

DOGFISH TERMS & CONDITIONS OF PURCHASE & SALE

1. Exclusive Terms and Conditions of Purchase & Sale

These terms and conditions are incorporated into and made a part of the purchase order, agreement or proposal ("Agreement") by Dogfish Head Companies LLC, Dogfish Head Craft Brewery LLC, Dogfish Head LLC, Dogfish Head Marketing, LLC, and Dogfish Inn LLC, Delaware limited liability companies with their principle place of business at 6 Cannery Village Center, Milton, DE 19968, and any of its subsidiaries, affiliates and unincorporated divisions (collectively referred to herein as "Dogfish") to buy from the named manufacturer, distributor, supplier or other seller or provider of services ("Vendor") the goods ("Goods") and/or services ("Services") referenced in the email and purchase order accompanying this document. The Agreement shall constitute the final, complete and exclusive statement of this contract and may not be modified or rescinded except by a written change order issued by Dogfish.

2. Acceptance Limited to Terms of Agreement

The Agreement expressly limits Vendor's acceptance to the terms of the Agreement, together with such plans, specifications, or other documents as are incorporated by reference on the email and purchase order accompanying this Agreement. Should the terms of Dogfish's purchase order conflict with this Agreement, those conflicting terms of the purchase order shall prevail. DOGFISH'S NOTIFICATION OF OBJECTION IS HEREBY GIVEN TO ANY ADDITIONAL AND DIFFERENT TERMS IN VENDOR'S QUOTATIONS, ACKNOWLEDGEMENTS, OR ANY OTHER DOCUMENT THAT VENDOR SENDS IN RESPONSE TO THE AGREEMENT, OR HAS SENT TO DOGFISH TO SOLICIT THE AGREEMENT, WHICH ARE HEREBY REJECTED AND NOT BINDING ON DOGFISH, UNLESS THE CEO, VICE-PRESIDENT OR PRESIDENT OF DOGFISH EXPRESSLY ACCEPTS THEM IN WRITING. Silence by Dogfish regarding the additional and different terms submitted by the Vendor will not be considered acceptance by Dogfish. If Vendor submits additional and/or different terms and conditions to Dogfish, or submits a counteroffer to the Agreement, Dogfish's subsequent performance will not be construed as either acceptance of Vendor's additional and/or different terms and conditions or Vendor's counteroffer. All shipments by the Vendor are considered to have been made pursuant to this offer.

3. Acceptance of the Agreement

Vendor will be deemed to have accepted the Agreement if Vendor (a) transmits to Dogfish Vendor's written or oral acknowledgement; (b) begins shipment of the Goods; (c) begins manufacture of the Goods, if they are to be specially manufactured for Dogfish; or (d) begins performing Services. By accepting the Agreement, the Vendor agrees that it has read these terms and conditions and that the Vendor understands and agrees to be bound by these terms and conditions.

4. Dogfish's Limited Acceptance

If this Agreement is construed as an acceptance of the Vendor's offer, this acceptance is expressly conditioned on the Vendor's assent to any additional or different terms contained in this Agreement. If

this Agreement is construed as a confirmation of an existing contract, the parties agree that this Agreement constitutes the final, complete and exclusive terms and conditions of the contract between the parties. If the parties have otherwise completed a signed, contemporaneous, written contract, the parties agree that the use of this Agreement to place orders for Goods or Services pursuant to such a contract shall be construed to supplement the terms of such written contract only to the extent that the terms and conditions of this Agreement are not inconsistent with such written contract. Regardless of its construction as an offer, acceptance, confirmation or use to place orders for Goods or Services pursuant to a contemporaneous contract, this Agreement incorporates by reference all terms of the Uniform Commercial Code providing any protection for Dogfish, including, without limitation, all express and implied warranty protection and all Dogfish's remedies under the Uniform Commercial Code, unless specifically disclaimed herein.

5. Intellectual Property

All information, art, graphics, designs, trademarks and other content are the sole and exclusive property of Dogfish. Where necessary to complete the Order, Dogfish grants to Vendor a non-exclusive, non-assignable license in Dogfish's trademarks and intellectual property ("Marks") for the sole purpose of completing the Order. This license shall terminate immediately upon the termination of this Agreement or receipt of goods or services. Vendor shall not permit others to use or market the Marks, and no trade name, service mark, copyright, trademark or other device or mark denoting or identifying any third party or any third party's product or service shall appear in proximity to the Marks if the proximity implies, or appears to imply an affiliation with Dogfish. All uses of the Marks shall inure to the benefit of Dogfish. All uses of the Marks shall be solely in accordance with the terms of this Agreement. Vendor shall not, at any time, acquire any rights in the Marks by virtue of any use Vendor may make of the Marks and no other Dogfish related words, figures or marks or derivations thereof, or any other words, figures or marks which are confusingly similar or unfairly compete with the Marks may be used without the prior written consent of Dogfish. It shall be a material condition of this Agreement that each use of the Marks by Vendor shall be subject to Dogfish's prior written consent. In this regard, Vendor agrees that prior to the production of any items bearing the Marks, Vendor shall submit to Dogfish all final designs, specifications and fabrications and color details for such items.

6. Shipment

Shipment of all Goods will be F.O.B. point of the destination indicated on Dogfish's purchase order. Vendor will bear the risk of loss until delivery of the Goods to the point of destination. The Vendor may not send partial shipment of orders' without Dogfish's written consent. Title to the Goods will transfer to Dogfish upon delivery. Dogfish shall inspect the goods upon receipt for non-conformity to quantity, quality, and/or defects. Dogfish must provide Seller with written notice of a claim within a reasonable time period from the date of delivery. Dogfish will not be deemed to have accepted orders where there are inherent defects in the Goods that could not be readily discovered by a visible inspection. Any shipping dates given in advance of actual shipment are warranted by Vendor to be firm, and time is of the essence with respect to Vendor's performance. This Agreement limits the Vendor's rights to delay or cancel shipments, such as only in cases of delinquency in payment of more than (30) days and that such right does not apply to disputed invoices, and limit such right to only a material breach or default of the parties' Agreement. The Vendor is required to promptly

advise Dogfish of any actual or anticipated delays in shipment or inventory shortages. In case the Vendor runs into a shortage of Goods and cannot complete all of their purchase orders, Dogfish is guaranteed their orders will be filled first with existing inventory. If, upon notice from Vendor of an anticipated delay, Dogfish accepts the delay, and delivery is not completed within the time stated by Vendor, or if no time is stated within a reasonable time, (1) Vendor shall use diligent efforts to ensure that Dogfish's entire shipment is made as soon as possible and (2) Vendor will bear all costs, expenses and damages arising out of any delay in performance of the Services or shipment of the Goods, including but not limited to, all costs incurred by Dogfish in procuring substitute Goods or Services that are in excess of the cost for which Dogfish would have purchased the relevant Goods or Services from Vendor. Except as otherwise agreed to in writing, (a) where transportation charges for Goods are separately charged to Dogfish, those charges will in no event exceed the lowest legal freight charges provided by the carrier for the routing specified in effect on the date of shipment, and (b) where transportation charges are allowed to Dogfish, that allowance will not be less than the actual freight charges paid by Dogfish or, where Dogfish performs the transportation, that allowance will be in an amount equal to the freight charges which would have been assessed for a like shipment via common carrier. If, however, Dogfish does not accept the delay, (1) Dogfish shall have the right to cancel the Agreement and corresponding order without penalty, and (2) Vendor shall not be permitted to sell any goods created to third parties without Dogfish's prior written consent. The Goods must be properly packaged for shipment. Each package must be numbered and labeled with Dogfish's order number, stock number, contents and weight and will contain an itemized packing slip. No charges must be allowed for packing, crating, freight express or cartage unless specified on the face of the Agreement.

7. Quality and Quantity

The Vendor shall meet all quality and quantity requirements of Dogfish and all quality and quantity requirements of Dogfish's customers, including, but not limited to, all applicable plans, specifications, and other contract descriptions, as set forth on the face of the purchase order. The quality and quantity of the Goods or Services shall be subject to the satisfaction of Dogfish, who shall be entitled to reject non-conforming Goods and Services. Dogfish or its designated representative shall have the right from time to time during business hours after reasonable notice to the Vendor to (i) inspect the Good or Services wherever it is located; (ii) remove samples of the Good for inspection and testing, and (iii) obtain factory site and other information from the Vendor to confirm conformance of the Goods or Services with agreed specifications. No such inspection, testing or inquiry shall be deemed to be or result in any variation of any of the Vendor obligations or a waiver of Dogfish's rights.

8. Price and Taxes

The price for Goods or Services is as stated on the purchase order accompanying this Agreement. All prices on the purchase order are firm. Vendor must not fill the Agreement at any other price. Vendor shall be responsible for the payment of all taxes associated with the sale of Goods and Services to Dogfish, except for taxes measured by Dogfish's income and sales tax. Vendor shall provide Dogfish, in the form and within time limits specified by written notice, the information necessary to enable Dogfish to comply with any lawful request for such information from any governmental authority having responsibility for assessment or collection of taxes. Dogfish shall pay invoiced amounts within thirty (30) days of receipt of

Vendor's invoice, provided that the terms and conditions herein have been met. Notwithstanding the foregoing, all invoices shall be submitted to Dogfish within ninety (90) days of completion of any project, and if Vendor fails to submit this invoice within that time, Dogfish shall have the right to deduct late billing fees of up to 5% (or the statutory maximum, whichever is greater) of the total cost of the Goods or Services from the invoice upon receipt.

9. Representations and Warranties

In addition to any warranty or representation that Vendor expressly has extended to Dogfish regarding the Goods or Services, Vendor warrants and represents that: (i) the Goods will be free from defects in workmanship, design and/or materials; (ii) the Goods will be newly manufactured (meaning that they must not have been previously used for any purpose), unless indicated on the purchase order, and that they will comply with any and all samples, drawings, blueprints, designs, and specifications; (iii) the Goods will not infringe any third party intellectual property rights; (iv) Vendor has and will have good and marketable title to all Goods delivered to Dogfish in accordance with the Agreements, free and clear of any and all liens and encumbrances, and that Vendor has full and complete legal rights to manufacture and sell the Goods to Dogfish without the consent of any third party; (v) if food, the food consisting of edible raw ingredients or finished materials not adulterated, mislabeled within the meaning of the Federal Food, Drug, and Cosmetic Act ("Act") and is suitable for human consumption or will not otherwise affect Dogfish's ability to use or resell the Goods; and not adulterated or misbranded within the meaning of any pure food laws or ordinances (then in effect) of the country, state, or city to which Goods are shipped; (vi) the Vendor represents and warrants that there are no pending or threatened actions or proceedings or government investigations against it that may affect the performance of this Agreement; (vii) the Vendor represents it has the requisite authority, permits and licenses to execute this Agreement and any other document, agreement, certificate or instrument necessary to consummate the transaction and perform its obligations hereunder; (ix) the Vendor has the personnel and experience to perform the Services in accordance with the warranty set forth in this paragraph; (x) the Vendor shall maintain and use all tools and equipment in accordance with manufacturer's specifications and recommendations and good engineering and operational practices; (xi) the Vendor shall perform all Services in good faith, promptly, with due diligence; and (xii) the Vendor warrants that it has the expertise, experience, capability and specialized knowledge to, and that it will perform all Services and, produce and provide, all Goods in a timely, professional and workmanlike manner in accordance with industry standards. The term of the warranties set forth by this Section will be the longer of (a) the maximum term allowed by applicable law; or (b) eighteen (18) months from shipment of the Goods or completion of Services to which the warranties apply, unless otherwise specified by Dogfish. During the applicable warranty term and upon Dogfish's request, Vendor, at its sole expense, must repair, replace or reimburse Dogfish for all or any part of any Goods or Services that fail to comply with any of the warranties and representations set forth in this Section. Furthermore, Dogfish must have the right to return to Vendor, at Vendor's sole expense, Goods shipped to Dogfish that are in excess of or less than 5% of the quantity designated by the Agreement. Additionally, Vendor warrants and represents that all Services must be performed and all Goods must be manufactured,

packaged, shipped, labeled and marked in compliance with, and will meet or exceed the standards of all applicable laws, statutes, regulations, guidelines, orders and policies. Applicable laws also include all environmental, health or safety laws of the United States and any state or local government agency having jurisdiction in the location where the Goods are to be shipped or any Services are to be performed in accordance with the Agreement. Dogfish may return any Goods not thus manufactured, packaged, shipped, labeled and marked to Vendor at Vendor's sole cost and expense. The Vendor shall, and with all reasonable speed, repair or replace the defective Goods or Services, without costs to Dogfish. Vendor must bear all shipping costs with respect to any Goods returned in accordance with this Section.

10. Indemnification

Vendor will indemnify, defend and hold harmless Dogfish and its officers, directors, employees, agents and representatives from and against any and all losses, damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), fines, penalties, liabilities and assessments, including, but not limited to, property damage, personal or bodily injury, or death ("Losses"), that may arise pursuant to or in connection with the Agreement or the Goods or the Services, regardless of whether such Losses are suffered by Dogfish or arise pursuant to or in connection with (a) a third-party suit, claim, counterclaim, cross-claim, demand, judgment or other action; (b) unfair or fraudulent advertising charges or claims; (c) any alleged defects or inherent dangers in Vendor production of items bearing the Mark(s) or use thereof; (d) any grossly negligent acts or omissions of Vendor, its employees and/or agents; or (e) the breach of any material term or condition of this Agreement by Vendor (each a "Claim"). For the avoidance of doubt, this indemnification obligation requires Vendor to pay any judgments against Dogfish resulting from any Claim, any court costs of Dogfish in connection with any Claim, and any reasonable attorneys' fees and disbursements incurred by Dogfish in Dogfish's defense of any Claim. Dogfish will have the sole and exclusive right to conduct the defense of any Claim at Vendor's sole expense, provided Dogfish must behave reasonably in its defense of the claim; and Dogfish shall not admit fault or liability on the part of Vendor (other than the payment of money subject to this indemnity) without Vendor's prior written consent and approval of the language contained in the agreement. The indemnification obligation does not depend on the truth of any allegations made against Dogfish, Vendor, or any third party. Vendor's obligation to indemnify shall survive the expiration or termination of this Agreement by either party for any reason.

11. Changes

Dogfish shall have the right to make changes in any drawings, specifications, designs, blueprints, dies, patterns, tools, printing plates, and other items for Goods or Services. If Vendor believes that any such change affects the price or delivery date for such Goods, Vendor must so notify Dogfish in writing, with adequate supporting documentation, within five (5) business days after receipt of Dogfish's change. Vendor must suspend performance of the change unless thereafter released, in writing, by Dogfish to perform the change, and Dogfish and Vendor will agree, in writing, upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change. Vendor's request for any adjustments will be deemed waived unless submitted in writing within such five (5) business days after Vendor receives direction from Dogfish to make such changes. Vendor must not suspend performance of the

unaffected portion of the Agreement while Dogfish and Vendor are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Dogfish. If released in writing by Dogfish, Vendor must comply with and perform such change in accordance with the terms of the Agreement.

12. Suspension

Dogfish may, at any time, for any reason or no reason at all, by written notice to Vendor, suspend further performance of all or any portion of the Agreement by Vendor. Such suspensions will neither exceed one hundred eighty (180) consecutive calendar days each nor more than two hundred seventy (270) total calendar days in the aggregate. Upon receiving any such notice of suspension, Vendor must promptly suspend further performance of the Agreement to the extent specified and, during the period of such suspension, must properly care for and protect all work in progress and materials, supplies and equipment Vendor has on hand for performance of the Agreement. Vendor must use its best efforts to utilize Vendor's material, labor and equipment in such a manner as to mitigate costs associated with suspension. Dogfish may, at any time, withdraw the suspension as to all or part of the suspended performance by written notice specifying the effective date and scope of withdrawal, and Vendor must, on the specified date of withdrawal, resume diligent performance of the work for which the suspension is withdrawn. If Vendor believes that any such suspension or withdrawal of suspension justifies modification of the purchase order price or time for performance, Vendor must comply with Section 11 hereof entitled "Changes". In no event will Vendor be entitled to any loss of prospective profits, contributions to overhead, or any direct, incidental, consequential, contingent, indirect, exemplary, punitive, circumstantial or other damages because of such suspension or withdrawals of suspension.

13. Termination/Default - Cancellation

Dogfish shall have the right to terminate this Agreement at any time, for any reason or no reason at all, with or without notice. Dogfish shall pay Vendor all reasonable direct costs actually incurred by Vendor in connection with the Agreement as of the termination date, except to situations expressly stated in this section, provided that Vendor must use its best efforts to mitigate costs associated with termination. Dogfish reserves the right, by written notice of default, to cancel the Agreement without liability, in the event of any one of the following: insolvency of Vendor, the filing of a voluntary petition in bankruptcy by Vendor, the filing of an involuntary petition to have Vendor declared bankrupt, the appointment of a Receiver or Trustee for Vendor, or the execution by Vendor of an assignment for the benefit of creditors. If Vendor fails to perform as specified herein, or if Vendor breaches any of the terms, Dogfish reserves the right without any liability, upon giving Vendor written notice, to (i) cancel this Agreement in whole or in part, or (ii) obtain the Goods or Services from another source with any excess cost resulting therefrom, chargeable to Vendor, if such deficiencies are not remedied. The remedies provided shall be cumulative in addition to any other remedies provided at law or in equity.

14. Subcontractors

Except in respect to Goods and Services bought or procured in the normal course of Vendor's business, Vendor will not subcontract any part of the manufacture and supply of Goods or performance of Services without Dogfish's prior written consent. Subcontracting will not relieve Vendor of any of its duties, obligations, responsibilities

and/or liabilities under the Agreement. Vendor will ensure that all material terms of the Agreement pertaining to the subcontracting of the manufacture and supply of any Goods or performance of Services are incorporated into any subcontract.

15. **Drawings and Other Items**

Unless otherwise expressly provided by Dogfish in the purchase order, any and all drawings, specifications, designs, blueprints, dies, patterns, tools, printing plates, and other items used in connection with the manufacture of the Goods under the Agreement that are expressly prepared or constructed by Vendor pursuant to the terms of the Agreement will be the property of Dogfish and, upon completion of deliveries of the Goods or Services under the Agreement or upon termination of the Agreement, shall cease all use of the drawings or other items. At the request of Dogfish, such items must be promptly delivered to Dogfish. No deviation from or any modification to any drawings, specifications, designs, blueprints, dies, patterns, tools, printing plates, or other items will be made by Vendor without the prior written consent of Dogfish.

16. **No Liens**

Vendor's obligations under the Agreement will include keeping Dogfish's premises free from all claims, liens and encumbrances. Vendor and all of Vendor's subcontractors and suppliers of any tier waive all rights of lien against the property and premises of Dogfish for labor performed or for Goods. Vendor agrees to indemnify, defend and hold Dogfish harmless from any and all such claims.

17. **Confidentiality**

From time to time during the Term of this Agreement, either party (as the "Disclosing Party") may disclose or make available to the other party (as the "Receiving Party") information about its business affairs, products/services, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information shall not include information that, at the time of disclosure 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 the Receiving Party or its directors, officers, employees, agents, consultants, advisors or other representatives any of its ("Representatives"); (ii) is or becomes available to the Receiving Party 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 the Receiving Party or its Representatives prior to being disclosed by or on behalf of the Disclosing Party; (iv) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or (v) is required to be disclosed pursuant to applicable law, provided the disclosing party is notified of any such requirement with sufficient time, where possible to seek a protective order or other appropriate injunctive action. On the expiration or termination of the Agreement, at the Disclosing Party's written request, the Receiving Party and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information or destroy all such copies and certify in writing to the Disclosing Party that such Confidential

Information has been destroyed. The Disclosing Party may seek equitable relief (including injunctive relief) against the Receiving Party and its Representatives to prevent the breach or threatened breach of this Section 17 and to secure its enforcement, in addition to all other remedies available at law

18. **Independent Contractor**

The relationship of Dogfish and Vendor pursuant to the terms and conditions of the Agreement is and will at all times be that of independent contractors, and no agency, partnership, joint venture or other similar relationship is intended or created hereby. If any of the Goods require, in connection with their installation or maintenance, the services of Vendor's employees, representatives or agents, Vendor agrees to furnish the same at no additional cost to Dogfish. The employees, representatives or agents performing those services will not be deemed to be the agents or employees of Dogfish, and Vendor assumes full responsibility for their acts and omissions and exclusive liability for any payroll taxes, contributions imposed by any federal or state law, or any employee benefit plans. Dogfish will not be liable for any injury, property or bodily, upon the Vendor's employees, representatives, or agents in connection with this Agreement.

19. **Interpretation**

The terms, conditions, and limitations set forth in the Agreement may be modified only by a signed writing signed by an authorized Dogfish agent. Regardless of how many times Dogfish purchases or has purchased Goods from Vendor by whatever means, each time Vendor accepts the Agreement, Dogfish and Vendor enter into a separate agreement that will be interpreted without reference to any other agreement between Dogfish and Vendor, or what Vendor may claim to be a course of dealing or course of performance that has arisen between Dogfish and Vendor. No inconsistent usage of trade or industry custom, if any, prior to, contemporaneous with or subsequent to the making of the Agreement will waive, vary, serve to explain or serve to interpret any of the terms, conditions and limitations of the Agreement. The Agreement, including any documents incorporated by reference, is the sole and exclusive Agreement with respect to the matters discussed herein and supersedes all prior and contemporaneous agreements and understandings, negotiations, inducements, representations or conditions, whether oral or written, whether express or implied, with respect to such matters. Failure by either party to enforce any of the terms, conditions and limitations of the Agreement will not constitute a waiver of those terms, conditions and limitations or a waiver of any other terms, conditions or limitations of the Agreement, and the failure of either party to exercise any right (whether provided by any agreements governed by the terms and conditions of the Agreement, law, equity, or otherwise) arising from Dogfish's default under the Agreement will not constitute a waiver of that right or any other rights. All communications in connection with the Agreement will be in English.

20. **Setoff**

Dogfish shall have the right to set-off the amount of return credits or other sums owed to Dogfish customers arising out of Goods or Services sold to Dogfish under any agreement governed by this Agreement between Vendor and Dogfish from amounts owed to Vendor under any agreement governed by this Agreement or any other agreement between Vendor and Dogfish.

21. Assignment

Neither the Agreement, nor any right to receive payment or other right hereunder, will be assignable, delegated, novated or transferable, in whole or in part, by Vendor without Dogfish's prior written consent. Dogfish having the right to grant or withhold consent to an assignment may do so in its sole and exclusive discretion, which exercise of discretion shall not be subject to judicial challenge. Any assignment without such consent is voidable at Dogfish's option.

22. Insurance

Vendor agrees to maintain insurance coverage in amounts necessary to insure itself and its employees and agents against any claims which may arise from performance of its duties and responsibilities under this Agreement. In any event, the parties agree to maintain a Commercial General Liability Insurance policy covering this agreement with limits of no less than \$1,000,000 for each occurrence (bodily injury and property damage), and \$2,000,000 general aggregate.

23. Survival

The provisions of this Agreement relating to intellectual property (Section 5), indemnification, warranty and representations, confidentiality, nondisparagement, shipment, no liens, and insurance including but not limited to Sections 5. Intellectual Property, 6. Shipment, 9. Representations and Warranties, 10. Indemnification, 15. Drawings and Other Items, 16. No Liens, 17. Confidentiality, 18. Independent Contractor, 19. Interpretation, 20. Setoff, 22. Insurance, 24. Nondisparagement, 25. Jurisdiction and Venue, and 27. Miscellaneous shall survive any termination or expiration of this Agreement for any reason. Notwithstanding the foregoing, any lawsuit, action, arbitration, or claim may be brought at any time during the applicable statutory limitations period.

24. Nondisparagement

The parties agree that it will not, directly or indirectly, in any capacity or manner speak, write, or otherwise communicate in any way (or cause, further, assist, solicit, encourage, support or participate in any of the foregoing), any remark or communication or other statement of any kind, whether verbal, in writing, electronically transferred, on social media or otherwise, that might reasonably be construed to be derogatory or critical of, or negative toward the other party (or any of its directors, officers, affiliates, subsidiaries, agents, sponsors, or representatives).

25. Jurisdiction and Venue

The parties hereby agree to exclude application of the UN Convention on the International Sale of Goods (CISG) to any contract made pursuant to this purchase order. The laws of the state of Delaware, without regard to its principles of conflicts of laws, govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates including, but not limited to its interpretation, construction, and performance, and all details of performance. Any dispute arising out of this Agreement shall be brought in the courts located in Sussex County, Delaware. Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceedings arising out of or relating to this Agreement and the transaction it contemplates.

26. Force Majeure

Neither party shall be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by acts of God (such as, but not limited to fires, hurricanes, explosions, earthquakes and floods), acts of the government, war, or terrorist activities. Upon occurrence of such an event, the affected Party shall promptly notify the unaffected party that such an event has occurred and its anticipated effect on performance, including its expected duration. The affected party shall furnish the unaffected party periodic reports regarding the progress of such event. The affected party shall use reasonable diligence to minimize damages and to resume performance. If a Force Majeure Event continues for more than sixty (60) days, the unaffected party shall have the right to terminate this Agreement without penalty.

27. Miscellaneous

If any clause or portion hereof shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining clauses or portions shall remain in full force and effect. The paragraph headings are for convenience only and shall not be used in interpreting or construing the terms and conditions. Dogfish retains the right to change the terms and conditions at any time for any reason without notice and continued business with the Vendor following any changes will mean that the Vendor is deemed to have accepted such changes to the terms and conditions. Nothing contained in the Agreement will be construed to limit or waive any rights of Dogfish under applicable United States federal, state, or local laws.