder. During the performance of this contract, Seller agrees that it and each subcontractor involved in the fulfilling of this contract shall to the extent applicable to this Purchase Order: comply with the terms of the Equal Opportunity and Affirmative Action clauses, which are incorporated herein by this reference, and program requirements contained in 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), or their successors, concerning women, minorities, eligible veterans and individuals with a disability, comply with the EEO-1 and VETS-100 form filing requirements contained in 41 C.F.R. §§ 60-1.7 and 61-250.10, until the VETS100A form filing requirements contained in 41 C.F.R. §61-300.10 take effect, at which time those VETS100A requirements will replace the VETS-100 requirement, or their successors, and comply with all applicable Executive Orders, laws and regulations relating to any of the above, which are hereby incorporated by reference, to the extent they apply to the Company.

26. OSHA HAZARD COMMUNICATION. As a requirement of this Purchase Order and the Federal OSHA Hazard Communication Standard, the Seller will provide to Buyer's purchasing department a Material Safety Data Sheet (MSDS) that meets all the requirements of the OSHA standard for all goods purchased under this Purchase Order. Seller will also assure that every product delivered is labeled in compliance with all applicable laws and regulations.

27. LEGAL AND ETHICAL COMPLIANCE. It is Buyer's company policy that its employees will abide by the law and conform to high ethical standards when conducting company business. Seller may communicate suspected violations of this policy to the Buyer by writing to: G & J Pepsi-Cola Bottlers Inc., Attn: [Dominic Orsini], 1241 Gibbard Ave, Columbus, Ohio 43219.

28. APPLICABLE LAWS. (a) This Purchase Order shall be governed by and shall be construed according to the laws of the state of Ohio without regard to the conflicts of laws provisions under the laws of any state. The rights and obligations of the parties shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. (b) Seller represents and warrants that this Purchase Order is being performed subject to all applicable federal, state or local laws, rules, regulations, ordinances or requisitions, and the Seller agrees upon request to furnish the Buyer a certificate to such effect, in such form as the Buyer may from time to time require.

29. RELATIONSHIP OF THE PARTIES. Seller and Buyer are independent contracting parties and nothing in this Purchase Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

30. ASSIGNMENTS AND SUBCONTRACTS. Seller will not assign or transfer this Purchase Order nor subcontract the furnishing of any complete or substantial portion of the goods or services without the prior written approval of Buyer. Buyer reserves the right to assign or transfer this Purchase Order.

31. SEVERABILITY. If any term or provision of this Purchase Order is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Purchase Order or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Purchase Order so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

32. LIQUIDATED DAMAGES. If Seller fails to deliver or fulfil its obligations to supply conforming goods or services to the Buyer in accordance with the schedule identified in this Purchase Order, Seller shall pay to Buyer an amount equal to 1% of the total Purchase Order price for the first through fifth weeks of delay (a "week" is defined as the first through the fifth business day after the specified delivery date, the 6th business date late shall start a second week), 2% of the total Purchase Order price for the sixth through ninth weeks of delay, and 5% of the total Purchase Order for each week of delay after the ninth week of delay (collectively, the "Liquidated Damages") until Seller has timely delivered or fulfilled the delinquent supply obligations. The parties intend that the Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that Buyer's harm caused by Seller's failure to timely deliver goods or services would be impossible or very difficult to accurately estimate at the time of contract, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from Seller's failure to timely deliver goods or services.

33. NOTICES. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the Purchase Order (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Purchase Order, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

34. HEADINGS. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

35. WAIVER. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Purchase Order shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

36. CUMULATIVE REMEDIES. The rights and remedies under this Purchase Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

37. **EQUITABLE REMEDIES.** The parties agree that irreparable damage would occur if any provision of this Purchase Order were not performed in accordance with the terms hereof and that the parties shall be entitled to equitable relief, including injunctive relief or specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

38. **SUCCESSORS AND ASSIGNS.** This Purchase Order shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

39. **NO THIRD-PARTY BENEFICIARIES.** This Purchase Order is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and, except as otherwise specifically stated herein, nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Purchase Order.

40. **SUBMISSION TO JURISDICTION.** Any legal suit, action, or proceeding arising out of or relating to this Purchase Order or the transactions contemplated hereby shall be instituted in any United States federal court or state court located in the state of Ohio in the City of Columbus and County of Franklin, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

41. **WAIVER OF JURY TRIAL.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS PURCHASE ORDER IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS PURCHASE ORDER OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS PURCHASE ORDER CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS DECIDED TO ENTER INTO THIS PURCHASE ORDER BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 41.