

Purchase Order Terms and Conditions

Amended September 2017

These Purchase Order Terms and Conditions (“**Terms**”) are part of each purchase order that Superior Foods Company or any of its affiliates, whether currently an affiliate or subsequently becoming an affiliate (collectively, “**Superior Foods**”) issues and are found on Superior Foods’ website at www.superiorfoods.co/purchase_terms.

1. Definitions. The term “**Agreement**” means these Terms, together with all documents specifically referenced herein and any written purchase order, contract or agreement which attaches, incorporates or otherwise references these Terms. The term “**Buyer**” means Superior Foods Company, or its subsidiary(ies) or affiliate(s) executing this Agreement. The term “**Seller**” means any individual, corporation or other entity who is to supply Products purchased by the Buyer pursuant to this Agreement. The term “**Goods**” means the goods or materials sold by Seller and purchased by Buyer under this Agreement. The term “**Order**” means the purchase order.

2. Acceptance. All Goods are supplied pursuant to this Agreement. Seller shall have accepted these Terms and this Agreement will become legally enforceable on the earlier of delivery of a signed acknowledgment, commencement of performance, or shipment of all or any portion of the Goods covered under this Agreement, by Seller. Any acceptance of this Agreement is limited to acceptance of the express terms of the offer contained on the face and back hereof. Without the written consent of Buyer’s authorized representative, no additional or different terms proposed by Seller in its acknowledgement will be effective to modify the Agreement and Seller will be deemed to have accepted the Agreement without such modifications. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of the Agreement will be deemed material and are expressly objected to and rejected. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller’s general terms and conditions of sale or any other document issued by Seller in connection with the Order.

3. Delivery Date. Seller shall deliver the Goods in the quantities and on the date(s) specified in the Order or as otherwise agreed in writing by the parties (the “**Delivery Date**”). If no delivery date is specified, Seller shall deliver the Goods within thirty (30) days of Seller’s receipt of the Order. Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Goods on the Delivery Date.

4. Quantity. If Seller delivers less than 95% of the quantity of Goods ordered, Buyer may reject all or any of the Goods. Any such rejected Goods shall be returned to Seller at Seller’s risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis. If Seller delivers Goods in excess of quantities ordered by Buyer, Buyer may reject any excess amounts delivered. Any such rejected goods will be returned to Seller at Seller’s risk and expense. If Buyer accepts the excess Goods, Buyer shall not be required to pay for the excess Goods and is required to pay only the amount set forth on the Order.

5. Delivery Location. All Goods shall be delivered to the address specified in the Order (the “**Delivery Location**”) during Buyer’s normal business hours or as otherwise instructed by Buyer.

6. Shipping Terms. Seller warrants that the prices set forth in this Agreement are complete and that no additional charge of any type will be added without Buyer’s prior express written consent, including but not limited to, charges for shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating. Unless otherwise specified in the Agreement, all prices will be FOB destination (place of delivery).

7. Title and Risk of Loss. Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location and acceptance of the Goods by Buyer.

8. Packaging. All goods shall be packed for shipment according to Buyer’s instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller’s expense.

9. Amendment and Modification. No change to the Order is binding upon Buyer unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Buyer.

10. Inspection and Rejection of Nonconforming Goods. The Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate the Order for cause pursuant to [Section 21](#). Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

11. Price. The price of the Goods is the price stated in the Order (the "**Price**"). If no price is included in the Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Order. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

12. Most Favored Customer. Seller represents and warrants that the price for the Goods is the lowest price charged by Seller to any of its external buyers for similar volumes of similar Goods. If Seller charges any other buyer a lower price, Seller must apply that price to all Goods under the Order. If Seller fails to meet the lower price, Buyer, at its option, may terminate the Order without liability pursuant to [Section 21](#).

14. Setoff. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

15. Warranties. Seller represents and warrants to Buyer, and agrees, that (a) the Goods and all materials that Seller furnishes in connection with the services shall be new, (b) the Goods and services and all materials that Seller furnishes in connection with the services shall be merchantable, of good material, workmanship and quality, fit for the purposes for which Buyer intends them and free from faults and defects, (c) the Goods and services and all materials that Seller furnishes in connection with the services shall conform to any samples, designs, drawings, specifications, standards, performance criteria or other requirements (collectively called "Specifications") that are referred to in the order or that Buyer has provided to Seller or otherwise specified or agreed to in writing, or, to the extent that any required Specifications are not referred to in the order or provided by Buyer to Seller or otherwise specified or agreed to in writing, the Specifications provided by Seller to Buyer, (d) the Goods, their manufacture, packaging, labeling, branding and sale and the services shall comply with all applicable federal, state, local and foreign laws, regulations, standards and orders, including, without limitation, the Fair Labor Standards Act of 1938, the Federal Child Labor Act, the Agricultural Marketing Act of 1946, the Occupational Safety and Health Act of 1970, the Federal Food, Drug, and Cosmetic Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Fair Packaging and Labeling Act and the Poison Prevention Packaging Act of 1970, the Poultry Products Inspection Act, the Federal Meat Inspection Act, Food Allergen Labeling and Consumer Protection Act of 2004, the Consumer Product Safety Act, the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 *et seq.* and all standards, rules, regulations and orders issued pursuant thereto, the Copyright Act of 1976 and state and federal trademark laws and patent laws, the Bioterrorism Act, and the FSMA, as each may be amended from time to time, (e) Seller shall promptly furnish to Buyer all information and copies of documents (including, but not limited to, complaints, inquiries, test or inspection results and warnings) that Seller receives from an enduser of the Goods, a government agency, an employee or agent of Seller or any other person or source and that suggests or indicates that the goods may not conform to the requirements of this Section, and (f) Seller has and follows, and will continue to have and follow, adequate quality, safety, and security procedures that will assure that the Goods and services will comply with the foregoing warranties, representations and agreements and that are reasonably calculated to prevent acts of terrorism with respect to the Goods and services.

Supplier Code of Conduct (“the Code”), a supplier means any direct or indirect vendor, broker, consultant, or other service provider to Superior Foods and its affiliates and subsidiaries. This Code sets forth the principles and ethical standards that we expect all our suppliers to work toward achieving throughout the course of our business relationship. Suppliers who knowingly violate laws or have repeated problems conforming to these principles may not receive our business. All manufacturing and outside storage facilities that supply Superior Foods are expected to undergo, at their cost, annual independent third party facility GMP audits and/or GFSI certifications. This applies to food and non-food suppliers. Appropriate corrective actions are to be developed and implemented immediately to address deficiencies that present a risk to food safety, security, quality, or traceability. Upon Buyer’s request, Seller shall give Buyer certificates of compliance with applicable laws, regulations, standards, and orders. Buyer’s approval of a sample, design, drawing, specification, standard, performance criteria, or other requirement shall not relieve Seller of any of its warranties under this paragraph, including, without limitation, its warranties of merchantability, fitness and compliance with laws. Seller’s warranties extend to future performance of the goods and services and survive inspection, tests, acceptance and payment and shall be considered to have been given not only to Buyer but also to Buyer’s customers and to end-users of the goods. Seller’s warranties apply to any replacement goods or services that Seller furnishes under these Terms or otherwise.

16. Unsafe or Unfit Goods. If a governmental agency declares that any of the Goods or any ingredient of, or any material included in, any of the Goods or any packaging or supplies used in connection with the Goods, or if Buyer at any time believes in good faith that any of the Goods or any such ingredient, material, packaging or supplies, (a) is or may be adulterated or misbranded (including, without limitation, situations in which the governmental agency determines there is “reason to believe” that there may be adulteration or misbranding) within the meaning of the Federal Food, Drug, and Cosmetic Act, as amended, or any other applicable federal, state, local or foreign law, rule or regulation, (b) fails or may fail to conform to an applicable standard or regulation issued under the Flammable Fabrics Act, as amended, (c) is or may be a misbranded hazardous substance or a banned hazardous substance within the meaning of the Federal Hazardous Substances Act, as amended, (d) does not or may not conform with an applicable consumer product safety standard, or has been declared a banned hazardous product, under the Consumer Product Safety Act, as amended, (e) has a reasonable probability of causing serious adverse health consequences or death to humans or animals, within the meaning of the FSMA and/or Bioterrorism Act, or (f) is or may be otherwise unsafe or unfit for the intended use of the Goods, or, if Seller receives any correspondence or other information that would reasonably lead Seller to conclude that any of the declarations set forth as items (a) – (f) above are substantially likely to be forthcoming, then, without limiting other rights and remedies that are available to Buyer under these Terms or applicable law, (i) Buyer or Seller, as the case may be, shall give the other party written notice of any such declaration or potential declaration, as applicable, and shall furnish to such party copies of the declaration and of all relevant notices, documents and correspondence, (ii) if a declaration has been issued, Seller shall stop including the ingredient or material in the Goods, (iii) if Seller has failed to produce the Goods in accordance with Buyer’s specifications and such failure is the reason for the declaration or potential declaration, as applicable, Buyer may terminate the Order, without liability to Seller, by giving written notice to Seller, which shall be effective immediately or on any later date that the notice specifies, (iv) if Buyer does terminate, then (A) Buyer’s obligations under the Order shall terminate immediately and Buyer shall not be obligated to pay Seller damages or other compensation by reason of the termination; and (B) Seller shall, unless Buyer directs otherwise, stop work and acquisition of materials under the Order and protect property in Seller’s possession in which Buyer has or may acquire an interest for a reasonable period of time, (v) Buyer shall have the right (A) with the consent of Seller (which shall not be unreasonably withheld, conditioned, or delayed), to recall (i.e. purchase or repurchase) any or all of the Goods, and any products made with or produced by the Goods, from its customers and end-users and any others having possession of the Goods, and Seller shall reimburse Buyer for all reasonable costs that Buyer incurs in doing so and shall assist Buyer and any applicable governmental agency in all reasonable respects in the recall, to the extent that Buyer requires Seller to do so; and (B) to return to Seller, at Seller’s expense, all such Goods, packaging or supplies that Seller shall have previously delivered to Buyer and to require Seller to refund the price to Buyer, whether or not Buyer would then have the right under applicable law to reject or to revoke acceptance of those Goods, packaging or supplies, (vi) to the extent that Buyer requests, Seller shall reasonably assist Buyer in any or all aspects of a recall, including, without limitation, developing a recall strategy and preparing and furnishing reports, records and other information; and (vii) Seller shall pay to Buyer an amount equal to all damages that Buyer incurs by reason of the declaration by the governmental agency and/or such good faith belief by Buyer and any resulting recall or delay in performance or return of Goods to Seller and/or any termination of the Agreement by Buyer. Buyer shall have the right to cancel Orders for Goods that are (1) subject to a recall, (2) produced at a facility that has received an unacceptable plant audit report, or (3) produced at a facility whose FDA registration has been, or is reasonably expected to be, suspended. Buyer’s right to cancel set forth in the immediately preceding sentence extends to all goods affected by the applicable event and to unrelated Goods that come from the same facility.

17. General Indemnification. Seller shall defend, indemnify and hold harmless Buyer and Buyer's customers (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the products purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

18. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

19. Insurance. Seller shall maintain in effect, at Seller's expense, the following minimum insurance coverages:

Commercial General Liability. Seller shall maintain in effect, at Seller's expense, commercial general liability insurance coverage with a limit of \$5,000,000 per occurrence and aggregate that will protect Seller and Buyer from any and all claims and liabilities for property damage, personal injury, death or economic damage, to any person, that arises from the Seller's Goods, their use or consumption or the performance of the services or any activities connected with the Goods or services. The following limits must be maintained by Seller:

Recall Insurance. Seller shall maintain in effect, at Seller's expense, recall liability coverage with a limit of \$2,000,000.

Worker's Compensation and Employers Liability. Seller shall maintain in effect, at Seller's expense, workers' compensation and employers liability insurance coverage.

Auto Liability. Seller shall maintain in effect, at Seller's expense, auto liability coverage with a limit of \$1,000,000.

The above limits may be achieved by a combination of primary coverage and umbrella coverage. All insurance that this Section requires shall be of the types and in amounts, and shall contain endorsements, and shall be issued by insurers having an A.M. Best financial rating of "A" or better. Carriers with a rating less than "A" must be approved by Buyer. Seller shall cause Buyer and each of its Affiliates and related companies, and their respective directors, officers, employees and agents to be named as additional insureds under any or all of the policies evidencing the insurance. Seller shall furnish to Buyer certificates of insurance evidencing any required insurance (a) as part of any initial quote or bid to sell Goods or services to Buyer, (b) prior to commencement of any work by Seller for Buyer or at Buyer's premises, and (c) annually thereafter upon renewal of the insurance coverage.

20. Compliance with Law. Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under the Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate the Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods.

21. Termination. Buyer may terminate the Order, in whole or in part, at any time with or without cause, or for undelivered Goods on seven (7) business days' prior written notice to Seller. In addition to any remedies that may be provided under these Terms, Buyer may terminate the Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate the Order upon written notice to Seller. If Buyer terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the

termination.

22. Limitation of Liability. Nothing in the Order shall exclude or limit (a) Seller's liability under Sections 15, 16, 17, 18 and 24 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

BUYER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR ANY OTHER SPECIAL DAMAGES OF SELLER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR SELLER'S ATTORNEY FEES. EXCEPT FOR ANY ACTION RELATED TO DISCREPANCIES IN AMOUNTS PAID OR DEDUCTED, WHICH ACTIONS MUST BE BROUGHT WITHIN 180 DAYS OF THE DATE OF SUCH PAYMENT OR DEDUCTION, ANY ACTION AGAINST BUYER ARISING OUT OF THE AGREEMENT, ANY ORDER, OR THESE STANDARD TERMS AND CONDITIONS MUST BE FILED WITHIN ONE (1) YEAR AFTER THE CLAIM ACCRUES.

23. Waiver. No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

24. Confidential Information. All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

25. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than seven (7) business days, Buyer may terminate the Order immediately by giving written notice to Seller.

26. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under the Order without Seller's prior written consent.

27. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from the Order.

28. No Third-Party Beneficiaries. The Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

29. Governing Law. All matters arising out of or relating to the Order shall be governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Michigan.
30. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to the Order shall be instituted in the federal courts of the United States of America or the courts of the State of Michigan in each case located in the City of Grand Rapids and County of Kent, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
31. Waiver of Jury Trial. Buyer irrevocably waives its rights to trial by jury in any Action or proceeding arising out of this Agreement or the transactions relating to its subject matter.
32. Cumulative Remedies. The rights and remedies under the Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.
33. Attorney Fees. If Buyer brings an action to enforce its rights under this agreement, the Buyer may recover its expenses (including reasonable attorneys' fees) incurred in connection with the action and any appeal.
34. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), certified or registered mail (in each case, return receipt requested, postage prepaid), or by email with confirmation of delivery. Except as otherwise provided in the Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
35. Severability. If any term or provision of the Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
36. Survival. Provisions of the Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Order including, but not limited to, the following provisions: Setoff, Warranties, General Indemnification, Intellectual Property, Indemnification, Insurance, Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction, and Survival.

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