

# TERMS AND CONDITIONS OF PURCHASE FOR USA



1. **Terms of Performance.** The commencement of performance by the seller identified on the reverse side hereof ("Seller") under the written purchase order on the reverse side hereof (together with these terms and conditions of purchase, the "Purchase Order") constitutes an irrevocable offer of the Seller to sell and to deliver the products described therein (the "Products") to the IMS entity identified on the reverse side hereof ("Purchaser") according to the terms stated in the Purchase Order. The Purchase Order when accepted by Seller, as evidenced by its signature on the reverse side hereof, other written confirmation or performance, shall constitute a binding contract and agreement between the parties. UNLESS EXPRESSLY AGREED TO IN WRITING BY PURCHASER, ACCEPTANCE OF THE PURCHASE ORDER BY PURCHASER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN, AND ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS CONTAINED IN SELLER'S INITIAL OFFER OR ANY RESPONSE TO THE PURCHASE ORDER SHALL BE DEEMED REJECTED BY PURCHASER WITHOUT NEED OF FURTHER NOTICE OF REJECTION AND SHALL BE OF NO EFFECT NOR IN ANY CIRCUMSTANCES BINDING UPON PURCHASER. The Purchaser may, from time to time, issue scheduling notes to Seller. Scheduling notices shall be non-binding on the Purchaser and are for information purposes only.

2. **Acceptance of the Products.** Seller agrees that the Purchaser shall not be deemed to have accepted the Products until the Products have arrived at Purchaser's place of business and Purchaser has had a reasonable time to inspect the goods, provided that any such inspection shall not be deemed a waiver of any product defects, or final acceptance of the goods as to quality, quantity or otherwise.

Purchaser may inspect all Products ordered from Seller hereunder at all times and places, including during the manufacturing process. Such inspection may at Purchaser's option include Seller's compliance with required quality control procedures. Seller will permit Purchaser or its designee access to Seller's facilities at all reasonable time and will provide all tools and assistance reasonable necessary for such inspection and/or confirmation at no additional cost.

Purchaser may reject any products which do not meet the specifications set forth in the Order. Purchaser may return any such Products to Seller for reimbursement, credit or replacement or correction. Purchaser may, in his option, correct such Products at Seller's cost. Any Products rejected will be at Seller's risk and expense and Seller will not thereafter tender such Products for ac-

ceptance unless the former correction or rejection is disclosed. Seller will reimburse Purchaser for any packaging, handling and transportation costs Purchaser incurs with respect to the rejected Products.

Purchaser may revoke acceptance at any time whether or not a substantial modification to the Products has been made if a defect in the Products which could not have been discovered during Purchaser's normal inspection procedures or which normally is not discoverable until the Products are used impairs the value of the Products to Purchaser.

Neither Purchaser's exercise nor its failure to exercise any rights provided for hereunder will relieve the Seller from responsibility for such Products which are not in accordance with the Order requirements or impose liability on Purchaser therefore.

3. **Price.** The purchase price for the Products sold shall be the price specified on the purchase order. Unless otherwise noted thereon, such price is DDP Facility designated by Purchaser ("DDP Designated Facility"). For purposes of the Purchase Order, the term "DDP" shall mean a price that includes all applicable charges including, but not limited to, packing, packing material, loading, freight and insurance to DDP Designated Facility and customs fees and all applicable taxes and duties that may be levied upon the manufacture, sale or delivery of the Products under the Purchase Order.

4. **Price Increases.** Prices are not subject to change without Purchaser's approval evidenced by Purchaser's properly authorized written amendment to the order. Seller warrants that the prices for the Products as sold to Purchaser shall not be less favorable than Seller currently extends to other customers.

5. **Payment Terms and Invoices.** Unless otherwise expressly stated on the reverse side hereof, payment terms are sixty (60) days. The payment date shall be calculated from the date that Seller's invoice is received by Purchaser or that the Products are accepted in accordance with the Purchase Order, whichever is later. If Purchaser makes payment earlier, Purchaser shall receive a discount of two point five percent (2.5 %).

6. **Delivery and Performance.** Unless otherwise noted on Purchaser's purchase order, the terms of delivery for the Products are DDP facility designated by Purchaser specified on the reverse hereof ("DDP Designated Facility"). Regardless of the terms of delivery, the Seller shall bear all risk of loss to the Products until the same actually arrive at DDP Designated Facility. Delivery of non-conforming Products or failure to deliver the Products at

the time and in the manner specified shall, at Purchaser's option, relieve Purchaser of any obligation to accept delivered Products or to make payment hereunder. Unless otherwise stated on the reverse side hereof, Seller guarantees all delivery dates with respect to the Products (the "Delivery Date"). Seller is responsible for employing the most expeditious shipping method available to meet the Delivery Date of the Products at no additional cost to Purchaser; provided that such shipping method shall comply with all governmental regulations applicable to the shipment of the Products. Seller shall not deliver any Products in installments unless agreed to in writing by both parties. Delay in delivery of any installment shall not relieve Seller of its duty to deliver any remaining installments by the specified Delivery Date. Without limiting Seller's obligations hereunder, Purchaser reserves the right to specify the methods, means and mode of packing and shipping the Products.

7. **Insurance.** Seller shall purchase insurance with a reputable insurance company accepted by Purchaser on the Products purchased hereunder insuring such Products for loss in transit in an amount equal to their purchase price and a general liability insurance. Such insurance shall name Purchaser as the designated beneficiary of any insurance proceeds and remain effective until such time as the Products are picked up at DDP Designated Facility by Purchaser, Customer or a carrier designated by either for delivery to Customer's place of business.
8. **Force Majeure.** Purchaser shall not be liable for any failure to accept the Products or to make payment hereunder if such failure is, directly or indirectly, caused by, or in any manner arises from fire, floods, accidents, civil unrest, acts of God, acts of terrorism, war, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, transportation delays, cancellation of order by Customer of Purchaser or any other cause or causes (whether or not similar in nature to any of those hereinbefore specified) beyond its control. If Purchaser cannot perform due to Force Majeure, he shall notify Seller immediately of the beginning of the disruption. If the delay, due to Force Majeure, continues more than 10 days, Purchaser has the right to terminate the order.
9. **Indemnity; Procedure.** Seller shall defend, indemnify and hold Purchaser harmless from and against all damages, claims, liabilities or expenses, including but not limited to attorney fees and costs arising out of or resulting in any way from any defect in the Product purchased hereunder, from any act or omission of Seller, its agents, employees or contractors. This indemnification duty shall be in addition to all remedies under the warranty clause of Seller. In addition, Seller agrees to indemnify, hold harmless and defend Purchaser and its Customers ("Indemnitees") from and against all liability, loss, damage, costs and expenses including, but not limited to, costs and expenses of litigation and reasonable attorneys' fees, which Indemnitees hereafter may incur or which In-

demnitees may reimburse to a third party as the result of any claim, action or right of action, at law or in equity, arising out of any infringement or alleged infringement of any license, patent, copyright or any other intellectual property right, or resulting from injury (including death) to any person or damage to any property occurring as a result of, or caused in whole or in part by, acts or omissions of Seller or its employees, any subcontractor or its employees, or any person, firm or corporation employed or engaged by Seller, including any failure of the Products to comply with the warranties made hereunder. Seller hereby waives and releases Indemnitees from any and all rights of recovery, claims, actions or causes of action which Seller may have against Indemnitees with respect to those matters which Seller has agreed to indemnify Indemnitees hereunder. Seller shall not be liable to Indemnitees for loss, damage, costs and expenses which are the direct result of the gross negligence or intentional conduct of Indemnitees. In the event any claim is made against Purchaser by reason of any matter referred to and in respect of which the Seller is alleged to be or otherwise may be liable under this Section, the Purchaser may conduct, with counsel of its choosing, all litigation and all settlement negotiations arising out of the claim and seek reimbursement from Seller for amounts expended as and when expended, or may, at Purchaser's option, require Seller to conduct the defense of the claim, at Seller's cost and expense, with counsel reasonably acceptable to Purchaser. In no event will Seller settle any claim against Purchaser, or for which Purchaser may be liable, without the written consent of Purchaser. In the event Purchaser elects for Seller to defend any claim under this Section, Purchaser shall have the right, at its election, to participate in the defense of any such claim for the further protection of its own interests.

10. **Warranties.**

- (a) **Seller's Warranties.** Seller warrants that it will convey good and marketable title to the Products free from any lawful lien, claim or encumbrance other than any lien arising hereunder. Seller further warrants that any Products delivered hereunder for twelve (12) months, shall: (1) comply with the Product descriptions and specifications provided by Purchaser to Seller, whether written or oral; (2) be merchantable and fit for the particular purpose for which purchased by Purchaser; (3) comply with all rules, regulations and requirements current state of the art, including without limitation, customs regulations, applicable to the Products and (4) before delivery inspect the Products according to industry standards.
- (b) **Claims; Remedies; Assignability.** In the event of a breach of the above referenced warranties the parties agree that: (1) Purchaser shall provide notice of such breach to Seller; and (2) Seller shall at Purchaser's option (i) replace such Product(s) by delivering a like quantity of the Product(s) meeting all of the descriptions and specifications referenced in the Purchase

Order; or (ii) refund the total purchase price for the Product(s) allegedly failing to comply with such warranty to Purchaser upon receipt of such Product(s) by Seller and all incremented cost incurred by Purchaser and damage caused to Purchaser due to such product defect; provided, however, that the remedies specified herein shall not be exclusive and shall not limit any remedies available to Purchaser at law or in equity. Seller further agrees that the warranties made herein shall be assignable by Purchaser to any domestic or international party to which it sells the Products and such warranties may be similarly reassigned in connection with any subsequent resales during the above warranty period.

11. **Defaults; Remedies.** If Seller fails to fulfill its obligations under the Purchase Order in any manner, Purchaser may at its option: (i) cancel its obligation to purchase under any purchase order relating to such failure, (ii) cancel the entire Purchase Order and in each case hold the Seller responsible for all damages resulting from such failure, (iii) insist on future performance of the terms of the Purchase Order and deduct and offset from the amounts otherwise due Seller under the Purchase Order those losses and expenses directly and indirectly incurred by Purchaser and its customers as a consequence of such failure, (iv) cover elsewhere and hold Seller responsible for any losses and expenses incurred by Purchaser even if Purchaser intends to insist upon future performance with respect to future deliveries, and, in addition, (v) pursue any other remedies permitted at law or in equity. The remedies set forth herein and those available at law or in equity are cumulative and the pursuit of any one or more remedies shall not in any manner operate as an election of remedies or otherwise waive Purchaser's rights to pursue any other rights or remedies available to it at law, in equity or under the Purchase Order.
12. **Termination for Convenience.** Purchaser may terminate the order at any time for convenience by giving written ninety (90) days' notice to Seller. Upon receipt of such notice Seller will immediately stop all work hereunder and direct any supplier to cease such work. Purchaser will pay Seller for all Products (i) which are ready for shipment in accordance with the purchase order's delivery schedule prior to Seller' receipt of the termination notice, (ii) conform to all requirements of the purchase order and are (iii) free and clear of all encumbrances. Purchaser will not be liable to make payments to Seller for loss of anticipate profit, unabsorbed overhead, interest on claims product development and engineering costs or charges in connection with the termination of the order. Purchaser will not pay for any work done after receipt of the notice of termination or for any costs incurred by Seller's suppliers or subcontractors.
13. **Termination for Cause.** Purchaser may terminate any order or any part for cause at any time in the event of a default by Seller. "Default" means: (i) Seller's failure to comply with any of the terms and conditions of the pur-

chase Order; (ii) Seller's failure to give Purchaser upon request assurance of Seller's ability to perform, (ii) insolvency, bankruptcy, liquidation or dissolution of Seller or (iv) any other event which causes reasonable doubt as to Seller's ability to render due performance hereunder. If, after termination for Default it is determined that Seller was not in Default, the rights and obligations of the parties will be the same as if the termination was for Purchaser's convenience.

14. **Protection of Trade Secrets and Confidential Information.** The parties hereto agree that Seller shall not disclose any (i) Trade Secrets for such time as they remain Trade Secrets or (ii) Confidential Information for a period of five (5) years after disclosure of Purchaser to any individual or entity not a party to the Agreement. Any additional non-disclosure agreements entered into between the Seller and the Purchaser shall apply. If provisions of additional non-disclosure agreements have contradictory terms with respect to protection of trade secrets and confidential information, the terms of the additional non-disclosure agreement shall prevail.
  - (a) Seller may make available Trade Secrets or Confidential Information to its qualified employees, as defined hereinafter, to the extent that such information must be disclosed to such qualified employees to apply the Trade Secrets or Confidential Information to its intended use. A "qualified employee" shall mean any individual employed by or affiliated with Seller who is bound by a valid and fully enforceable confidentiality agreement which contains confidentiality obligations substantially similar to the confidentiality obligations stated herein, prior to disclosure of the Trade Secrets and Confidential Information to such employee.
  - (b) For purposes of the Agreement the following terms shall have the meanings set forth below:
    - (i) The term "Trade Secrets" shall mean and include any and all designs, plans, processes, tools, mechanisms, programs or compounds known to only Seller, or to those of its clients and employees to whom they must be confided in order to be applied to the uses intended, some or all of which may arise to the level of being patentable or subject to copyrights, all as further defined under the laws of the State of Georgia.
    - (ii) The term "Confidential Information" shall mean and include information not rising to the level of Trade Secret and not generally known to or by a business in competition with the Seller or otherwise publicly disseminated by the protected party hereto, the disclosure of which may be beneficial to a competing business or detrimental to Seller.

15. **Property.** Unless otherwise provided in the Order, property of every description, including material, drawings, manufacturing aids, samples, models, tools furnished by the Purchaser to Seller for the performance of the order shall remain property of Purchaser plainly marked or otherwise adequately identified by Seller as property of Purchaser. Seller shall store any tools delivered by Purchaser in a separate area in his warehouse to avoid comingling with other items belonging to Seller. If employees or agents of Seller perform work at plant of Purchaser or on the premises of one of Purchaser's customers, Seller shall ensure that they comply with applicable accident prevention regulations and Purchaser's policies and guidelines. Seller shall assume full responsibility of liability of any act or omissions of Seller, its employees or agents and shall be responsible for damage or loss caused by it or its employees at the plant of Purchaser. Seller shall deliver to Purchaser an insurance policy obtained from an insurance company acceptable to Purchaser and with amounts of coverage acceptable to Purchaser with a policy naming Purchaser as an additional insured providing for a general liability insurance. Supplier shall provide a certificate of insurance indicating the coverage upon request of Buyer or within ten (10) days prior to commencing work under the purchase order. The receipt or review of such insurance certificate and policies by Buyer shall not relieve Seller from its obligations hereunder. The insurance policy to be provided by Seller shall specify in its termination clause that insurance can be terminated only upon 30 days prior written notice to Buyer.
16. **Security Interest.** Except as otherwise agreed upon to the contrary, Seller shall have the duty to execute a security agreement in the form attached hereto, if requested by the Purchaser.
17. **General Provisions.** If employees or agents of Seller perform work at Purchaser's plant or premises, Seller shall instruct them regarding accident prevention regulations and regarding Purchaser's company guidelines and policies. Further, Seller shall be liable for any acts and omissions of its employees and agents and damages or lost costs by employees or agents of Seller at Purchaser's plant.
- a) Seller shall not assign its rights or delegate its performance obligations under the Purchase Order, by operation of law or otherwise, without the prior written approval of Purchaser.
- b) The Purchase Order shall be governed by and construed according to the laws of the State of Georgia, without regard to its conflict of laws rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Purchase Order.
- c) In the performance of the Order Seller shall comply with all applicable provisions of the laws and will hold the Purchaser harmless from any liability resulting from Seller's non-compliance with the applicable provisions of the laws.
- d) Time is of the essence with respect to the Purchase Order.
- e) Any disputes arising under the Purchase Order shall be submitted promptly to arbitration in Atlanta, Georgia under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted by one arbitrator, selected by AAA, who is familiar with commercial agreements involving the purchase and sale of perishable food commodities.
- f) Purchaser's waiver of any breach, or failure to enforce any of the terms and conditions of the Purchase Order, at any time, shall not in any way affect, limit or waive Purchaser's rights thereafter to enforce and compel strict compliance with every term and condition hereof.
- g) To the extent permitted by applicable law, Purchaser shall not be liable for any claims or damages under any order unless such damage or loss was caused by gross negligence or willful misconduct of Purchaser.
- h) In no event shall Purchaser be liable to Seller, regardless of the form of action, whether in contract or in tort or otherwise, for any incidental or consequential damages of any nature whatsoever, including without limitation, lost profits.
- i) Each section and subsection of the Purchase Order constitutes a separate and distinct understanding, covenant and provision hereof. In the event that any provision of the Purchase Order shall be void or unlawful, such provision shall be deemed to be severed from the Purchase Order, but every other provision of the Purchase Order shall remain in full force and effect.
- j) The Purchase Order sets forth the entire agreement between Seller and Purchaser, and no terms, conditions, understanding or agreement purporting to modify or vary the terms of the Purchase Order shall be binding unless hereafter made in writing and signed by Seller and Purchaser.
- k) Purchaser shall have the right to set off against any amount due Seller under the Purchase Order or any other agreement to which Purchaser and Seller are parties any amount due hereunder from Seller to Purchaser in respect of damages or indemnity payments or otherwise.
- l) Seller shall bear the risks of any currency fluctuation in the market price of the Products. In not event, shall any such price fluctuation relieve Seller of its obligations to make timely delivery hereunder.