

Brewster West, LLC
Purchase Order
Terms and Conditions

- 1.0 Entire Agreement: This purchase order, and any documents referred to on the face hereof, constitute the entire agreement between Brewster West, LLC (referred to as "Brewster West") and the Seller and is expressly conditioned upon Seller's acceptance of all of the terms and conditions of purchase contained therein. Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing despite Brewster West's acceptance of goods or services.
- 2.0 Changes: Brewster West shall have the right at any time to make changes in drawings, quantity, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly.
- 3.0 Force Majeure: Brewster West may delay delivery and/or acceptance occasioned by causes beyond its control.
- 4.0 Warranties: Seller warrants that it has good and marketable title to all Products delivered to Brewster West pursuant to this Agreement and the same shall be delivered to Brewster West free and clear of all liens and encumbrances. Seller warrants that all goods or services furnished hereunder shall conform to the description and specification thereof, be merchantable, and free from any defects in design, workmanship or material. Seller also warrants that the items furnished hereunder are suited for their intended use. Seller shall indemnify, save harmless and defend Brewster West from any breach of this warranty, and no limitations on Brewster West's remedy in Seller's documents shall operate to reduce this indemnification. Seller shall extend all warranties it receives from its suppliers to Brewster West, and Seller's warranty shall extend to Brewster West's customers. This warranty is in addition to all warranties implied in law.
- 5.0 Termination:
 - 5.1 Termination for convenience. Brewster West reserves the right to terminate this contract for its convenience. In such event Seller shall immediately stop all work and observe any instructions from Brewster West as to work in process. Seller shall be paid an equitable adjustment for work already performed.
 - 5.2 Termination for Cause. By written notice of default to Seller, or if Seller becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Seller any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law of any jurisdiction or for the appointment of a receiver or trustee in respect to any of Seller's property and such proceeding is not dismissed or cured within 60 days, Brewster West may cancel the whole or any part of this order or exercise any other remedy provided purchasers of goods by law or in equity.
- 6.0 Remedies: Not by way of limitation, the remedies of the parties include:
 - 6.1 If Brewster West cancels this order in whole or in part as provided in Section 5.2, Brewster West may procure upon such terms and in such manner as Brewster West may deem appropriate goods or services similar to those cancelled and Seller shall be liable to Brewster West for any excess costs for such similar supplies or services, including Brewster West's costs incurred in making such procurements, provided that Seller shall continue the performance of this order to the extent not cancelled under the provisions of this order.
 - 6.2 The rights and remedies of Brewster West provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.
 - 6.3 The failure of Brewster West to insist upon strict performance of any of the terms of this order or to exercise any rights hereunder shall not be construed as a waiver of Brewster West's rights.
- 7.0 Price:
 - 7.1 Price Warranty: Seller warrants that the prices for the articles sold Brewster West hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities.
 - 7.2 Unpriced Orders: If price is not stated on this order, it is agreed that the goods or services shall be billed at the price last quoted to, or paid by a customer of Seller, or the prevailing market price, whichever is lower.
- 8.0 Shipments:
 - 8.1 If in order to comply with Brewster West's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Brewster West and approved in advance.
 - 8.2 Each shipment shall have its own respective packing list/delivery slip with a PO number.
 - 8.3 Orders shall be shipped complete unless otherwise noted on the purchase order.
- 9.0 Invoice Payment: Invoices shall be rendered separately for each delivery, cover not more than one order, and specify Brewster West's purchase order number. Invoices shall be sent to Brewster West at its office at Brewster West, 311 South Oneida, Rupert, Idaho 83350 marked for the attention of Accounts Payable. Payment terms are net thirty (30) days from receipt of a correct invoice.
- 10.0 Packaging: Seller shall package the goods in accordance with accepted standard commercial practices for normal shipment considering the type of goods involved and the normal risks encountered in shipment. Each package shipped to Brewster West shall be numbered and labeled with Brewster West's purchase order number, stock number, contents and weight, and shall contain an itemized packing slip. No charges of any kind will be allowed, including charges for boxing, packing, crating or cartage, unless specifically agreed to by Brewster West on the face hereof.
- 11.0 Risk of Loss: Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein which occur prior to acceptance by Brewster West. No such loss, injury, or destruction shall release Seller from any obligations hereunder.
- 12.0 Time is of the essence in this contract.
- 13.0 Quantity Tolerance: At Brewster West's option, any excess quantities shipped may be returned at Seller's expense.
- 14.0 Quality/Standards:
 - 14.1 Name Brand: If a special brand is specified in this order, the goods being purchased must meet the standard for quality, performance, and use of such brand. If Brewster West elects to accept good purported to be equal to the special brand, the goods may be rejected if any specification is determined to be nonconforming.
 - 14.2 Custom-Made: Any parts or materials that are custom-made to Brewster West's specifications are required to pass inspection criteria established by Brewster West's Quality Assurance Department.
- 15.0 Inspection and Quality Control: All items furnished under this order by Seller to Brewster West shall be subject to inspection and tests by Brewster West, or representatives of third party purchasing Brewster West's product in which items will be used ("User's Representative"). To the extent practicable inspection may be made

- at all times and places, employees while at Brewster West's premises including the period of manufacture and prior to acceptance.
- 16.0 Rejection: All goods purchased hereunder are subject to Brewster West's inspection and approval. Goods rejected by Brewster West for whatever reason shall be held, transported and/or stored at Seller's sole expense. Seller shall promptly reimburse Brewster West for any such expenses. Brewster West reserves the right to charge Seller an administrative cost for any rejection.
- 17.0 Assignment: Seller shall not assign or sub-contract this order without Brewster West's prior written consent.
- 18.0 Verbiage: The term "Seller" or "Contractor" or both of said terms, as may be appropriate, shall mean the person, firm or corporation to whom the purchase order is addressed, whether the order be for manufactured goods, materials, supplies and work, or some or all of them.
- 19.0 Special Tooling, Drawings, Artwork or Specifications:
19.1 Seller is responsible for the protection, calibration, maintenance, and care (other than normal wear) of all tooling, artwork, and equipment owned by Brewster West. Said tooling, artwork or equipment shall be subject to surveillance inspection upon notice and shall be returned in an acceptable condition immediately upon demand or notice.
19.2 Any drawings, artwork, or specification prepared by Seller are to become the property of Brewster West and shall be marked "Property of, Brewster West Dairy, Inc." and shall be stored separately when not in use. Such drawings, artwork or specifications will be sent to the Brewster West Purchasing Department immediately when requested.
- 20.0 Advertising: No advertising or publicity matter having or containing any reference to Brewster West shall be made by Seller without the written consent of Brewster West.
- 21.0 Infringements: Seller warrants that Brewster West's purchase, installation, sale and/or use of the goods covered hereby, including, but not limited to any related documentation, will not result in any claim of infringement, or actual infringement of any patent, trademark, copyright, franchise, trade secret or other intellectual property right. Seller shall indemnify and hold Brewster West harmless from and against all claims, losses, expenses, damages, causes of action and liabilities of every kind and nature, including without limitation reasonable attorneys' fees, arising from or out of any breach of the foregoing warranty.
- 22.0 Disclosure of Information: All data and information not already in the public domain, developed or disclosed during the life of this order, will be the property of Brewster West and will be held in secrecy and confidence by the Seller. Seller shall protect all data and information received from Brewster West with the same degree of care with which it protects its won trade secrets and proprietary, commercial, technical and confidential information. Seller will keep confidential all such data and information until it comes in the public domain until Brewster West's Purchasing agent consents in writing to disclosure.
- 23.0 Compliance with Laws: Seller shall comply with all applicable federal, state and local laws, rules, regulations and other legal requirements, including, but not limited to the Fair Labor Standards Act, as amended, provisions of the Equal Opportunity Clause of Section 202 of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Veteran's Readjustment Act of 1974, and shall indemnify and hold harmless Brewster West against all fines and penalties assessed and costs and expenses incurred which may arise out of or result from the Seller's failure to do so. The laws of Ohio shall govern this transaction, excepting its choice of law principles.
- 24.0 Attorneys Fees and Forum: In any suit or action brought to enforce any term, condition, or covenant herein, or to recover damages arising from any breach of this contract, the losing party shall pay to the prevailing party reasonable attorneys' fees and all other costs and expenses which may be incurred by the prevailing party in any such suit or action and in any reviews thereof and appeals there from. All action or lawsuits shall be brought in the Stark County Ohio Common Pleas Court and all Seller accept personal jurisdiction and venue of said court.
- 25.0 Service or Installation of Work: In the event this order requires the performance of work or installation of goods by Seller upon any property or project of Brewster West, the following conditions shall also be applicable.
- 25.1 Seller shall take precautions to protect all property and persons from damage or injury arising out of its work and shall comply with all fire, safety and other applicable regulations prescribed by any governmental agency and by Brewster West and/or owner of the project upon which work is being performed, and shall be responsible for the observance thereof by all sub-contractors, employees, agents and representatives of Seller and its subcontractors. Seller shall also obtain at its own expense and provide Brewster West with proof of insurance coverage providing for 30 days notice of cancellation to Brewster West satisfactory to Brewster West for worker's compensation and property damage, public liability, personal injury, employer's liability, product liability and other applicable insurance.
- 25.2 Seller shall keep the premises and work free and clear of all mechanics' and materialmen's liens or claims; Seller shall promptly pay for all labor and material and if Seller fails to do so Brewster West, without waiving any rights or remedies against Seller for or by reason of such failure may, but without any obligation to do so, pay the same and deduct the amount of such payments from sums due Seller hereunder; and Brewster West may withhold any payment to Seller until receiving such affidavits, waivers, and releases with respect to claims for labor and materials as Brewster West may require.
- 25.3 The work shall remain at Seller's risk prior to written acceptance by Brewster West and/or the owner of the project and Seller shall replace at its own expense all work damaged or destroyed by any cause whatsoever.
- 25.4 Seller shall act as an independent contractor and not as the agent or representative of Brewster West.
- 25.5 Seller shall perform its work in accordance with the schedules and work programs established by Brewster West and shall fully cooperate with Brewster West and others engaged in work on the project so that the work on the entire project may be performed with the utmost speed, consistent with good practices. In case of conflict, Brewster West may direct the necessary coordination.
- 25.6 Seller shall carry on its work so that the premises shall at all times be clean, orderly and free from debris and upon completion shall remove all equipment and unused materials from the project; clean up all refuse and debris and leave the site of the work clean, orderly and in good condition.
- 25.7 Seller shall require Seller's employees, agents, contractors or sub-contractors to abide by Brewster West's Work and Safety rules when work or services are performed at Brewster West's premises. Brewster West has the right to exclude personnel from Brewster West's premises who do not abide by such rules, and at Brewster West's election, to declare a default under the order.
- 25.8 Seller is solely liable for its employees, agents, contractors or sub-contractors and their action while on Brewster West's premises and the Seller will indemnify and protect Brewster West from all losses, claims, expenses, damages arising from or out of the presence or activity of Seller's employees while at Purchaser's premises.