

These terms and conditions shall apply to all orders or transactions entered into by and between the buyer ("Buyer") and Briess Industries, Inc., a Wisconsin corporation, which also does business under the name Briess Malt and Ingredients and Better Brewing ("Seller"). Seller will accept orders, provide services, sell Products (defined below), and do business with Buyer only on these terms and conditions. These terms and conditions and any Seller quotation form submitted herewith or separately shall be collectively referred to hereinafter as the "Agreement." In this Agreement, "Products" shall mean all items being sold by Seller to Buyer, whether malts, flours, extracts, flakes, ingredients, materials, products to be manufactured and/or delivered, services to be rendered, or any combination thereof.

**1. Entire Agreement.** This Agreement contains all of the terms and conditions between Seller and Buyer regarding the Products sold, to the exclusion of any other statements and agreements. Seller's acceptance of Buyer's order is expressly conditioned on Buyer's unqualified acceptance of this Agreement, and Buyer, upon placing an order, is deemed to have accepted all the terms and conditions of this Agreement without modification. Unless otherwise agreed to in a writing signed by Seller, any term or condition contained in any Buyer purchase order, or other form, correspondence or communication that purports to add to or is in any way inconsistent with this Agreement shall be inapplicable and of no force or effect whatsoever and only this Agreement shall govern.

**2. Taxes.** Buyer shall be responsible for all foreign, federal, state, or local sales, use, value-added, excise or other taxes or duties applicable to the sale of the Products.

**3. Delivery & Shipment.** All timeframes provided by Seller, whether verbally or in writing, are good faith estimates of the expected delivery date for the Products. Seller shall use commercially reasonable efforts to fill Buyer's orders within the time stated but in no event, shall Seller be liable for any damages associated with Seller's inability to meet any such timeframes or deadlines, including, without limitation, incidental or consequential damages arising therefrom. If shipment or delivery is delayed or suspended by Buyer, Buyer will pay the invoice price for the Products in accordance with the payment terms stated in this Agreement, together with Seller's handling, storage charges, demurrage or similar charges imposed by Seller. If the Products are to be shipped, shipment shall be EXW (Ex Works as defined under Incoterms 2010) Seller's plant unless otherwise specified by Seller in writing. If Buyer has not provided Seller with shipping instructions, Buyer hereby authorizes Seller to make shipping arrangements necessary to deliver the Products and fulfill Seller's shipping obligations hereunder. Risk of loss and title to Products shall pass to Buyer upon delivery of the Products to the carrier for shipment.

**4. Rejection of Products.** All claims for damage in shipment shall be made to carrier not Seller. All claims for errors or shortages shall be made in writing to Seller within a period of 10 days after the Product is delivered to Buyer. Failure to make such claim within such period shall constitute an irrevocable acceptance of the Products and an admission by Buyer that the Products fully comply with all terms, conditions, and specifications of this Agreement.

### **5. Limited Warranty.**

**A. Limited Warranty.** Except as noted in Section C. below, Seller warrants to Buyer that the Products on the date of delivery to Buyer will conform to the information and standard attributes set forth in the Technical Data Sheet for applicable Products. Buyer must give written notice to Seller of any suspected defect in the Products within 10 days after the Product is delivered to Buyer. Buyer must also obtain written authorization from Seller prior to returning any Products for replacement or otherwise disposing of the Products, and Buyer shall be responsible for all costs and expenses associated with returning or otherwise disposing of the Products. The limited warranty stated in this Section is not transferable.

**B. Limited Remedy.** In the event of a breach of the warranty stated in Section A. above, Seller shall remedy such nonconformance by, at Seller's option, repair or replacement of the defective Products or refunding to Buyer the purchase price for such defective Products, which shall be Seller's sole obligation to Buyer, and Buyer's exclusive remedy, with regard to any breach of the limited warranty stated herein for any defective Products.

**C. Exceptions to the Limited Warranty.** The limited warranty stated in Section A. above does not cover and is void regarding Products which have been subjected to improper handling or storage, neglect, accident, or improper use or application, nor as to any separately listed item of the Products which is not manufactured, sold or delivered by Seller.

**THE LIMITED WARRANTY PROVIDED IN THIS SECTION 6 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ANY AND ALL OTHER EXPRESS, STATUTORY OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. NO WARRANTY IS MADE WHICH EXTENDS BEYOND THAT WHICH IS EXPRESSLY CONTAINED HEREIN.**

**6. LIMITATION OF LIABILITY. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, INDIRECT, OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR LABOR COSTS) ARISING FROM THE MANUFACTURE, SALE, PROVISION, OR USE OF THE PRODUCTS, BREACH OF THIS AGREEMENT, OR FOR ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER THEORY OF LIABILITY, AND REGARDLESS OF WHETHER SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR**

**DAMAGE OR IF SUCH LOSS OR DAMAGE WAS FORSEEABLE BY SELLER AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY AND REMEDY UNDER SECTION 6 ABOVE. REGARDLESS OF THE TYPE OR NATURE OF THE ACTION, BUYER SHALL BE LIMITED TO BUYER'S DIRECT ACTUAL DAMAGES NOT EXCEEDING THE AMOUNT ACTUALLY PAID TO SELLER BY BUYER FOR THE PRODUCTS WHICH ARE THE SUBJECT OF THE APPLICABLE CLAIM. SELLER HAS RELIED ON THE FOREGOING LIMITATION AND BUYER EXPRESSLY ACKNOWLEDGES THAT THIS PROVISION IS ESSENTIAL IN THE ESTABLISHMENT OF THE PRICING OF THE PRODUCTS. THE LIMITATIONS ON, AND EXCLUSIONS FROM, LIABILITY SET FORTH IN THIS SECTION SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.**

**7. Information and Modifications.** Buyer's order of Product from Seller shall constitute acknowledgment and confirmation by Buyer that Buyer has received, reviewed, approved and accepted all information contained in Seller's Technical Data Sheet for the Product. Buyer may obtain Seller's Technical Data Sheet for each Product by contacting Seller for a copy at 1.800.657.0806. Seller reserves the right to modify its Products and the corresponding Technical Data Sheet from time to time without notice to Buyer. Notwithstanding that Seller may provide a Technical Data Sheet or additional information, services, consultation and/or advice to Buyer regarding the Products, Buyer shall utilize and solely rely on Buyer's own expertise, know-how and judgement in relation to the Products and Buyer's selection and use of the Products and information contained in the Technical Data Sheet, and Seller disclaims and does not assume any liability based on such Technical Data Sheet, additional information, services, consultation and/or advice.

**8. Indemnification.** Buyer shall defend (with counsel acceptable to Seller), indemnify and hold Seller and its shareholders, directors, officers, employees, agents, and representatives harmless against any claims, causes of action, proceedings, losses, damages, liabilities, judgments or expenses (including, without limitation, reasonable attorneys' fees and other costs and expenses of litigation) resulting from or otherwise connected with bodily injury, death or property damage caused by Buyer or its agent's negligent acts or omissions with respect to the Products.

**9. Default.** If: (a) Buyer cancels an order after Seller has commenced performance thereof, including and without limitation Seller purchasing or contracting to purchase barley or other ingredients from a third party; (b) Buyer defaults under this Agreement or any other agreement between Buyer and Seller; (c) Buyer becomes insolvent or is unable to pay its debts as they mature, files or has filed against it a bankruptcy, insolvency, or similar petition; or (d) Seller in good faith doubts the ability of the Buyer to pay Seller, then, Seller may, in addition to all of its other rights and remedies under this Agreement or at law or equity: (i) cancel this Agreement or any order under this Agreement; (ii) terminate this Agreement as to the portion thereof in default or as to any unshipped balance or both and resell within 30 days any of the Products which have not been shipped and which Buyer has wrongfully failed or refused to accept and recover from Buyer the difference between the purchase price thereof and the price obtained on resale, less commission and expense in connection with such resale and all demurrage; (iii) defer or suspend further shipments or provision of Products until Buyer reestablishes satisfactory credit; (iv) cancel the unshipped or unperformed portion of any order and invoice Buyer for incurred costs and reasonable profit without any liability on the part of Seller for failure to ship or provide Products; and/or (v) make shipment of Products to Buyer on a C.O.D. or cash in advance basis. If legal action is required by Seller to recover monies due from Buyer or to enforce any provision of this Agreement, Buyer shall be liable to Seller for all of Seller's costs and expenses associated therewith, including Seller's reasonable attorneys' fees and other costs and expenses of litigation.

**10. Force Majeure.** Seller shall not be responsible for any delay in the delivery of, or failure to deliver, Products by reason of any failure or delay in the performance of its obligations under this Agreement on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, telecommunications outages, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of Seller. In the event of any such delay, Seller's performance hereunder shall be postponed by such length of time as may be reasonably necessary to compensate for the delay.

**11. No Waiver.** No waiver of this Agreement or any of its provisions is valid unless expressly agreed to in writing signed by Seller. No waiver by Seller of any default under this Agreement is a waiver of any other or subsequent default. The failure of Seller to insist upon strict and timely performance of any term or condition of this Agreement shall not be deemed a waiver of any right or remedy that Seller may have under this Agreement or at law or equity, and shall not be deemed a waiver of any subsequent default in performance of the terms and conditions of this Agreement.

**12. Independent Contractor.** In producing, supplying or providing any Products under this Agreement, Seller shall operate as an independent contractor. The officers, employees and agents of one party shall not be considered officers, employees or agents of the other party for any purpose whatsoever.

**13. Assignment.** Buyer may not assign any of its rights, duties or obligations under this Agreement without Seller's prior written consent and any attempted assignment without such consent will be void and of no effect or consequence.

**14. Remedies.** Each of the rights and remedies of Seller under this Agreement is cumulative and in addition to any other or further remedies provided under this Agreement or at law or equity.

**15. Governing Law and Venue.** This Agreement shall be construed and governed under the laws of the State of Wisconsin, without application of conflict of law principles. All actions or counterclaims regarding the enforcement or interpretation of this Agreement shall be initiated and prosecuted exclusively in the state and federal

courts located in Milwaukee, Wisconsin. Buyer and Seller both consent to the jurisdiction and venue of such courts and expressly waive objections based on the doctrines of personal jurisdiction or forum non conveniens.

**16. Survival.** The provisions contained in this Agreement shall survive any termination, expiration or completion hereof.

**17. Limitation of Actions.** Any action by Buyer for any loss or damage with respect to this Agreement shall be commenced within one (1) year from the date of delivery of the Products, or such claim shall be forever barred.

**18. Miscellaneous.** No modification of this Agreement or any of its provisions by Buyer is valid unless expressly agreed to in writing signed by Seller. The headings used in this Agreement are for reference purposes only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof. If any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, then such invalidity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding and enforceable and in full force and effect, and such invalid or unenforceable provision shall be construed in a manner so as to give the maximum valid and enforceable effect to the intent of Buyer and Seller as expressed in this Agreement.