

**FOOD PRODUCT
WARRANTY AND INDEMNITY
AGREEMENT**

This Food Product Warranty and Indemnity Agreement (this "Agreement") is entered into as of the date set forth on the signature page hereof (the "Effective Date") by McIlhenny Company, ("McIlhenny"), in favor of Alpine Food Distributing, Inc., with its primary address at 2400 SE Mailwell Dr., Milwaukie, OR 97222 (the "Buyer"), and its subsidiaries, affiliates, and franchisees (collectively with the Buyer, the "Buyer Parties").

RECITALS:

A. McIlhenny is the manufacturer of TABASCO® Brand Pepper Sauce and other TABASCO® brand food products (collectively, the "Products").

B. The Buyer is a customer of McIlhenny and has requested, as a condition of buying further Products from McIlhenny, that McIlhenny enter into this Agreement for Buyer's benefit.

NOW, THEREFORE, in consideration of the foregoing and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, McIlhenny agrees as follows in favor of the Buyer Parties:

1. Warranty. Each shipment of the Products made after the Effective Date by McIlhenny to or on the order of any of the Buyer Parties is hereby warranted under the following laws to the extent then effective and applicable on the date of such shipment's delivery to one of the Buyer Parties or its designee to be:

- a) Not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act (the "FDA Act"); and not an article which may, under Section 404 or 505 of the FDA Act, be introduced into interstate commerce;
- b) Not adulterated or misbranded within the meaning of any identical or substantially similar state law or municipal ordinance in which the definition of adulteration or misbranding are identical or substantially similar to those in the FDA Act;
- c) Lawfully registered with the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act, when such registration is legally required, and in compliance with all the requirements of said Act;
- d) Not a misbranded hazardous substance within the meaning of that term in the Federal Hazardous Substances Act;
- e) Of merchantable quality and fit for the ordinary purposes for which similar food products are normally used; and

- f) Free from any artificial colorings and preservatives, which are not derived from a batch certified by McIlhenny in accordance with the FDA Act, and all other revisions and amendments thereto and all regulations issued under the FDA Act.

Provided, however, that in cases of alleged misbranding, this warranty shall apply only if such Products bear one of McIlhenny's marks or labels. McIlhenny performs no private label manufacturing for the Buyer Parties.

The foregoing warranties constitute McIlhenny's sole and exclusive warranties with respect to any Products delivered to the Buyer Parties, and McIlhenny disclaims any other warranties, whether express or implied.

For purposes of determining when delivery occurs to one of the Buyer Parties or its designee, any transportation carrier or warehouseman engaged by the Buyer Party shall be deemed to be such Buyer Party's designee and, if the Buyer Party directs McIlhenny to delivery the Products to a third party distributor selected by the Buyer Party, such third party distributor shall be deemed to be the Buyer Party's designee.

2. Duty to Provide Notice. As a condition precedent to McIlhenny's duty to provide indemnification as provided in Sections 4 and 5 below, the Buyer must notify McIlhenny in writing within a reasonable time following the accrual of any claim for violation of the above warranties, giving the name and address of the complainant and the Product concerned; *provided, however,* that any delay in providing such notice shall only excuse McIlhenny from its duties under Sections 4 and 5 to the extent that McIlhenny can demonstrate that such delay has prejudiced McIlhenny's defense of the matter in question. All notices shall be sent to McIlhenny at Avery Island, Louisiana 70513, Attention: Chief Legal Officer.

3. Required Insurance Coverage. McIlhenny agrees that during this Agreement's term, McIlhenny shall obtain and carry, in full force and effect, comprehensive general liability insurance, including broad form vendor's and contractual liability endorsements. The policy limits for said coverage shall not be less than Five Million Dollars (\$5,000,000) per occurrence and per annual aggregate. The insurance coverage described in this paragraph shall be evidenced by a certificate of insurance, which shall be provided to the Buyer upon request and shall name the Buyer Parties as additional insureds. Such insurance shall also include a waiver of subrogation in favor of the Buyer Parties. The Buyer Parties shall be deemed named as additional insurers only with respect to liability contractually assumed by McIlhenny under Section 4 below and with respect to liability imposed on McIlhenny, as the manufacturer of the Products, by statute or common law but for no other purpose whatsoever.

4. Indemnity. Subject to Section 6 below, McIlhenny further agrees to protect and indemnify, defend and hold harmless the Buyer Parties from any loss, damage, liability, cost, and reasonable expense (including court costs and reasonable attorneys' fees if McIlhenny refuses to assume the defense of the matter as provided in Section 5) incurred in connection with the death or injury to persons or damage to property sustained or claimed to have been sustained by any individual, corporation or other person, due to the failure of any Product from any shipment or delivery by McIlhenny to comply in any material respect with the warranties set forth in Section


1(a) through (f) above on the date of its delivery to any of the Buyer Parties or its designee except to the extent such loss, damage, liability, cost, or expense is the direct result of negligent acts or willful misconduct of one of the Buyer Parties.

5. Handling of Indemnified Claims. If any matter arises that is subject to indemnification under Section 4 above, McIlhenny shall be entitled to appoint counsel to represent McIlhenny and all indemnified persons in connection with such matter and shall be entitled to make all decisions with respect to the defense or settlement of such matter. McIlhenny may not, however, settle any such matter without the Buyer's consent unless such settlement may be made without any expense to the Buyer Parties and without the prospect of exposing the Buyer Parties to additional claims that would be subject to indemnification under the preceding paragraph. The Buyer Parties may participate in the joint defense of any such matter at the sole expense of the Buyer Parties, and, as a condition precedent to McIlhenny's performance of its obligations under Section 4, the Buyer Parties must cooperate with all reasonable requests made by McIlhenny's counsel in connection with the defense of the matter.

6. Limitations on Liability. Notwithstanding any other provision of this Agreement to the contrary, in no event shall McIlhenny or its insurers be liable for (a) claims for lost profits, (b) claims for loss of business reputation, (c) remote, unforeseeable or speculative consequential damages, or (d) any other type of damage, loss or claim not customarily insured against by similarly situated manufacturers.

7. Continuing Effect. This Agreement is continuing and shall be in full force and effect and shall be binding upon McIlhenny with respect to each and every Product delivered to the Buyer Parties or their designees by McIlhenny (including goods in transit) before the receipt by the Buyer of written notice of revocation thereof. This Agreement is not assignable and revokes and supersedes any prior agreement or any terms on preprinted forms provided by McIlhenny with its invoice or other related documents by the Buyer Parties with their purchase orders or other related documents. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Louisiana.

MCILHENNY COMPANY

By: 
Name: Hadiya Claxton
Title: Chief Legal Officer
Effective Date: Oct. 21, 2021