



PURCHASE ORDER TERMS & CONDITIONS

The following terms and conditions (the "Terms and Conditions") shall apply to the sale or other provision of products, goods or services (collectively, the "Products") to Mercer Foods, LLC ("Buyer") by the supplier of the Products provided hereunder ("Seller") and shall be in addition to the prices, quantities and delivery schedules set forth in any Purchase Order (as defined below). In the event of any conflict between these Terms and Conditions and any written agreement or any purchase order, invoice or quotation from Buyer (each a "Purchase Order") with respect to the Products, these Terms and Conditions shall control. Buyer rejects any other terms and conditions appearing on, referenced in or attached to Seller-issued documents. Seller's acceptance of (i) Buyer's Purchase Orders or (ii) delivery of the Products to Buyer shall each constitute acceptance of these Terms and Conditions.

1. DELIVERY AND CHANGES

Time is of the essence of this contract. Delivery shall not be deemed to be complete until all Products have been actually received and accepted by Buyer, notwithstanding any agreement to pay freight, express or other transportation charges.

If Seller fails to provide and deliver the quality or quantity of Products specified in any Purchase Order, Seller shall be liable for any additional costs or expenses incurred by Buyer to fulfill the applicable order contemplated by the Purchase Order.

Buyer reserves the right to refuse any Products and to cancel all or any part of the Products. Acceptance and/or payment of all or any part of the Products shall not be deemed to be a waiver of Buyer's rights either to (i) cancel shipments already sent, (ii) cancel future shipments, (iii) return all or any portion of the Products because of failure to conform to any Purchase Order, by reason of defects, latent or patent or other breach of warranty, or (iv) make any claim for damages including manufacturing costs and loss of profits or other special damages incurred by the Buyer. Such rights shall be in addition to any other rights and remedies provided by law which shall not be limited by anything contained herein or otherwise.

Buyer may, at any time, by written notice to Seller, make changes within the general scope of any Purchase Order in any one or more of the following (i) drawings designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; and (iv) schedule of deliveries.

2. SELLER EXPRESSLY WARRANTS AND REPRESENTS AS FOLLOWS:

- a. All Products conveyed by any Purchase Order are free of defects in material and workmanship, conform to applicable specification, drawing samples and descriptions, and are of merchantable quality, and are suitable for Buyers' intended purposes.
- b. The Products are owned by Seller, and upon acceptance by Buyer (or as otherwise provided in any Purchase Order), will be delivered to Buyer free and clear of all claims, liens, encumbrances and penalties.
- c. No part of the Products, covered by any Purchase Order are subject to any actual or claimed trademark, patent or copyright infringements or any litigation based thereon.
- d. All Products, wrappers and containers covered by any Purchase Order shall bear markers and labels and be manufactured and distributed in compliance with all applicable federal, state and municipal laws, rules and regulations, including without limitation the Fair Labor Standards Act, the Federal Food, Drug and Cosmetic Act, the Fair Practices and Labeling Law and the Toxic Substances Control Act.
- e. No product, component, or ingredient with a foreign country origin is to be used without prior written approval from Buyer.
- f. Product must meet all requirements of the Federal Food, Drug and Cosmetic Act as amended, including those related to pesticide and chemical residues.
- g. Samples and grading are to be supplied to Buyer, as requested from time to time, at Seller's sole cost and expense.
- h. Equal Employment Clause – Seller guarantees compliance with the provisions of Executive Order 11246 (the "Executive Order") pertaining to non-discrimination in employment and hiring. Under these Terms and Conditions and Section 203, Paragraphs A and B of the Executive Order, Seller agrees to file compliance reports with the appropriate federal agency, and on request to supply Buyer with copies of the compliance reports and any other information necessary to demonstrate compliance. Seller also guarantees compliance with Section 503 of the Rehabilitation Act of 1973, as amended (the "Act") relating to employment and hiring of the handicapped, and the rules, regulations and relevant orders issued by the Secretary of Labor pursuant to

the Act. Seller shall also comply with the Veterans Era Vietnam Readjustment Act of 1974, as amended, and if applicable, Seller shall take all required affirmative action on behalf of disabled veterans and veterans of the Vietnam Era to employ and advance in employment these qualified veterans.

- i. Seller will comply with all applicable federal, state or local laws, orders, regulations and/or ordinances, including without limitation anti-bribery, anti-corruption, import/export, privacy and anti-kickback laws.
- j. Seller further represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of Products under these Terms and Conditions.

The foregoing warranties and representations shall survive Buyer's acceptance and payment for the Products covered by these Terms and Conditions.

3. INSURANCE AND INDEMNIFICATION

Seller agrees to indemnify, defend and hold Buyer, its officers, agents and employees, successors and assigns, harmless from any and all liability, loss, damage or expense which Buyer may suffer as a result of claims, demands, costs or judgements against it involving Seller's activities related to any Purchase Order or any failure by Seller to comply strictly with these Terms and Conditions, including the warranties stated in Section 2 above, or otherwise to fully and timely discharge its obligations under these Terms and Conditions or any Purchase Order. This indemnity shall include the expense of any defense, including attorney's fees, and shall be in addition to any other remedies provided by law.

Seller shall carry comprehensive general liability insurance, including contractual and product liability coverage, with minimum limits acceptable to the Buyer. Seller shall, at the request of the Buyer, supply certificates evidencing such insurance coverage.

4. PACKING

Unless otherwise specified, (i) all packing and crafting by Seller shall be in compliance with carrier's tariffs and in suitable containers for protection in shipment and storage, and (ii) the price or prices for the Products shall include all charges for Seller's packing and crating, and for transportation to the FOB point unless expressly stated otherwise.

5. TAX

Any sales tax, usage tax, or value added tax shall be paid by Buyer where applicable. Seller shall use commercially reasonable efforts to cooperate in processing Buyer's resale documents.

6. USE OF BUYER'S DATA

Seller shall not, without prior written consent of Buyer, use or disclose any data, designs, or other information belonging to or supplied by or on behalf of Buyer, except in the performance of any Purchase Orders for Buyer. Upon Buyer's request, such data, designs or other information and copies thereof, shall be returned to Buyer. Where Buyer's data, designs, or other information are furnished to Seller's suppliers for procurement of supplies by Seller for use in the performance of Buyer's Purchase Orders, Seller shall insert the substance of this provision in such Purchase Orders.

7. TERMINATION

- a. Buyer may terminate any Purchase Order, in whole or in part, without liability to Seller, if (i) the Products do not conform to Buyer's specifications, (ii) deliveries are not made at the time or in the quantities specified, (iii) in the event of a breach of any of these Terms and Conditions or the additional terms specified in any Purchase Order, (iv) or in the event Seller becomes insolvent, or make a general assignment for the benefit of creditors, files or has filed against it a petition in bankruptcy or reorganization or pursues any other remedy under any other law relating to the relief of debtors, or in the event a receiver is

appointed for Seller's property or business. Nothing contained herein or otherwise shall limit Buyer's rights and remedies upon Seller's termination of any Purchase Order.

- b. Buyer may terminate any Purchase Order, in whole or in part, at any time for its convenience by notice to Seller in writing. On receipt by Seller of such notice, Seller shall and to the extent specified in such notice, stop work and take any action necessary to protect property in Seller's possession, in which Buyer has or may acquire an interest. In such event, Buyer shall pay to Seller as settlement, without duplication, (i) the amounts due for supplies delivered and accepted or services completed in accordance with such Purchase Order prior to Seller's receipt of notice of termination; plus (ii) actual costs incurred by Seller if properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of the contract, including liabilities to subcontractors which are so allocable, and excluding any interest charges or charges for any Products, raw materials or parts which can be delivered or diverted to another Purchase Order or another one of Seller's customers; plus (iii) a reasonable profit on work, actually done by Seller prior to such termination (iv) provided, however, that the total settlement shall not exceed the Purchase Order price, and provided further that if it appears that the Seller would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed and appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss. Such termination claim shall be submitted on forms approved by Buyer within sixty (60) days after the Seller's receipt of notice of termination. Any termination by Buyer, whether for default or otherwise shall be without prejudice to any claims for damages or other rights of Buyer against Seller.
- c. Buyer shall have the right to audit all elements of any termination claim and Seller make available to Buyer on request all books, records, and papers, relating thereto.

8. ASSIGNMENT

Neither party may assign or factor these Terms and Conditions or any Purchase Order without the prior written consent of the other party, provided that Buyer may assign its rights hereunder to any of its affiliates. Any attempted assignment of these Terms and Conditions or any Purchase Order in violation of the foregoing shall be null and void.

9. APPLICABLE LAW AND JURISDICTION

These Terms and Conditions and any Purchase Orders hereunder are governed by and shall be construed in accordance with the laws of the state of California, excluding its conflicts of law rules. The parties consent to the sole and exclusive venue and jurisdiction of the federal and state courts situated in or having jurisdiction over the State of California.

10. INDEPENDENT CONTRACTOR

Except as specifically and expressly provided herein, the parties shall be considered independent contractors for the purposes of these Terms and Conditions and any Purchase Order. The relationship between Buyer and Seller shall not be that of partners, agents or joint venturers. Nothing in these Terms and Conditions or any Purchase Order shall be deemed to constitute a partnership, agency agreement or joint venture between them for any purpose whatsoever.

11. NORTH AMERICAN FREE TRADE AGREEMENT

Seller agrees to deliver as a separate line item a NAFTA Certificate of Origin (Customs Form 434) for all Products that meet the NAFTA Rules of Origin. Buyer reserves the right to withhold all payments to the Seller until such time as a completed NAFTA Certificate is delivered. A NAFTA Certificate is mandatory for all Products which are labeled "MADE IN THE USA".

12. CONFIDENTIAL INFORMATION

"Confidential Information" means any confidential or proprietary information that Mercer discloses to Seller hereunder. Confidential Information does not include any information that (i) is already in Seller's possession without obligation of confidence; (ii) is independently developed by Seller without use or reference to such Confidential Information; (iii) becomes publicly available other than through a breach of these Terms and Conditions; (iv) Mercer authorizes in writing to be disclosed prior to disclosure of such Confidential Information; or (v) is required to be disclosed pursuant to a court or government agency order or rule, provided that before disclosing any Confidential Information, Seller, to the extent permitted by law, provides reasonable notice of such order or rule to provide Mercer the opportunity to object to or limit such disclosure. Seller will exercise reasonable care to protect Confidential Information from unauthorized disclosure, which care shall not be less than Seller exercises to protect its own Confidential Information. Seller will use the Confidential Information solely in furtherance of any Purchase Orders hereunder and will disclose the

Confidential Information only to its employees or agents who need to know such information and agree to adhere to the confidentiality provisions of these Terms and Conditions. Notwithstanding any other provision in these Terms and Conditions, Mercer may seek provisional remedies in a court of competent jurisdiction, with or without notice, to enforce these obligations. Seller's duty to hold Confidential Information in confidence expires five (5) years from receipt of such Confidential Information.

13. ENTIRE AGREEMENT

These Terms and Conditions and any Purchase Order constitute the entire agreement between the parties, there being no other promises, terms, conditions, or obligations, referring to the subject matter not contained or referred to herein. If any provision of these Terms and Conditions, to any extent, is declared invalid or unenforceable, the remainder of these Terms and Conditions will not be affected thereby and will continue to be valid and enforceable to the fullest extent permitted by law. Any modifications hereto must be in writing and signed by both parties. Buyer's failure to strictly enforce any of these terms shall not be considered a waiver of any of its rights hereunder. The termination or expiration of these Terms and Conditions will not affect the survival and continuing validity of any provision which expressly or by implication is intended to continue in force after such termination or expiration.