

Berserker Holdings, LLC

(DBA) Valhalla Pharms

SALES AGREEMENT AND PURCHASE ORDER

Seed Sale Agreement

This Seed Sale Agreement is dated \_\_\_\_\_\_\_, 2020 (the “**Effective Date**”), by and between Berserker Holdings, LLC, a Colorado limited liability company doing business as Valhalla Pharms (“**Valhalla**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Customer**”) (each a “**Party**” and collectively the “**Parties**”).

The Parties agree as follows:

1. Basic Transaction. The Parties have completed an order form (the “**Order Form**”) which is attached hereto as Exhibit A. Valhalla shall sell, and Customer shall purchase, the hemp seeds identified on the Order Form (the “**Purchased Seeds**”) for the purchase price specified on the Order Form (the “**Purchase Price**”).
2. Delivery of Seeds. Customer shall take delivery of the Purchased Seeds at Valhalla’s facility in Denver, Colorado, unless the Parties agree otherwise on the Order Form. If Valhalla ships the Purchased Seeds to Customer, Customer shall pay or reimburse Valhalla for all costs and fees of packaging and shipping, including insurance costs. Valhalla shall notify Customer when the Purchased Seeds are available for delivery; any delivery date specified in the Order Form is subject to confirmation by Valhalla. Title to and risk of loss of the Purchased Seeds shall transfer to Customer when the Purchased Seeds leave Valhalla’s facility.
3. Customer Use Restriction.
	1. Customer shall only use the Purchased Seeds to grow one industrial hemp crop. Customer shall not use the hemp plants grown from the Purchased Seeds for cloning, cross breeding, growing seed or seed stock, performing transformations or mutagenesis, performing molecular or cellular techniques, or conducting research.
	2. If Customer sells the Purchased Seeds to a third party purchaser, the sale must be subject to the use restriction set forth in this Section 3 (the “**Use Restrictions**”) and Customer shall indemnify, defend, and hold Valhalla harmless from any losses, damages, costs, and fees (including attorneys’ fees) arising out of or related to the third party purchaser’s breach of these Use Restrictions and from any claims brought by the third party purchaser against Valhalla.
4. Assumption of Risk. Customer assumes all risk associated with:  storing and planting the Purchased Seeds;  growing, harvesting, and processing industrial hemp from the Purchased Seeds;  non-germination of the Purchased Seeds or low-yield of the industrial hemp crop grown using the Purchased Seeds; and  the industrial hemp crop grown using the Purchased Seeds developing a THC content in excess of 0.3%. Customer acknowledges that Customer must monitor the growing industrial hemp crop for THC content and that a THC content in excess of 0.3% is illegal under federal law.
5. Payment of Purchase Price.
	1. Deposit. One-half of the Purchase Price is due and payable upon the Effective Date.
	2. Final Payment. The remainder of the Purchase Price is due before Purchased Seeds are delivered. The Purchased Seeds will not be released from Valhalla’s facility until the Purchase Price has been paid in full. Valhalla reserves the right not to release the Purchased Seeds until all forms of payment used have cleared Valhalla’s bank.
	3. Taxes. Except for taxes based upon the net income and personal property of Valhalla, all taxes or other assessments imposed by governmental authorities, based upon the licenses granted herein or this Agreement (including without limitation, sales and use taxes) are the obligation of Customer, whether such taxes are now or hereafter imposed.
6. Warranty.
	1. Limited Warranty. Valhalla warrants to Buyer (the “**Limited Warranty**”) that, on the date of delivery, the Purchased Seeds:  are free and clear of any liens or encumbrances; and  are of the quality and variety specified on the Order Form. This Limited Warranty does not extend to any third party purchaser to whom Customer sells any of the Purchased Seeds.
	2. Warranty Disclaimer. Except as expressly provided in the Limited Warranty, the Purchased Seeds are sold “as is” and Valhalla expressly disclaims any and all representations, warranties, and conditions of any kind or nature, express or implied, written or oral, including without limitation representations, warranties and conditions of performance, merchantability, fitness for a particular purpose, non-infringement, and those arising by statute or otherwise in law or from a course of dealing or use of trade. Valhalla does not warrant that the Purchased Seeds will result in an industrial hemp crop with a THC content less than 0.3%.
	3. No Reliance on Unstated Representations. Customer represents and warrants to Valhalla that Customer has not relied on any statements or representations made by Valhalla or Valhalla’s employees or agents, other than those expressly made in this Agreement.
7. Liability. Neither Party shall be liable for special, indirect, punitive, or consequential damages, or for damages for lost profits, arising out of or related to this Agreement. Except for payment of the Purchase Price, each Party’s total liability arising out of or related to this Agreement shall not exceed the Purchase Price. This Section 7 shall not apply to Customer’s breach of Section 3 (Customer Use Restrictions) or Section 9 (Confidentiality) or to Customer’s indemnity obligations herein.
8. Third Party Indemnification. Each Party (the “**Indemnifying Party**”) shall indemnify, defend, and hold harmless the other Party from and against any and all claims, causes of actions, losses, damages, demands, liabilities, costs, and expenses, including without limitation reasonable attorneys’ fees and expenses, brought by, asserted by, awarded to, or incurred as a result of a third party (“**Third Party Damages**”), to the extent such Third Party Damages arise from or relate to the Indemnifying Party’s breach of this Agreement.
9. Confidentiality.
	1. Definition of Confidential Information.
		1. Definition. “**Confidential Information**” means all information that Valhalla discloses to Customer that falls within one or more of the following categories:  any information identified as confidential or proprietary by Valhalla;  any information that falls within the definition of a “trade secret” as defined in C.R.S. § 7-74-102(4), as amended;  any information, including a formula, pattern, compilation, program, device, method technique, or process that  derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainably by proper means by, other persons who can obtain economic value from its disclosure or use and  is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;  any information which Customer knows or reasonably should know that Valhalla is required to keep confidential under a binding obligation with a third party; and  all information provided to Customer which Customer knows or reasonably should know could be detrimental to the interests of Valhalla if disclosed or used without authorization, whether or not such information is identified as confidential.
		2. Exceptions. Information that falls into any one or more of the following categories will not constitute Confidential Information:  information that is or becomes part of the public domain through no fault of Customer;  information that Customer can show was known by Customer prior to its receipt from Valhalla;  information that Customer can show was independently developed by or for it without relying on any Confidential Information; and  information that Customer can show was rightfully received from a third party who is not under any obligation to maintain the confidentiality of such information, under circumstances not involving a violation of the rights of Valhalla.
	2. Protection of Confidential Information. Except as otherwise provided or permitted in this Agreement, Customer will not do any of the following, directly or indirectly, without the written consent of Valhalla:  disclose, transfer, or otherwise communicate to any third party any Confidential Information; or  use Confidential Information for any purpose except to perform Customer’s obligations or exercise Customer’s rights in this Agreement. Customer will not permit any of its respective agents or employees to take any action prohibited by this Section 9(b).
	3. Disclosure by Court Order or Law. Customer will not be in breach of the obligations hereunder to the extent that, based upon the advice of counsel, it provides Confidential Information under a court order or discloses Confidential Information as required by law. Before Customer discloses Confidential Information under this Section (c), Customer must:  immediately notify Valhalla of the court order or legal requirement;  give Valhalla a reasonable opportunity to contest or limit the required disclosure; and  provide reasonable assistance at Valhalla’s expense, except to the extent it is illegal to do any of the foregoing.
	4. Return of Confidential Information. Upon demand by Valhalla, Customer will, at its option, immediately destroy or deliver to Valhalla the originals and all copies of any and all materials and writings received from, created for, or belonging to Valhalla which relate to or contain any Confidential Information. If Customer opts to destroy the information, it will provide a written certification of the destruction of the information to Valhalla.
10. Consulting Services. Valhalla may provide written materials, advice, and other consulting services to Buyer related to storing, planting, growing, harvesting, and/or processing an industrial hemp crop using the Purchased Seeds (collectively, “**Consulting Services**”). Unless the Parties enter into a separate written consulting agreement, all Consulting Services will be provided at Valhalla’s sole discretion without charge. All Consulting Services and any materials provided with any Consulting Services are provided “as-is” without warranty of any kind. Customer assumes all risk associated with, and hereby releases Valhalla and its employees from any liability for costs or damages incurred by Customer resulting from, Customer’s reliance on the Consulting Services. In the performance of any Consulting Services, Valhalla shall be considered an independent contractor, and not a partner or employee, of Customer. Neither Party will have any authority to bind the other Party.
11. General Provisions.
	1. Injunctive Rights. The breach or threatened breach of this Agreement, including the unauthorized use or disclosure of Confidential Information, would be highly prejudicial to the interests of Valhalla and would materially damage Valhalla. Therefore, in addition to any other remedy available at law or in equity, Valhalla will be entitled to injunctive relief, including without limitation to specific performance, to enforce this Agreement and the Customer’s obligations hereunder. Valhalla may obtain injunctive relief without posting a bond (or, if a court determinates that a bond is required, then upon the posting of a nominal bond).
	2. Further Assurances. Each Party shall execute all further documents and take all further acts reasonably necessary or appropriate to carrying out the intent of this Agreement.
	3. Disputes. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to such jurisdiction’s conflict of laws principles. An action brought by either Party to interpret or enforce any provision of this Agreement shall be brought only in a state or federal court located in Denver, Colorado; provided that Valhalla may seek injunctive relief in any court of competent jurisdiction. Each Party submits to the jurisdiction and venue of such courts and waives any objection to which it otherwise might be entitled regarding such jurisdiction or venue. Customer waives any right it may have to a jury trial in any action or proceeding arising out of or in connection with this Agreement.
	4. Termination. This Agreement shall terminate if a material breach of this Agreement remains uncured seven days after the non-breaching Party provides written notice to the breaching Party, specifying in reasonable detail the nature of the alleged breach of this Agreement. The Parties may also terminate this Agreement by mutual written agreement.
	5. Transfer; Binding Effect. Buyer may not transfer or assign this Agreement or any right or obligation hereunder without the prior written consent of Valhalla. This Agreement shall bind and inure to the benefit of the heirs, successors, and permitted assigns of the Parties.
	6. Entire Agreement. This Agreement states the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes and replaces all previous discussions, negotiations, and agreements. Any terms or conditions provided by Buyer shall not be incorporated into this Agreement. Any amendment or addition to this Agreement will be effective only if in writing and signed by both Parties.
	7. Waiver. The failure of any Party to insist upon the performance of any provision of this Agreement or to exercise any right or privilege granted to such Party under this Agreement will not be construed as waiving such provision or any other provision of this Agreement.
	8. Force Majeure. If performance of an obligation hereunder is prevented, restricted, or interfered with by reason of earthquake, fire, flood, or other casualty, or due to strikes, riots, storms, explosions, acts of God, war, terrorism, or a similar occurrence or condition beyond the reasonable control of the Parties, the Party so affected shall, upon giving prompt notice to the other Party, be excused from such performance during such prevention, restriction, or interference, and any failure or delay resulting therefrom shall not be considered a breach of this Agreement. A Party who suffers a force majeure event shall promptly notify the other Party and provide the other Party with reasonable access to inspect the effects of the force majeure event.
	9. Notices. Any notice, request or demand or other communication provided for or given under this Agreement shall be in writing and shall be given or made by delivering it (personally or by courier, return receipt requested and charges prepaid) or sending it by e-mail to the Party to whom the notice is directed at the address or e-mail address provided by the Parties to each other from time to time. A Party shall acknowledge a written notice when received.
	10. Severability. If any provision of this Agreement is held invalid or unenforceable, the Parties intend that the provision be enforceable to the maximum extent permitted and therefore request that the court reform the invalid or unenforceable provision to render it enforceable to the maximum extent permitted; if the court refuses to modify or reform the provision, then the provision shall be severed from this Agreement with no effect upon the remaining provisions.
	11. No Third Party Beneficiaries. This Agreement is made solely for the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement confers any rights or remedies on any persons other than the Parties and their respective successors and permitted assigns.
	12. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. Facsimile or electronic signatures will be considered originals in the execution of this Agreement. Heading shall not be considered in interpreting this Agreement.

[signature page follows]

The Parties are executing this Agreement to signify their acceptance of all the provisions herein, to be effective on the Effective Date regardless of the date of actual signature.

 **Berserker Holdings, LLC Customer
 (d/b/a Valhalla Pharms)**

By: By:

Name: Name:

Title: Title:

Date: Date:

Purchaser Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Purchaser Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Purchaser Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Ind. Hemp Reg.#: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

IHR # Expiration: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Retail/Wholesale #: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exhibit A
Order Form

Seller: BERSERKER HOLDINGS, LLC IHR#: 102292

 (DBA) VALHALLA PHARMS SEED REG. ID#: 0033GC

 6565 Vine Court

 Denver CO 80229

Date: Purchase order Number

Products delivered pursuant to this order are subject to the terms and conditions detailed on the reverse side of this Purchase Order.

Purchaser Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Purchaser Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Purchaser Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Ind. Hemp Reg.#: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

IHR # Expiration: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Retail/Wholesale #: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Quantity**  | **Unit Price** | **Deposit Due $** |
| Peach Mint Kush |  |  |  |
|  |  |  |  |

 Total Purchase Price: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Shipping Cost: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Total Paid: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By signing, Purchaser acknowledges the terms and conditions detailed on the reverse:

(Buyer Signature) Date

(Seller Signature) Date