



MASTER AGREEMENT FOR PURCHASE OF PRODUCTS AND/OR SERVICES

<u>Parties:</u>	Click here to enter text.	[Buyer entity name]	
	“ <u>Vendor</u> ”	“ <u>Buyer</u> ” or “ <u>ARYZTA</u> ”	
<u>Notice Address:</u>	Click here to enter text.	Click here to enter text.	
<u>Date:</u>	Click here to enter a date.	<u>Term:</u>	Click here to enter text.
<u>Exhibits:</u>	Exhibit A - [Specification of Products and/or Services] Exhibit B - [Pricing]		

1. Master Agreement; Exhibits.

(a) This Master Agreement (“Agreement”) executed on the date set forth above sets forth the general terms and conditions governing the purchase and sale of products and/or services between Vendor and Buyer (collectively, the “Products” and/or “Services”), more specifically described in the Exhibits attached hereto and incorporated by reference herein.

(b) Each time Buyer engages Vendor to supply Products and/or Services, an Exhibit shall be prepared specifying the scope of Products and/or Services specific to that engagement. Each new Exhibit represents a separate contract between Vendor and Buyer incorporating the terms and conditions of this Agreement. Each Exhibit shall contain term of the Exhibit. Each Exhibit issued shall be deemed incorporated into and governed by the terms of this Agreement, and supplemented by the terms of the applicable Exhibit. Where the terms of an Exhibit conflict with the Agreement, the terms of the Agreement shall govern, except to the extent that the Exhibit expressly states that the Agreement is to be overridden or modified.

(c) If a purchase order is attached as an Exhibit, where the terms and conditions of that purchase order conflict with this Agreement, the terms of the Agreement shall govern, except to the extent that the purchase order expressly states that the Agreement is to be overridden or modified. In the event that a purchase order overrides or modifies the Agreement, such override or modification shall pertain only to that single purchase order and not to subsequent purchase orders, regardless of the similarity of the Products and/or Services being procured.

2. Pricing, Payment Terms.

(a) Buyer agrees to pay to Vendor the amount for the Products and/or Services set forth in the relevant Exhibit. Each Exhibit will include the price of the Products and/or Services, based on one of the following categories:

- Commodity Priced: prices shall be based on a forward futures contract between Buyer and Vendor for forward delivery mechanism or cash for the raw material ingredient for a committed duration and /or committed volume, and the price for the raw material/ingredient shall remain fixed during the agreed committed duration of procurement period and /or during procurement of the committed volume. If no futures contract is applicable, Buyer and Vendor may agree on an extended price guarantee in the Exhibit.
- Formula Based: prices shall be based upon the formula listed in the Exhibit.
- List Priced: prices shall be based upon Vendor's list price for the raw material/ingredient. Vendor may change its list price for any such raw material/ingredient only upon forty-five (45) days prior written notice to Buyer. Once changed, a price must remain in effect for a period on not less than ninety (90) days after the date of change.
- Other: prices shall be determined on such other basis or methodology as may be specified in the Exhibit.

Each Exhibit will also include any other costs or charges with respect to the Products and/or Services that are preapproved by Buyer. Vendor agrees to provide initial and future price files in electronic format to the Buyer's at the notice address listed above or to the contact individual noted in the relevant Exhibit. Vendor shall provide Buyer with the Products and/or Services at the agreed upon price, and shall provide Buyer first priority, in any allocation event.

(b) Unless otherwise agreed in writing between the parties, all payments due hereunder to Vendor shall be paid to Vendor in currency as stated in the applicable Exhibit.

(c) The prices and terms for the Products and/or Services provided hereunder shall be the lowest prices and the best terms for and under which Vendor is selling such products and/or services, taking into account any differences in quantities, schedule, and other material terms.

3. Shipment and Delivery.

(a) Time is of the essence. Vendor shall immediately notify Buyer in the event that Vendor's timely performance under this Agreement is or is likely to be delayed, in whole or in part, and Vendor shall provide Buyer with all available information regarding the reasons for such delay. Unless otherwise expressly agreed to in writing, all Products delivered to Buyer shall be F.O.B. Destination, to Buyer's ship-to address set forth in this Agreement or the applicable Exhibit

hereto without charge to Buyer for crating or storage. All costs and expenses relating to such transportation and delivery shall be paid solely by Vendor.

(b) Vendor shall ship only those quantities of Products order by Buyer in the applicable Exhibit and shall not make any substitutions without Buyer's prior written approval. When Vendor arranges for the transportation of Products to Buyer via a carrier of Vendor's choosing, Products will be shipped F.O.B. Destination and the risk of loss shall transfer only upon the acceptance of the Products by Buyer at the designated F.O.B. point.

(c) The following conditions must be satisfied in order for Buyer to accept Products (in addition to all other conditions set forth in this Agreement or in any applicable Exhibit): (i) all ingredients, packaging, and pallets must comply with all federal, state, and local regulations; (ii) full truckloads must be sealed with the original seal number and lot number(s) printed on the bill of lading; cross outs of printed or carbon copy numbers will be refused; (iii) seals must be broken by the designated Buyer employee or witnessed by them when delivered on site; seals cannot be broken prior to delivery or the load will be refused and subject to certificate of destruction; (iv) all less-than-truckload (LTL) shipments must be delivered locked and the lot number(s) printed on the bill of lading; a Buyer employee will verify the lock before unloading; if the lock is unlocked before witness or there is no lock at all, the load will be refused and subject to certificate of destruction; (v) no alterations (write out, scratch out, etc.) on the bill of lading are acceptable; information must be clear and original; documentation that has alterations or different seal numbers will be refused and subject to certificate of destruction; (vi) a certificate of analysis (COA) for ingredients must be emailed to the facility prior to shipment when possible or must accompany each delivery; (vii) shipments should contain no more than two lots per load and must contain no more than two lot codes per pallet and multiple lot pallets must be marked, unless previously agreed in writing by Buyer; and (viii) materials that are regulated by different federal agencies cannot be mixed on the same shipment and will be rejected; the product on these mixed loads will be deemed unacceptable regardless of handling conditions.

(d) Buyer may reject any portion or all of any shipment of Products that does not conform to the applicable specifications, warranties or descriptions, or Products which constitute over-shipments or early shipments by Vendor, within a reasonable period of time, but in any case no less than sixty (60) days of receipt, and may return such rejected Products to Vendor at Vendor's expense, for replacement, refund, or credit at Buyer's sole option. Buyer's payment to Vendor for Products prior to Buyer's timely rejection of such Products as non-conforming shall not be deemed as acceptance by Buyer and shall be subject to adjustment for errors, shortages, defects in the Products, or other failure of Vendor.

(e) Vendor guarantees an uninterrupted supply of the Products to Buyer and will have a back-up supply plant for all locations.

4. Product Recalls; Quality Control.

(a) Vendor shall immediately notify Buyer of the initiation of, or any circumstances relating to the necessity to initiate, a Product recall, withdrawal, inventory retrieval, or any other

action to remove Products from distribution and sale (a “Recall”). Vendor shall be responsible for, and shall reimburse Buyer upon demand, all costs, claims or liabilities incurred by Buyer in the event of a Recall.

(b) Buyer shall provide Vendor with a copy of the Buyer’s Food Safety and Quality Expectations Manual, and Vendor shall comply with all information set forth therein. Upon request and during regular business hours, Buyer’s representatives shall have unrestricted access to all areas of the plant and warehouse facilities of Vendor relating to the manufacture and storage of the Products, and shall have the right to inspect, test, analyze, and sample all raw materials, manufacturing processes, finished products inventory, plant and storage facilities, productions records, storage records and any other materials, reports, processes and facilities related to the manufacture and storage by Vendor of Products.

5. Ongoing Relationship Management.

Vendor shall establish and maintain the following:

(a) Vendor shall work with Buyer to develop improvements in all aspects of the relationship. This will include manufacturing, delivery, performance, inventory management, technology and communications.

(b) Vendor shall work with Buyer to conduct an in-depth review of all specifications, line equipment, workflow and service requirements. Vendor and Buyer will target annual cost reduction goals of [3 -5]% for each year of the agreement.

(c) Vendor will commit to joint participation with Buyer in a formal business review to take place at Buyer’s office at a minimum on an annual basis. Topics to be reviewed will include overall quality, on-time delivery, cost take-out opportunities, and a market review/outlook.

(d) Each party will identify one primary corporate contact with respect to each Exhibit for presentation and approval of all pricing and changes to same, management of key projects and resolution of issues not resolved at the local level, which contact shall be provided in the applicable Exhibit. Vendor will identify backstop personnel that will serve in the absence of the primary contacts for vacation coverage, illness, etc.

(e) Vendor agrees to supply Buyer samples of Products in quantities as reasonably requested by Buyer at no cost or expense to Buyer. Samples for plant trials are not included.

(f) Vendor agrees to partner with Buyer to develop and implement sustainability and corporate social responsibility programs as it pertains to the sourcing of ingredients, in respect to both programs that are an ongoing part of everyday business and programs that would be considered innovative and incremental. Further, Vendor-managed programs shall be made available to Buyer, with appropriate lead time, such that Buyer could source certified ingredients as needed to meet both internal objectives as well as Buyer-driven objectives. Any incremental cost to Products would be calculated at actual cost.

6. Warranty, Indemnification.

(a) Vendor warrants to Buyer and its customers for the longer of Vendor's normal warranty period or for one (1) year following the date of Buyer's acceptance of the Products and/or Services that (i) when received by Buyer from Vendor, the Products shall (A) be free from defects in design, material, workmanship and manufacture, and (B) not be adulterated or misbranded, or unsafe, within the meaning of the Federal Food, Drug, and Cosmetic Act, with all revisions and amendments pertaining thereto (including the Pesticide and Food Additive Amendment of 1958) or within the meaning of any substantially similar state or municipal law or ordinance, or is an article which may not under any federal, state, or municipal law or ordinance be introduced into interstate or intrastate commerce, (ii) the Products and/or Services will conform to the applicable documentation, specifications, drawings, samples, or to other descriptions set forth in this Agreement or any Exhibit hereto, (iii) the Services will be performed in a professional and workmanlike manner, (iv) the Products and/or Services will be suitable for the purposes for which the products and/or services are intended including without limitation purposes made known to Vendor, (v) Vendor has good, unencumbered title to the Products and has conveyed such good, unencumbered title to Buyer, and (vi) all Products are new and unused, unless otherwise specified by Buyer. The foregoing warranties are in addition to all other warranties, whether express or implied, and will survive delivery, inspection, acceptance, or payment by Buyer.

(b) Vendor shall indemnify, defend and hold Buyer and Buyer's subsidiaries, parent companies, affiliates, customers and their respective officers, directors, employees and agents ("Indemnified Parties") harmless against any and all claims, liabilities, losses, damages, settlements, costs and expenses (including attorneys' fees and expenses) incurred by any of the Indemnified Parties arising from or relating to (i) death of or bodily injury to any person, or damage to property, on account of any alleged or actual defect in any Products provided hereunder, whether latent or patent, including, without limitation, improper construction or design, or failure to warn or caused by the negligence or willful misconduct of Vendor or any subcontractor, agent, employee or consultant of Vendor, (ii) any negligence or willful misconduct of Vendor or any subcontractor, agent, employee or consultant of Vendor (a "Vendor Party"), (iii) any breach of this Agreement (including the Exhibits hereto), (iv) any breach of warranty by Vendor (whether express or implied), (v) any failure by Vendor or any subcontractor, agent, employee or consultant of Vendor to comply with all applicable federal, state, local and foreign laws and ordinances (including the Nutrition Labeling and Education Act of 1990 and the Federal Food, Drug, and Cosmetic Act, with all revisions and amendments pertaining thereto (including the Pesticide and Food Additive Amendment of 1958)), and (vi) any union, welfare, pension, vacation, apprenticeship, owner-operator, health and welfare or related type payment obligations associated with the services or labor provided, or employment related claims such as harassment, termination or discrimination, arising out of, connected with or related to the provisions of the services or labor, or made by any Vendor Party, or made by any employment agency and/or Professional Employment Organization against Buyer for a product or service supplied, or to be supplied, under or in connection with this Agreement by Vendor.

(c) Vendor shall secure and maintain such insurance against public liability and property damage and such employee's liability and compensation insurance as will protect Buyer

against the aforementioned risks and against any claims under any Worker's Compensation and Occupational Disease Acts. The insurance mentioned in the preceding sentence shall be in an amount not less than \$5,000,000 per occurrence. If applicable, Vendor shall also secure and maintain professional liability insurance in the amount of \$2,000,000 each claim/in the aggregate covering Vendor's negligent acts, errors or omissions.

(d) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY EXHIBIT HERETO AND REGARDLESS OF WHETHER ANY REMEDY UNDER THIS AGREEMENT WOULD FAIL OF ITS ESSENTIAL PURPOSE, BUYER WILL NOT BE LIABLE TO VENDOR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY.

7. Termination.

Buyer shall have the unrestricted right, at its option, to immediately cancel and terminate this Agreement and/or any Exhibit hereto without cost or liability to Buyer in the event of: (a) Vendor's insolvency or inability to meet obligations as they become due, (b) filing of voluntary or involuntary petition of bankruptcy by or against Vendor, (c) institution of legal proceedings against Vendor by creditors or stock holders, (d) appointment of a receiver for Vendor by any court of competent jurisdiction, or (e) material breach by Vendor of this Agreement or any Exhibit hereto. In addition, Buyer shall have the unrestricted right, at its option, to terminate this Agreement for convenience and without cause, upon thirty (30) days' written notice to Vendor. Vendor shall be entitled to payment for Products ordered and/or Services performed prior to the effective date of termination, and Buyer shall have no further liability to Vendor under this Agreement or otherwise.

8. Confidentiality / Information Security.

(a) Each parties agrees to keep confidential and not disclose to any third parties any information (in any form or medium, written or oral, and whether or not labeled or otherwise identified as confidential) given to or received from the other party, directly or indirectly, as a result of or in connection with performance under this Agreement (including the Exhibits hereto). The foregoing obligation of confidentiality does not apply to information which (i) is or becomes available to the public generally, other than as a result of disclosure by the receiving party, directly or indirectly, in breach of the terms of this Agreement, (ii) becomes available to the receiving party from a source other than the disclosing party, including without limitation prior to the date hereof, provided that such source is not (to the knowledge of the receiving party after reasonable inquiry) bound by a confidentiality agreement with or does not have a contractual, legal or fiduciary obligation of confidentiality to the disclosing party or any other person with respect to such information, or (iii) has been independently acquired or developed by the receiving party without using any information of the receiving party or violating any of its obligations under this Agreement, but the receiving party shall have the burden of proof to demonstrate such independence. Neither party will use any information of the other party that is subject to the foregoing obligation of confidentiality for its own benefit or the benefit of a third party, and will

take all reasonable measures to protect the confidentiality of such information and prevent its disclosure to others.

(b) The purchase by Buyer of Vendor's Products or Services does not authorize Vendor to use the name of or make reference to Buyer, or any of its affiliated companies or subsidiaries, for any purpose in any releases for public or private dissemination, nor shall Vendor divulge or use in any advertisement or publication any specifications, data, or other information pertaining to or relating to this usage without prior written approval.

(c) Vendor shall implement appropriate administrative, technical, and physical safeguards and other appropriate measures to protect the security, confidentiality and integrity of all confidential information, including but not limited to nonpublic and/or personal information relating to customers or employees of Buyer. These measures shall be designed to ensure and anticipate any threats or hazards to the security and confidentiality of such information and protect against unauthorized access to or use of such information. Vendor shall consult with Buyer at Buyer's request to discuss the appropriate safeguards required.

9. Independent Contractor.

It is understood and agreed that Vendor is acting as an independent contractor in the performance of its obligations under this Agreement. Nothing contained in this Agreement, or the relationship between Buyer and Vendor shall be construed as creating the relationship of joint venturers, principal and agent, or employer and employee between Vendor and Buyer.

10. Ownership and Use of Documents.

All work product ("Work Product") of Vendor in connection with this Agreement (including, without limitation, software, methodologies, tools, techniques, documentation, plans, drawings, sequences of operation and specifications developed by Vendor which arises out of the performance of this Agreement) shall be the sole and exclusive property of Buyer. Vendor agrees that, to the fullest extent permitted under applicable law, Vendor shall develop such Work Product as "work made for hire". If deemed not to be work made for hire under such Copyright Act or law for any reason, upon creation of such Work Product, Vendor hereby irrevocably assigns, and agrees to automatically assign without further consideration the copyright in and to all such Work Product to Buyer. Vendor shall do all things reasonably necessary to protect and vest all rights, title and interest in any Work Product in Buyer.

11. Miscellaneous.

(a) Except as provided herein, any notice, approval or consent required or permitted hereunder shall be (i) in writing, (ii) delivered by hand or by overnight courier service to the respective addresses of the parties as set forth in this Agreement or the relevant Exhibit hereto (or such other addresses a party may designate in writing), and (iii) effective upon actual delivery. Except as provided herein, the failure to enforce any provision herein or right or remedy on any one occasion shall not be construed as a waiver on any other occasion. No inference or

presumption shall be given to the fact that this Agreement is in a form provided by Buyer, it being understood that the document is the result of good faith negotiation between the parties.

(b) No right or obligation under this Agreement (including the right to receive monies due) may be assigned or delegated by Vendor without the prior written consent of Buyer, and any purported assignment or delegation without such consent shall be void. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective successors and assigns, subject to the limitations on assignment and subcontracting set forth herein.

(c) This Agreement represents the sole and entire agreement between Buyer and Vendor, and supersedes all prior negotiations, representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto, relating to the subject matter of this Agreement. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No inference or presumption shall be given to the fact that this Agreement is in a form provided by Buyer, it being understood that the document is the result of good faith negotiation between the parties. The headings used in this Agreement are inserted only for the purpose of convenience and reference, and in no way define or limit the scope or intent of any provision or part hereof.

(d) This Agreement shall be construed in accordance with the laws of the state of California without regard to its principles of conflict of laws. The exclusive jurisdiction and venue of any action relating to this Agreement shall be the Superior Court of California for the County of Alameda or the United States District Court for the Northern District of California and each of the parties hereto submits itself to the exclusive jurisdiction of such courts and waives any argument relating to the convenience of forum.

(e) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same instrument, binding on the parties. This signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

(f) In the event of any dispute between the parties arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover its costs incurred in connection therewith from the non-prevailing party, including reasonable attorneys' fees.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the date first written above.

BUYER:

ARYZTA LLC

By: _____

Name: _____

Title: _____

VENDOR:

Click here to enter text.:

By: _____

Name: _____

Title: _____

[EXHIBITS]