

## Terms and Conditions of Sale

- Terms to Govern.** These Terms and Conditions of Sale (together with the Sales Contract, Seller's order acknowledgment and any other Seller issued documents are, collectively, the "Terms") are the only terms which govern the sale of goods and services by Amerikoa Ingredients, LLC ("Seller") to the named buyer of the goods and/or services ("Buyer"). These Terms constitute the entire agreement between Seller and Buyer. Seller rejects all additional, different, or inconsistent terms or conditions (including any attempt to strike any of these Terms) regardless if proposed orally or in writing in Buyer's purchase order, other Buyer document, or set forth on Buyer's website. No other terms or conditions shall be binding on Seller unless set forth in a written addendum to these Terms signed by a duly authorized officer of Seller and Buyer. Fulfillment of an order by Seller does not constitute acceptance of any Buyer terms or conditions and does not serve to modify these Terms.
- Purchase Price; Increases.** The purchase price ("Purchase Price") for the goods and services shall be as set forth on the front page of these Terms. The Purchase Price does not include any taxes, fees, or charges. If Seller, at any time, shall be required to pay any such amounts on Buyer's behalf, such amounts shall be invoiced to and paid by Buyer within ten (10) days of the date of Seller's invoice. Notwithstanding the foregoing, Seller reserves the right to increase the Purchase Prices based on increases to Seller's storage costs, freight rates, fuel surcharges, duties, or taxes (excluding taxes assessed on Seller's income). Any increases shall be effective on the date of Seller provides notice to Buyer. Seller reserves the right to correct any pricing errors.
- Payment.** Buyer shall pay all invoiced amounts due to Seller as set forth on the applicable Sales Contract. If not expressly stated on the Sales Contract, then Buyer shall pay invoiced amounts within 20 days of the date of the invoice. Buyer shall make all payments in immediately available United States dollars by check or wire transfer to an account designated in writing by Seller to Buyer.
- Shipping.** If not expressly stated on the Sales Contract, all shipments are made in accordance with Seller's standard shipping and packaging practices and will be F.O.B. Seller's loading dock, or a location described on the applicable Sales Contract ("Delivery Point"). Buyer shall take delivery of the goods once they have been delivered to the Delivery Point. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. If Buyer provides or arranges for the carrier, Buyer shall be responsible for ensuring that the carrier provides food grade transportation equipment.
- Quantities.** Buyer's obligation to purchase goods at a particular Rate of Delivery and Receipt of Product described on the Sales Contract confirmation (a "Quarterly Allocation") sheet is a firm and binding commitment. If Buyer fails to request and receive goods in accordance with a Quarterly Allocation, then Buyer shall owe damages in the amount equal to the sum of (a) the difference between the contracted price for the goods and what Seller is able to sell to third-party purchasers after using commercially reasonable cover efforts, and (b) Seller's additional carrying costs of the goods (e.g., insurance, storage, and financing). If Seller is unable, after reasonable cover efforts, to sell goods the Buyer fails to request and receive under a Quarterly Allocation, then Buyer shall owe damages in the amount equal to the difference between the contracted price for the goods and the market price for the goods, as reasonably determined by the Seller, plus additional carrying costs of the goods (e.g., insurance, storage, and financing). Seller reserves the right to make partial shipments of goods. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's order. If Seller delivers to Buyer a quantity of goods of up to 10% less than what is owed under the Quarterly Allocation, Buyer shall not be entitled to object to or reject the goods or any portion of them by reason of the shortfall. If Buyer so requests, Seller may, but is not required to, deliver goods in accordance with a Sales Contract that exceed the Quarterly Allocation. If shortages occur in Seller's supply of goods (or materials necessary to produce the goods) similar to those ordered under a Sales Contract of which these Terms are a part, then Seller may allocate its available supply among other purchasers in a manner and amount that, in Seller's reasonable discretion, is fair and reasonable. Seller may deduct the quantity not shipped because of such an allocation from the Quarterly Allocation the Buyer is obligated to purchase.
- Inspection of Goods.** Buyer shall inspect the goods within ten (10) days following its receipt. Buyer will be deemed to have accepted the goods unless it notifies Seller in writing within the foregoing inspection period that it has received goods that do not match the type or quantity of goods ordered (such goods being "Nonconforming Goods"). If Buyer timely notifies Seller it has received Nonconforming Goods, Seller will, at Seller's option, either (i) replace such Nonconforming Goods with conforming goods, or (ii) credit or refund the Purchase Price for such Nonconforming Goods paid to Seller by Buyer. All Nonconforming Goods must be returned to Seller at Seller's expense (or, at Seller's written direction, disposed of by Buyer in a manner mutually acceptable to Buyer and Seller with Seller to pay all reasonable disposal costs). Buyer agrees that the remedies set forth in this paragraph are Buyer's exclusive remedies for Seller's delivery of Nonconforming Goods.
- Warranty.** Seller warrants to Buyer that the goods (i) free and clear of any liens or encumbrances arising by or under the Seller, (ii) will not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act as of the time of delivery to the Delivery Point, and (iii) will substantially conform the description of the goods identified in a Sales Contract. If the goods do not match this warranty, Buyer shall notify Seller immediately and shall provide Seller with a written explanation and evidence of the warranty defect. If the goods are found to be defective under this warranty, Seller will, at Seller's option, either (i) replace the defective goods with non-defective goods, or (ii) credit or refund to Buyer the Purchase Price that Buyer paid Seller for such defective goods. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, REGARDLESS OF WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.
- Limitation of Liability.** To the greatest extent permitted under applicable law, in no event shall Seller be liable to Buyer or any third party for any loss of use, lost revenue or profit, loss of data, or diminution in value, or for any consequential, indirect, incidental,

special, or punitive damages, whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not Seller has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.

9. **Returns.** No goods may be returned without Seller's prior written authorization (in Seller's sole discretion), and any such returns shall be made, if at all, only under the terms and conditions specified in writing by Seller. Seller cannot accept the return of any food grade goods once such goods leave Seller's control.
10. **Cancellations.** Buyer's orders are not subject to change or cancellation by Buyer without Seller's prior written consent (in Seller's sole discretion).
11. **Miscellaneous.**
  - (a) **Confidential Information.** All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, 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 this Agreement is confidential, solely for the use of performance hereunder and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.
  - (b) **Buyer's Specifications.** With respect to any portion of the goods manufactured by Seller to Buyer's provided designs, specifications or instructions, Buyer guarantees that such goods and/or processes do not infringe any patent, registered designs, or other property right.
  - (c) **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other fiduciary relationship between the parties.
  - (d) **Force Majeure.** Neither party shall be liable to the other for failure of or delay in performance of any non-payment obligations hereof when such failure or delay is caused by conditions beyond such party's reasonable control, including, but not limited to, war, strike, labor dispute, fire, flood, tornado, hurricane, government intervention, embargo, shortage of raw materials, breakdown, shortage or non-availability of transportation facilities or equipment or any Act of God or other causes beyond such party's reasonable control. Without limitation, a force majeure event shall include a plague, epidemic, pandemic, or outbreak of infectious disease that includes local, regional, state, or national government orders to quarantine, limit business production or services, or restrict employee services. If either party declares force majeure hereunder, such party agrees to use commercially reasonable efforts to ensure the effects of such force majeure event are minimized. The affected party agrees to resume performance of its obligations as soon as reasonably practicable when the cause of the force majeure event has ended. If the force majeure event has not ended within ninety (90) days, either party may cancel the affected order in full or in part, without liability other than to return any deposit or prepayment which is unearned by reason of such cancellation. Regardless of any declaration or continuation of a force majeure event, Buyer shall not be entitled to withhold monies due Seller under any Sales Contract.
  - (e) **No Assignment.** The rights and obligations under this Contract are not assignable by Buyer unless Seller consents to such assignment in writing.
  - (f) **No Third-Party Beneficiaries.** This Agreement 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.
  - (g) **Choice of Law; Venue.** These Terms shall be interpreted, construed and enforced in accordance with the substantive laws of the State of Illinois without regard to its conflict of law provisions. The exclusive venue for any matter arising in connection with these Terms shall be exclusively in the state and federal courts sitting Cook County, IL, and each party consents to the jurisdiction and venue of such courts.
  - (h) **Waiver.** No waiver by any party of any of the provisions of these Terms shall be effective unless explicitly set forth in writing and signed by the party so waiving.
  - (i) **Severability.** If any provision of these Terms or performance thereunder is now or hereafter prohibited by law, regulation, or other governmental action, in any country, state, or territory, or political subdivision, then such provision shall be deemed not to be part of these Terms, within the jurisdiction in which such prohibition is operative. The invalidity or unenforceability of any provisions hereof shall not affect the validity or enforceability of the remaining provisions.
  - (j) **Interest/Costs of Enforcement.** Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including reasonable attorneys' fees.