

STANDARD PO TERMS & CONDITIONS

Introduction; Acceptance. Vendor produces, manufactures, sells and/or resells products in the specialty foods, wholesale or retail grocery category (“Products”), which DPI Specialty Foods, Inc. or any of its subsidiaries (“DPI”) is purchasing pursuant to a DPI Purchase Order (“PO”) accepted by Vendor. Vendor agrees that its acceptance of this PO constitutes (1) Vendor’s express disclaimer of any conflicting terms in the PO with Vendor’s terms and conditions of purchase or the terms and provisions of any other documents provided by Vendor, and (2) Vendor’s express acceptance of these Standard PO Terms and Conditions (the “Terms”, which together with the PO constitute the “Full PO”).

1. Notices. All communications from Vendor to DPI relating to the PO shall be addressed to the DPI’s representative(s) identified on the PO and all communications relating to these Terms shall be addressed to: General Counsel, 601 S. Rockefeller Ave., Ontario, CA 91761.

2. Acknowledgment. The shipment of any Products, acceptance of payment for the shipment of any Products and/or an agreement of acceptance of the Purchase Order shall constitute acceptance by Vendor of the Full PO and each and all of the Terms stated herein.

3. Shipping Terms. If Vendor arranges for the transportation of Products from Vendor’s location to DPI via a carrier of Vendor’s choosing, the shipment is FOB destination with Vendor bearing all costs for freight, insurance, duties, taxes and other shipping expenses to the destination specified in the PO and shall bear all risk of loss until the goods are received by DPI at the specified destination. If DPI arranges for the transportation of Products from Vendor’s location via a carrier of DPI’s choosing, Products will be shipped FOB origin, with DPI bearing risk of loss and taking title upon delivery of the Product to the carrier. Shipments will be made in accordance with the most current version of DPI’s Vendor Policies and Expectations, as published on the Vendor Portal.

4. Order Acceptance. Receipt of an order does not constitute acceptance of all Products in that order. DPI shall have the right to inspect and reject any order, or any part thereof for any non-conforming Product, Product shortages or shipping damage. Vendor will correct any such defects in the Product and DPI will deduct credit amounts from any open invoice or require Vendor to issue a check in the amount of the credit, in DPI’s sole discretion. In no event shall acceptance be considered approval of or waiver of any latent defect, nor waiver of any warranty granted by the Vendor (or by law) to any person or entity that purchases any Product for use in the regular course of such person’s or entity’s personal or business use. Vendor will assist DPI in conducting any reasonable inspections or testing procedures, as may be requested by DPI.

5. Order Changes and Cancellations. DPI shall have the right, without penalty, to change the location of delivery of any PO or to increase or decrease the number of Product units in a PO by providing Vendor written notice at least two (2) business days prior to the scheduled shipment date. DPI may, in its sole discretion, cancel or reschedule any PO without incurring any additional charges by providing Vendor with written notice at least two (2) business days prior to the scheduled shipment date.

6. Invoice. Unless otherwise specified by DPI in writing, a separate invoice shall be issued for each shipment and only after the Vendor Product is shipped. No payment will be made or required prior to receipt of Product and current invoice. Payment due dates will be computed from the date of receipt of an invoice to the date DPI’s check is mailed (or payment is otherwise transmitted by DPI). No terms or conditions printed on any invoice will be binding and DPI’s payment of such invoice does not constitute acceptance of such terms.

7. Payments. Unless otherwise specified on the PO, payment terms are 2% 10 Net 35 days EFT calculated from the date of actual receipt of goods or the date of DPI’s receipt of the invoice, whichever is later. Notwithstanding the foregoing, payment terms for an initial order from any new Vendor shall be Net 90 days date of invoice. DPI may extend this initial payment period to allow for receipt of DPI customer marketing charges. DPI may offset any amounts due from Vendor against any invoice. If Vendor’s account is referred to an attorney or collection agency for collection, Vendor shall pay all of DPI’s expenses incurred in such collection efforts including, but not limited to, collection agency fees, court costs and reasonable attorneys’ fees.

8. Disputes. Account discrepancies or payment disputes shall be resolved with the applicable DPI Division. If the parties are unable to resolve the dispute within sixty (60) calendar days of the payment or deduction, the matter shall be escalated to DPI’s National Vendor Relations team. No DPI Division may be placed on credit hold unless the parties are unable to resolve the dispute within sixty (60) days after escalation to DPI’s National Vendor Relations team. No dispute may be initiated more than 90 days from the date the payment was made or the deduction was taken, whichever is later.

9. Credits and Returns. DPI shall have the right to return, at Vendor’s expense, and for full credit or refund, any Products that are: (i) shipped in error or in non-conformance with a PO; (ii) past the expiration date; (iii) damaged or defective; or (iv) not manufactured, packaged or labeled in accordance with industry standards and/or all applicable laws, ordinances, rules and regulation. All returns will be destroyed in field and will not be sent back to Vendor. Vendor shall be liable, and shall reimburse DPI, for 100% of the reclamation costs incurred by DPI for returns from DPI customers. All customer returns will be destroyed in field and will not be sent back to Vendor. DPI has the right to pass through deductions for any retailer-initiated chargebacks related to their Products.

10. Representations and Warranties; Disclaimer. Vendor represents and warrants that all Products shall: (i) conform to the specifications, descriptions and labels; (ii) be merchantable; (iii) be free from defects in workmanship, material, packaging, construction, and design, (iv) be fit and sufficient for the purpose for which it is intended and/or which is stated on any packaging, labeling or advertising, (v) be free of any and all liens and encumbrances of any kind, (vi) conform to all domestic and international legal requirements and shall not be in violation or cause DPI to be in violation of any applicable law, rule or regulation (including without limitation, export, environmental and hazardous substance laws, regulations, rules and directives) and (vii) comply with all applicable federal, state or local laws, regulations, ordinances, or administrative orders or rules, regarding all food labeling, disclosure and safety laws, rules, regulations and ordinances, as of the date of such shipment or delivery, are not adulterated or misbranded and are not articles which cannot be introduced into interstate commerce. **THE FOREGOING EXPRESS WRITTEN WARRANTIES BETWEEN THE PARTIES ARE EXCLUSIVE AND ARE IN LIEU OF ANY OTHER WARRANTIES OR REMEDIES, EXPRESS, IMPLIED OR STATUTORY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO THE EXTENT THAT IT IS ILLEGAL OR UNENFORCEABLE UNDER APPLICABLE LAW.**

11. Indemnification. Vendor agrees to indemnify, defend and hold DPI, its parent, affiliates, subsidiaries, related entities, officers, directors, employees, and contractors harmless from and against any and all liabilities, damages, costs and expenses, including reasonable attorneys’ fees

(collectively, “Losses”), incurred by DPI and the indemnified parties as a result of or arising from (i) any product liability or similar claims arising or resulting from the use or consumption of any Product, including claims seeking damages for personal injury, property damage or death arising from or in relation to Products; (ii) any intentional misconduct or negligence by Vendor or its employees or agents in performing its obligations under this Agreement; (iii) any third party claim that a Product, or any part thereof, infringes or misappropriates any Intellectual Property Right of a third party; (iv) the failure or alleged failure of Products to comply with any express or implied warranties of Vendor; (v) the violation or alleged violation of any law, statute or governmental ordinance due or related to the manufacture, possession, use or sale of any Products; (vi) any actual or alleged unfair business practices, false advertising, misrepresentation or fraud resulting from the Products or materials related to the Products and provided by Vendor; (vii) any breach or alleged breach of a Vendor representation or warranty or any other provision of this Agreement by Vendor. DPI shall have the option, but not obligation of assuming and controlling the defense and settlement of any such claims, at Vendor’s expense if, in DPI’s sole discretion, DPI’s interest would be prejudiced otherwise. In the event that such claims should arise, DPI agrees to provide Vendor prompt notice of the existence of any claim of which DPI is aware, reasonable assistance in the defense and settlement of any claim at Vendor’s request and expense (to the extent Vendor has assumed the defense and settlement of such claim). DPI’s express written consent shall be required in connection with any settlement that includes terms beyond payment of money by Vendor. This Section will not be construed to limit or exclude any other claims or remedies that DPI or its respective affiliates (and its and their respective directors, employees and agents) may assert.

12. Compliance. Vendor, its subsidiaries, affiliates or divisions shall be in compliance with all FDA and other federal, state and local laws, rules or regulations, including, without limitation, all food labeling, disclosure and safety laws, rules, regulations and ordinances and the Bioterrorism Act (if applicable), at time of shipment and delivery of any product. DPI may request copies of Vendor’s policies, certifications and/or procedures, including, without limitation, Material Safety Data Sheets, to validate compliance with this section.

13. Limitation of Liability. EXCEPT FOR ANY WILLFUL OR GROSSLY NEGLIGENT ACTS BY A PARTY OR ITS EMPLOYEES OR AGENTS, OR THE FULFILLMENT OF ANY INDEMNITY OBLIGATIONS UNDER THESE TERMS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, OR TO ANY THIRD PARTY CLAIMING THROUGH OR UNDER SUCH PARTY, FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

14. Insurance. At all times, Vendor shall obtain and maintain, at its sole expense, a comprehensive “all-risk” and general liability policy of insurance, in amounts not less than \$2 Million per occurrence and \$4 Million annual aggregate, against (i) loss or damage by fire or any other casualty (including but not limited to business interruptions, Vendor outages and acts of terrorists) to the Product inventory, Vendor facilities or those controlled by Vendor, assets and operations of Vendor; (ii) defective product, false advertising, trademark or service mark, patent or copyright infringement claims alleged or arising from the market and resale of the Products and/or end user use of the Products; and (iii) DPI’s use or reliance on the Product Information provided to DPI by Vendor. Vendor shall provide a current Certificate of Insurance satisfactory to DPI reflecting the types of coverage and limits required hereunder, and shall name DPI as an additional insured in the aforementioned required insurance policy. Except as expressly provided in these terms and conditions, these insurance requirements shall not limit Vendor’s liability to DPI in the event insurance recoveries/proceeds are less than Vendor’s liability to DPI.

15. Complete Agreement. This Full PO contains the entire understanding of the parties with respect to the subject matter herein and except as specifically provided herein, supersedes any and all understandings or agreements, oral or written, between the parties relating to the subject matter hereof.

16. Amendments; Waivers. No modification, amendment or waiver of any term or condition hereof shall be effective unless consented to in a writing signed by DPI and Vendor, which consent shall not be unreasonably withheld or delayed. Unless agreed to by DPI in writing, DPI will not be bound to any additional or different terms or conditions hereafter transmitted by Vendor and DPI will not be bound by its silence, course of dealing, usage of the trade or its acceptance of the packaged goods. DPI and Vendor hereby acknowledge and agree that the waiver of any provision hereto at a particular time by DPI shall not constitute a waiver of such provision or any other provision at any other time, unless so specified in writing by DPI.

17. Grant of Rights. Vendor hereby grants to DPI a non-exclusive, non-transferable license to use all Vendor trademarks, service marks, and other owned or licensed intellectual property, or any other similar rights held by Vendor necessary or desirable for DPI to market and sell Products.

18. Assignment. The Full PO and Vendor’s rights, duties and obligations hereunder shall not be assignable by Vendor without the prior written consent of DPI, which consent may be withheld in its sole discretion, but DPI shall have the right to assign the Full PO to any subsidiary, affiliate or successor without Vendor’s consent. The Full PO and these terms and conditions shall inure to the benefit of and be binding upon DPI and Vendor and their respective successors and permitted assigns; nothing contained herein shall give to any other person any benefit or any legal or equitable right, remedy or claim.

19. Miscellaneous. Headings used herein are for convenience only and shall not be used for interpretive purpose. In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of these Terms. A party’s failure to act with respect to another party’s breach of any provision contained herein does not constitute a waiver. If any provision herein is held to be invalid or unenforceable, such provision shall be narrowly construed, if possible, so as to be enforceable, or otherwise deemed ineffective and the remaining provisions shall not be affected. The rights and obligations of the parties under this Full PO shall be governed in all respects by the laws of the State of California exclusively, as such laws apply to contracts between California residents performed entirely within California. Venue for any dispute under this Full PO shall be in the County and State in which the DPI Division identified on the PO is located. These terms and conditions will survive the fulfillment of the Full PO.